

GOV. MSG. NO. 850

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 1, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 1, 2008, the following bill was signed into law:

HB2863 HD2 SD2 CD1

A BILL FOR AN ACT RELATING TO RENEWABLE
ENERGY.
(ACT 207)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish a
2 renewable energy facility siting process for state and county
3 permits required for the siting, development, construction, and
4 operation of a new renewable energy facility of at least two
5 hundred megawatts of electricity. The legislature finds that
6 coordinating the process for required permits is in the State's
7 interests to reduce Hawaii's over-dependence on fossil fuels and
8 meet Hawaii's energy self-sufficiency goals and mandates and
9 will encourage the timely development of renewable energy
10 projects that utilize Hawaii's indigenous renewable energy
11 resources for the health, safety, and welfare of the residents
12 of Hawaii.

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

"CHAPTER

RENEWABLE ENERGY FACILITY SITING PROCESS



1 § -1 **Definitions.** As used in this chapter, unless the
2 context otherwise requires:

3 "County agency" means a department, division, office,
4 officer, agency, or other organization of a county government,
5 including a county council.

6 "County law" means a county charter provision, ordinance,
7 or administrative rule.

8 "County permit" means a permit that is subject to approval
9 by a county agency pursuant to federal, state, or county law.

10 "Delegated environmental permit" means an air or water
11 quality permit subject to issuance by the department of health
12 under authority delegated by the United States Environmental
13 Protection Agency.

14 "Energy resources coordinator" or "coordinator" means the
15 energy resources coordinator as designated in section 196-3.

16 "Permit":

17 (1) Means any approval, no matter the nomenclature,
18 necessary for the siting, development, construction,
19 or operation of a renewable energy facility; except
20 that the term shall not include:

21 (A) Acceptance by an accepting authority of an
22 environmental impact statement on a facility;



- 1 (B) Issuance by a county agency of a building or
- 2 grading permit; or
- 3 (C) Approval by the public utilities commission of a
- 4 power purchase agreement between a renewable
- 5 energy facility and a public utility; and

6 (2) Includes:

- 7 (A) A state land use reclassification;
- 8 (B) A county development, community, or community
- 9 development plan amendment;
- 10 (C) A county zoning map amendment;
- 11 (D) A state conservation district use permit;
- 12 (E) A state special use permit for an agricultural or
- 13 rural district;
- 14 (F) A special management area permit;
- 15 (G) A shoreline setback variance; and
- 16 (H) A grant of an easement on state or county real
- 17 property.

18 "Permit plan" means the aggregated set of required permits
19 for a renewable energy facility, coordinated by the department
20 of business, economic development, and tourism.



1 "Power purchase agreement" means an agreement between a
2 renewable energy facility owner and a public utility on the sale
3 of electricity produced by the facility to the public utility.

4 "Renewable energy" has the same meaning as defined under
5 section 269-91.

6 "Renewable energy facility" or "facility" means a new
7 facility located in the State with the capacity to produce from
8 renewable energy at least two hundred megawatts of electricity.
9 The term includes any of the following associated with the
10 initial permitting and construction of the facility:

- 11 (1) The land parcel on which the facility is situated;
- 12 (2) Any renewable energy production structure or
13 equipment;
- 14 (3) Any energy transmission line from the facility to a
15 public utility's electricity transmission or
16 distribution system;
- 17 (4) Any on-site infrastructure; and
- 18 (5) Any on-site building, structure, other improvement, or
19 equipment necessary for the production of electricity
20 or biofuel from the renewable energy site,
21 transmission of the electricity or biofuel, or any
22 accommodation for employees of the facility.



1 "State agency" means a department, division, office,
2 agency, or other organization of the state government, but not
3 the legislature.

4 "State law" means a state constitutional provision,
5 statute, or administrative rule.

6 "State permit" means a permit that is subject to the
7 approval of a state agency pursuant to federal or state law;
8 except that the term does not include a delegated environmental
9 permit.

