

JAN 22 2007

A BILL FOR AN ACT

RELATING TO FORMATION OF A RENEWABLE ENERGY FACILITIES SITING
COUNCIL.

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

1 SECTION 1. In 2004, the legislature found that Hawaii was
2 becoming increasingly dependent on imported oil and other fossil
3 fuels, especially for electrical energy generation. The
4 legislature also recognized then that local public utility
5 companies were steadily and significantly increasing their use
6 of fossil fuels in order to keep up with consumer demands. The
7 legislature concluded that an increase in the use of fossil
8 fuels was proportionate to an increase in green house gas
9 emissions. Consequently, the legislature amended the State's
10 renewable portfolio standards by mandating, incrementally, that
11 a percentage of net electricity sales be derived from renewable
12 energy sources. The ultimate goal that the legislature set for
13 public utilities was to reach twenty per cent renewable resource
14 use by the year 2020 for the State.

15 Hawaii has an abundance of renewable energy resources that
16 can and should be used as an alternative to fossil fuels.
17 However, problems continue to surface relating to where

1 renewable energy producing facilities should be built, including
2 the numerous and sometimes lengthy or duplicative permitting
3 review processes.

4 These obstacles can be reduced, while still ensuring a
5 thorough review of each project and extensive opportunity for
6 public input, by creating a state renewable energy facility
7 siting council for renewable energy facilities. It would be a
8 one-stop review council, instrumental in assisting project
9 developers to locate appropriate sites, streamlining permitting
10 and other government- related actions, and significantly
11 shortening the time it takes to complete these projects, while
12 providing thorough review and ample and varied opportunities for
13 public input. The site certificate would serve as a
14 consolidated state permit. Therefore, if the siting council
15 issues a site certificate, then other state and local government
16 permits required for the project would be issued. These other
17 permits potentially include use permits for land use or
18 environmental permits based on state regulations. Issuing
19 agencies would be bound by the site certificate. Once a site
20 certificate is issued, state agencies and local governments must
21 issue their permits, subject only to conditions contained in the
22 site certificate.

1 In light of the significant objectives and mandates that
2 the State has imposed on the local renewable energy industry,
3 the State must also assist the industry by creating
4 opportunities to achieve these objectives. The creation of a
5 renewable energy facilities siting council for renewable energy
6 developments is one significant way the State can illustrate its
7 commitment to lessening Hawaii's dependence on imported oil.

8 In the interests of the public health and the welfare of
9 the people of this State, it is the declared public policy of
10 this State that the siting, construction, and operation of
11 renewable energy facilities shall be accomplished in a manner
12 consistent with protection of the public health and safety and
13 in compliance with the energy policy and air, water, solid
14 waste, land use, and other environmental protection policies of
15 this State. It is, therefore, the purpose of this Act, to the
16 maximum extent permitted by the United States Constitution, to
17 establish in cooperation with the federal government a
18 comprehensive system for the siting, monitoring, and regulating
19 of the location, construction, and operation of all renewable
20 energy facilities in this State.

21 This Act achieves this purpose by creating a state
22 renewable energy facilities siting council.

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

4 "CHAPTER

5 SITING RENEWABLE ENERGY FACILITIES

6 § -1 Definitions. As used in this chapter:

7 "Applicant" means any person who makes application for a
8 site certificate in the manner provided for in this chapter.

9 "Council" means the renewable energy facilities siting
10 council.

11 "Energy generation area" means an area within which the
12 effects of two or more small generating plants may accumulate so
13 the small generating plants have the effects of a magnitude
14 similar to a single generating plant of at least one megawatt or
15 more.

16 "Facility" means a renewable energy facility together with
17 any related or supporting facilities.

18 "Local government" means any county within the State.

19 "Project order" means the order, including any amendments,
20 issued by the council in accordance with this chapter.

21 "Public utility" means the same as in section 269-1.

1 "Renewable energy facility" means any physical structure or
2 change to an existing landscape that is used for the purpose of:

- 3 (1) Generating or producing energy utilizing the
4 sources specified by section 269-91; or
5 (2) Producing the fuel sources specified by section
6 269-91, including biofuels.

7 "Site" means a proposed location of a renewable energy
8 facility, and its related or supporting facilities.

9 "Site certificate" means the binding agreement between the
10 State, local government, and the applicant, authorizing the
11 applicant to construct and operate a renewable facility on an
12 approved site, incorporating all conditions imposed by the
13 council on the applicant.

14 **§ -2 Renewable energy facility siting council;**
15 **appointment; confirmation; term; restrictions.** (a) There is
16 established a renewable energy facility siting council to be
17 located within the department of budget and finance for
18 administrative purposes, and consisting of nine members, who
19 shall be appointed in the manner prescribed in section 26-34,
20 except as otherwise provided in this section. Two members shall
21 be appointed from each of the counties and one member shall be
22 appointed at large to comprise the nine-member council. The

1 mayors of each county shall provide the governor with three
2 names from which the governor shall choose one member to be
3 appointed from each county. The governor shall designate a
4 member to be chairperson of the council. The members shall
5 receive no compensation for their services on the council, but
6 shall be reimbursed for actual expenses incurred in the
7 performance of their duties.

8 (b) The term of office of each member is six years. The
9 terms of the members first appointed shall be as follows:
10 three members shall serve for two years, three members shall
11 serve for four years, and three members shall serve for six
12 years, as designated by the governor at the time of appointment.
13 Before the expiration of the term of a member, the governor
14 shall appoint a successor whose term begins on July 1 next
15 following. Section 26-34 shall not apply insofar as it relates
16 to the number of terms and consecutive number of years a member
17 can serve on the council; provided that no member shall serve
18 more than twelve consecutive years. If there is a vacancy for
19 any cause, the governor shall make an appointment to become
20 immediately effective for the unexpired term.

21 (c) No member of the council shall be an employee,
22 director, or retired employee or director of, or a consultant

1 to, or have any pecuniary interest, other than an incidental
2 interest which is disclosed and made a matter of public record
3 at the time of the appointment to the council, in any
4 corporation or utility operating a renewable energy facility in
5 this state or in any manufacturer of related equipment.

6 (d) In appointing the members, the governor shall select
7 persons who have experience in accounting, business,
8 engineering, government, finance, law, landuse, or other
9 similar fields.

10 § -3 **Member panels.** Each application for site
11 certificate shall be reviewed by three members, as determined by
12 the council, provided that two members shall be those who are
13 appointed from the same county in which the proposed facility
14 will be situated, and provided that the members from the same
15 county in which the proposed facility will be situated are not
16 otherwise recused or excused, pursuant to any rules adopted by
17 the council.

18 § -4 **Powers and duties; rules.** Notwithstanding any law
19 to the contrary, except such laws that were established pursuant
20 to authority delegated by the federal government, the council
21 shall:

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- 1 (1) Conduct and prepare, independently or in
2 cooperation with others, studies, investigations,
3 research, and programs relating to all aspects of
4 site selection;
- 5 (2) In accordance with the applicable state law,
6 adopt standards and rules to perform the
7 functions vested by law in the council, including
8 the adoption of standards and rules for the
9 siting of renewable energy facilities, consistent
10 with section 269-91, of a size of one megawatt or
11 greater;
- 12 (3) In accordance with the applicable state law,
13 adopt rules specifying all council fees and the
14 expenses to be recovered by such fees;
- 15 (4) Encourage cooperation by the people, counties,
16 industries, agriculture, and others, in
17 performing the functions vested by law in the
18 council;
- 19 (5) Advise, consult, and cooperate with other
20 agencies of the State, local government,
21 industries, other states, the federal government,
22 and affected groups;

1 (6) Employ and at pleasure dismiss an executive
2 administrator, who shall be exempt from chapter
3 76, and fix the executive administrator's
4 compensation; and

5 (7) Appoint and employ clerks, administrative
6 personnel, engineers, accountants, and
7 environmental, cultural, or other assistants for
8 the council as the council finds necessary for
9 the performance of the council's functions and
10 define their powers and duties. Notwithstanding
11 section 28-8.3, the council shall appoint one or
12 more attorneys independent of the attorney
13 general who shall act as attorneys for the
14 council and define their powers and duties and
15 fix their compensation. The attorneys employed
16 by the council shall be exempt from chapter 76.
17 Other employees may be appointed with or without
18 regard to chapter 76 as may be needed by the
19 council in accordance with chapter 76.

20 § -5 **Adoption of rules.** All rules adopted by the council
21 shall be adopted in the manner required by chapter 91.

1 § -6 **Site certificate required; exceptions.** (a) Except
2 as provided in subsection (b), no facility shall be constructed
3 or expanded unless a site certificate has been issued for the
4 site thereof in the manner provided in this chapter.

5 (b) A site certificate is not required for a renewable
6 energy facility for which no site certificate has been issued
7 that, on July 1, 2007, had electric generating equipment in
8 operation.

9 (c) Any person who proposes to construct or enlarge a
10 renewable energy facility and who claims an exemption under
11 subsection (b) from the requirement to obtain a site certificate
12 shall request the council to determine whether the proposed
13 facility qualifies for the claimed exemption. The council shall
14 make its determination within sixty days after the request for
15 exemption is filed. An appeal from the council's determination
16 on a request for exemption shall lie, subject to chapter 602, in
17 the manner provided for civil appeals from the circuit courts.
18 The record on review by the court shall be the record
19 established in the council proceeding on the exemption.

20 (d) Notwithstanding subsection (a), a separate site
21 certificate shall not be required for expansion within the site
22 or within the energy generation area of a facility for which a

1 site certificate has been issued, if the existing site
2 certificate has been amended to authorize expansion.

3 **§ -7 Notice of intent to file application for site**
4 **certificate; public notice; standards, application requirements,**
5 **and study requirements; project order.** (a) Each applicant for
6 a site certificate shall submit to the council a notice of
7 intent to file an application for a site certificate in a manner
8 prescribed by the council. The notice of intent shall provide
9 information about the proposed site and the characteristics of
10 the facility sufficient for the preparation of the council's
11 project order.