10 **§ -2 Renewable energy facility siting process staff.**

11 The energy resources coordinator may employ and dismiss staff
12 without regard to chapters 76 and 89 to assist the coordinator
13 in the implementation of this chapter. The salary of each staff
14 member shall be set by the coordinator. Each staff member shall
15 be entitled to participate in any public employee benefit
16 program plan or privilege.

17 The coordinator may also contract persons to assist the
18 coordinator in the implementation of this chapter.

19 **§ -3 General duties of the coordinator.** The coordinator
20 shall:

- 21 (1) Consult with appropriate state and county agencies to
22 develop and establish a permit plan application format



- 1 and procedure designed to ensure a timely review to
2 obtain required permits and approvals for renewable
3 energy facilities;
- 4 (2) Receive a permit plan application, in a form as the
5 coordinator shall prescribe, from an applicant for the
6 approval of the siting, development, construction, and
7 operation of a renewable energy facility, with an
8 appropriate initial application fee as determined by
9 the coordinator;
- 10 (3) Identify all state and county permits necessary for
11 approval of the renewable energy facility;
- 12 (4) Assist in the permit plan application process by
13 coordinating permitting processes, giving technical
14 assistance, overseeing the creation of the permit
15 plan, and providing general oversight to facilitate
16 the timely review and permitting of the siting of a
17 renewable energy facility;
- 18 (5) Gather from the applicant any information the
19 coordinator finds relevant and necessary for the
20 reviewing and processing of a permit application by
21 the federal, state, and county agencies;



1 (6) Coordinate public meetings on the island where a
2 renewable energy facility is proposed to be developed
3 to:

4 (A) Allow members of the affected communities to
5 provide input regarding the development of the
6 renewable energy facility;

7 (B) Promote public awareness of the plan for the
8 renewable energy facility in the proposed area;
9 and

10 (C) Allow the coordinator, the applicant, and any
11 applicable agency to gain public sentiment and
12 input regarding the proposed development of the
13 renewable energy facility, and incorporate the
14 public sentiment and input into the planning of
15 the proposed renewable energy facility; and

16 (7) Work with the federal, state, and county agencies and
17 the applicant to determine the terms and conditions of
18 the permit plan and permits that are necessary to
19 effectuate this chapter and to protect the public
20 health and safety and promote the general welfare.

21 **§ -4 Permit plan application; coordinator; fee;**
22 **pre-application conference.** (a) The coordinator shall



1 establish and require the applicant to pay a fee for the
2 coordinator's services in overseeing the permit plan process.
3 The coordinator shall set the fee at an amount sufficient to
4 cover the costs and expenses of the coordinator, coordinator's
5 staff and any contractor contracted by the coordinator to assist
6 the applicant, and relevant state and county agencies, if
7 necessary, to provide input and advice on the state and county
8 permits necessary for the facility and in obtaining the permits.
9 Upon collection of the fee or periodically thereafter, the
10 coordinator, if necessary, shall transmit to each relevant state
11 or county agency the portion of the fee that reflects the cost
12 to that state or county agency for providing its input or advice
13 or issuing the required permits.

14 (b) Before accepting a permit plan application, the
15 coordinator may hold a pre-application conference, without
16 regard to acceptance of the final environmental impact
17 statement, with the prospective applicant to discuss all the
18 state and county permits necessary for the facility and notify
19 the prospective applicant of the information that must be
20 submitted for the necessary permits under the permit plan.
21 After receiving a permit plan application, the coordinator shall



1 accept the application after determining that the application is
2 complete and complies with the permit plan format and procedure.

3 (c) Within ten days of acceptance of a permit plan
4 application, the coordinator shall publish public notice of the
5 acceptance of the application in two consecutive publications of
6 the office of environmental quality control's environmental
7 notice, published pursuant to section 343-3. The public notice
8 shall include:

- 9 (1) The name of the applicant;
- 10 (2) The location of the proposed renewable energy
11 facility;
- 12 (3) A summarized description of the facility;
- 13 (4) The state and county permits required for the
14 facility; and
- 15 (5) Any other information deemed necessary or desirable by
16 the coordinator.

17 (d) In conjunction with the pre-application conference,
18 the initial public meeting, and any subsequent coordinating
19 meetings with permitting agencies, the coordinator shall compile
20 a permit plan, which shall include:

- 21 (1) All state and county permits needed;
- 22 (2) All applicant information required;



- 1 (3) A plan for permits to be processed concurrently;
- 2 (4) A list of required state and county technical support
- 3 and data required;
- 4 (5) Agreement on timeline and coordination for potential
- 5 environmental impact statements and permit
- 6 concurrence, review, and issuance;
- 7 (6) Agreement on conditions by which any timelines may be
- 8 extended; and
- 9 (7) Agreement on cost reimbursement agreement.
- 10 (e) The permit plan shall be a working document, available
- 11 to the public and posted on the department of business economic
- 12 development and tourism's website, and shall be regularly
- 13 updated with current information. The permit plan shall be used
- 14 to promote efficiency and transparency in the permitting process
- 15 and to achieve the purposes of this chapter through efficiencies
- 16 in processes and procedures, including the coordinated and
- 17 concurrent processing of permits where possible, while ensuring
- 18 opportunities for appropriate public comment and participation,
- 19 including hearings normally required for permits and mitigation
- 20 of potential environmental impacts.
- 21 (f) The permit plan shall be designed to ensure that all
- 22 permits identified in the permit plan shall be processed and



1 either denied or approved no later than twelve months after the
2 date that the project permit plan application is accepted by the
3 coordinator, subject to any extensions that may be requested by
4 the applicant.

5 (g) Each appropriate state and county agency shall
6 diligently endeavor to process and approve or deny any permit in
7 the permit plan no later than twelve months after a completed
8 permit plan application is approved by the coordinator. If a
9 permit is not approved or denied within twelve months after
10 approval of a completed permit plan application, the permitting
11 agency shall provide the coordinator with a report identifying
12 diligent measures that are being taken by the agency to complete
13 processing and action as soon as practicable. If a permitting
14 agency fails to provide this report and if the permit has not
15 been approved or denied within eighteen months following the
16 approval of a completed permit plan application by the
17 coordinator, the permit shall be deemed approved.

18 § -5 **Approval of state permits.** When the coordinator
19 accepts a permit plan application for a renewable energy
20 facility that requires state permits, the coordinator shall
21 facilitate the timely processing of the permit plan with the
22 state agency or agencies responsible for approving, monitoring,



1 and enforcing the terms and conditions of the permit in
2 accordance with the permit plan.

3 **§ -6 Approval of county permits.** When the coordinator
4 accepts a permit plan application for a renewable energy
5 facility that requires county permits, the coordinator shall
6 facilitate the timely processing of the permit plan with the
7 relevant county agency or agencies responsible for approving,
8 monitoring, and enforcing the terms and conditions of the permit
9 in accordance with the permit plan.

10 **§ -7 Coordination with federal permits and delegated**
11 **environmental permits.** (a) The coordinator shall establish and
12 implement a system to coordinate the approval of required
13 federal permits with state and county permits for a renewable
14 energy facility. The system shall include a process for
15 coordinating the federal environmental impact statement process
16 with the state environmental impact statement process.

17 (b) The coordinator also shall establish and implement a
18 system to coordinate the issuance of delegated environmental
19 permits by the department of health with approval of state and
20 county permits for a renewable energy facility.

21 (c) The coordinator may convene interagency working groups
22 for the purpose of this section.



1 **§ -8 Environmental impact review process; applicability.**

2 (a) Chapter 343 shall apply to any permit plan application for
3 a renewable energy facility.

4 (b) Notwithstanding any provision in this chapter or in
5 chapter 343 to the contrary, the coordinator shall not accept a
6 permit plan application for a renewable energy facility prior to
7 the acceptance of an environmental impact statement for the
8 renewable energy facility. An agency may review and commence
9 processing applications for permits for a renewable energy
10 facility prior to the acceptance of a permit plan by the
11 coordinator, provided that action to grant or deny a permit
12 shall not be taken until after final acceptance of an
13 environmental impact statement.

14 (c) Notwithstanding any provision of chapter 343 to the
15 contrary, the department of business, economic development, and
16 tourism shall be the accepting authority for any final
17 environmental impact statement that is prepared by an applicant
18 for any renewable energy facility under this chapter.

19 **§ -9 Building or grading permit required from county.**

20 All applicable county-issued permits shall be required to grade
21 a site or construct a structure for a renewable energy facility.

22 The applicable county shall establish an expedited process for



1 review and issuance of all required building or grading permits.
2 Under the process, the county may contract with a third party to
3 conduct the review of the permit application and require the
4 applicant for the permit to pay the cost incurred for the third
5 party review.

6 **§ -10 Public participation; public meetings.** Upon
7 acceptance of the permit plan application for a renewable energy
8 facility, the coordinator shall hold a public meeting on the
9 island on which the renewable energy facility will be built.
10 The purpose of the public meetings shall be to promote public
11 awareness of the proposed renewable energy facility in the
12 affected areas. The public meeting shall be an opportunity for
13 any members of the affected community to provide input regarding
14 the development and construction of the renewable energy
15 facility and regarding the permit plan developed pursuant to
16 section -4. The public meeting shall also be an opportunity
17 for the coordinator, the applicant, and any applicable state or
18 county agencies to gain public and community sentiment regarding
19 the proposed development of the renewable energy facility and
20 incorporate the public sentiment and input into the planning of
21 the proposed renewable energy facility.



1 § -11 **Renewable energy facility siting special fund;**

2 **uses.** (a) There is created within the state treasury a
3 renewable energy facility siting special fund, which shall
4 consist of:

5 (1) Moneys appropriated to the fund by the legislature;

6 (2) Permit plan application fees collected by the
7 coordinator under this chapter; and

8 (3) Moneys allotted to the fund from other sources.

9 (b) Moneys from the fund shall be expended by the energy
10 resources coordinator for the purposes of section -4(a) and
11 for the operation and administration of the renewable energy
12 facility siting process pursuant to this chapter.

13 § -12 **Rules.** The coordinator may adopt interim rules to
14 implement this chapter without regard to the notice and public
15 hearing requirements of section 91-3 or the small business
16 impact review requirements of chapter 201M; provided that any
17 amendment of the interim rules shall be subject to chapters 91
18 and 201M."

19 SECTION 3. Section 343-2, Hawaii Revised Statutes, is
20 amended by adding a new definition to be appropriately inserted
21 and to read as follows:



1 "Renewable energy facility" has the same meaning as
2 defined in section -1."

3 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The public utilities commission may direct public
6 utilities that supply electricity to the public to arrange for
7 the acquisition of and to acquire electricity generated from
8 nonfossil fuel sources as is available from and ~~which~~ the
9 producers ~~[of same]~~ are willing and able to make available to
10 the public utilities, and to employ and dispatch the nonfossil
11 fuel generated electricity in a manner consistent with the
12 availability thereof to maximize the reduction in consumption of
13 fossil fuels in the generation of electricity to be provided to
14 the public. To assist the energy resources coordinator in
15 effectuating the purposes of chapter , the public utilities
16 commission may develop reasonable guidelines and timetables for
17 the creation and implementation of power purchase agreements."

18 SECTION 5. Section 343-5, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) Whenever an applicant proposes an action specified by
21 subsection (a) that requires approval of an agency and that is
22 not a specific type of action declared exempt under section



1 343-6, the agency initially receiving and agreeing to process
 2 the request for approval shall prepare an environmental
 3 assessment of the proposed action at the earliest practicable
 4 time to determine whether an environmental impact statement
 5 shall be required[-]; provided that, for an action that proposes
 6 the establishment of a renewable energy facility, a draft
 7 environmental impact statement shall be prepared at the earliest
 8 practicable time. The final approving agency for the request
 9 for approval is not required to be the accepting authority.

10 For environmental assessments for which a finding of no
 11 significant impact is anticipated:

- 12 (1) A draft environmental assessment shall be made
 13 available for public review and comment for a period
 14 of thirty days;
- 15 (2) The office shall inform the public of the availability
 16 of the draft environmental assessment for public
 17 review and comment pursuant to section 343-3; and
- 18 (3) The applicant shall respond in writing to comments
 19 received during the review, and the agency shall
 20 prepare a final environmental assessment to determine
 21 whether an environmental impact statement shall be
 22 required. A statement shall be required if the agency



1 finds that the proposed action may have a significant
2 effect on the environment. The agency shall file
3 notice of the agency's determination with the office,
4 which, in turn, shall publish the agency's
5 determination for the public's information pursuant to
6 section 343-3.

7 The draft and final statements, if required, shall be
8 prepared by the applicant, who shall file these statements with
9 the office.

10 The draft statement shall be made available for public
11 review and comment through the office for a period of forty-five
12 days. The office shall inform the public of the availability of
13 the draft statement for public review and comment pursuant to
14 section 343-3.

15 The applicant shall respond in writing to comments received
16 during the review and prepare a final statement. The office,
17 when requested by the applicant or agency, may make a
18 recommendation as to the acceptability of the final statement.

19 The authority to accept a final statement shall rest with
20 the agency initially receiving and agreeing to process the
21 request for approval. The final decision-making body or
22 approving agency for the request for approval is not required to



1 be the accepting authority. The planning department for the
2 county in which the proposed action will occur shall be a
3 permissible accepting authority for the final statement.

4 Acceptance of a required final statement shall be a
5 condition precedent to approval of the request and commencement
6 of the proposed action. Upon acceptance or nonacceptance of the
7 final statement, the agency shall file notice of such
8 determination with the office. The office, in turn, shall
9 publish the determination of acceptance or nonacceptance of the
10 final statement pursuant to section 343-3.

11 The agency receiving the request, within thirty days of
12 receipt of the final statement, shall notify the applicant and
13 the office of the acceptance or nonacceptance of the final
14 statement. The final statement shall be deemed to be accepted
15 if the agency fails to accept or not accept the final statement
16 within thirty days after receipt of the final statement;
17 provided that the thirty-day period may be extended at the
18 request of the applicant for a period not to exceed fifteen
19 days.

20 In any acceptance or nonacceptance, the agency shall
21 provide the applicant with the specific findings and reasons for
22 its determination. An applicant, within sixty days after



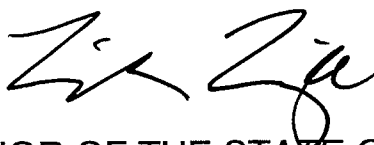
1 nonacceptance of a final statement by an agency, may appeal the
2 nonacceptance to the environmental council, which, within thirty
3 days of receipt of the appeal, shall notify the applicant of the
4 council's determination. In any affirmation or reversal of an
5 appealed nonacceptance, the council shall provide the applicant
6 and agency with specific findings and reasons for its
7 determination. The agency shall abide by the council's
8 decision."

9 SECTION 6. There is appropriated out of the renewable
10 energy facility siting special fund the sum of \$100,000 or so
11 much thereof as may be necessary for fiscal year 2008-2009 to be
12 expended by the department of business, economic development,
13 and tourism for the purposes of this Act.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2008.

APPROVED this 1 day of JUL , 2008



GOVERNOR OF THE STATE OF HAWAII