12 (b) Each applicant for a site certificate shall cause
13 public notice to be given within seven days of filing a notice
14 of intent with the council. The public notice shall provide a
15 description of the proposed site and facility in sufficient
16 detail to inform the public of the location and proposed use of
17 the site, and shall be given not less than once in each of three
18 consecutive weeks. Any public notice provided in compliance
19 with this subsection shall occur on the island on which the
20 facility will be situated. The public shall provide written
21 comments within specified deadlines established by the council.

1 (c) Following review of the notice of intent and any
2 written public comments received in response to the notice of
3 intent, the council may hold a pre-application conference with
4 the applicant and state agencies and local governments that have
5 regulatory or advisory responsibility with respect to the
6 facility. The council may also hold a public hearing to gather
7 public comment on an applicant's notice of intent. After the
8 pre-application conference, the council shall issue a project
9 order identifying the applicable statutes, administrative rules,
10 council standards, and local ordinances, as well as the
11 application requirements and study requirements for the site
12 certificate application. A project order shall not constitute a
13 final order.

14 (d) A project order issued under subsection (c) may be
15 amended at any time by the council.

16 **§ -8 Application for site certificate; comment and**
17 **recommendation.** (a) Applications for site certificates shall
18 be made to the council in a form prescribed by the council and
19 accompanied by the fee required by the council.

20 (b) Copies of the notice of intent and of the application
21 shall be sent for comment and recommendation within specified
22 deadlines established by the council to the department of

1 health, the commission on water resource management, the public
2 utilities commission, the land use commission, the department of
3 agriculture, the department of land and natural resources, the
4 department of business, economic development, and tourism, the
5 division of consumer advocacy, department of commerce and
6 consumer affairs, any other state agency that has regulatory or
7 advisory responsibility with respect to the facility, and any
8 local government affected by the application.

9 (c) Any state agency or local government that is requested
10 by the council to comment and make recommendations under this
11 section shall respond to the council by the specified deadline.

12 (d) When the council determines an application is
13 complete, the council shall notify the applicant and provide
14 notice to the public.

15 **§ -9 Evaluation of site applications.** The council shall
16 evaluate each site certificate application to determine
17 compliance with the requirements set forth in the project order.
18 As part of its evaluation, the council may commission an
19 independent study by an independent contractor, state agency,
20 local government, or any other person, of any aspect of the
21 proposed facility within its statutory authority to review.

1 § -10 **Draft proposed order for hearing; issues raised;**
2 **final order; expedited processing.** (a) Based on its review of
3 the application and the comments and recommendations on the
4 application from state agencies and local governments, the
5 council shall prepare and issue a draft proposed order on the
6 application.

7 (b) Following issuance of the draft proposed order, the
8 council shall hold one or more public hearings on the
9 application for a site certificate on the island for which the
10 facility is proposed and elsewhere, as the council considers
11 necessary. Notice of the hearing shall be published at least
12 fifteen days before the hearing on the island for which the
13 proposed facility will be situated. The notice shall, at a
14 minimum:

- 15 (1) Include a description of the facility and the
16 facility's general location;
- 17 (2) Include the name of a council representative to
18 contact and the telephone number where additional
19 information may be obtained;
- 20 (3) State that copies of the application and draft
21 proposed order are available for inspection at no

1 cost and will be provided at a reasonable cost;

2 and

3 (4) State that failure to raise an issue in person or
4 in writing prior to the close of the record of
5 the public hearing with sufficient specificity to
6 afford the council an opportunity to respond to
7 the issue precludes consideration of the issue in
8 a contested case.

9 (c) Any issue that may be the basis for a contested case
10 shall be raised not later than the close of the record at or
11 following the final public hearing prior to issuance of the
12 council's proposed order. Such issues shall be raised with
13 sufficient specificity to afford the council and the applicant
14 an adequate opportunity to respond to each issue. A statement
15 of this requirement shall be made at the commencement of any
16 public hearing on the application.

17 (d) After reviewing the application, the draft proposed
18 order, and any testimony given at the public hearing, and after
19 consulting with other agencies, the council shall issue a
20 proposed order recommending approval or rejection of the
21 application. The council shall issue public notice of the
22 proposed order that shall include notice of a contested case

1 hearing specifying a deadline for requests to participate as a
2 party or limited party and a date for the prehearing conference.

3 (e) Following the issuance of the proposed order, the
4 council shall conduct a contested case hearing on the
5 application for a site certificate in accordance with the
6 applicable provisions of chapter 91 and any procedures adopted
7 by the council. The contested case hearing shall be conducted
8 on the island on which the proposed facility will be situated.
9 The applicant shall be a party to the contested case. The
10 council may permit any other person to become a party to the
11 contested case in support of or in opposition to the application
12 only if the person appeared in person or submitted written
13 testimony at the public hearing on the site certificate
14 application, and upon application of any rules developed by the
15 council identifying criteria for intervention. Issues that may
16 be the basis for a contested case hearing shall be limited to
17 those raised on the record of the public hearing under
18 subsection (c), unless:

- 19 (1) The council failed to follow the requirements of
20 subsection (b) or (c); or
21 (2) The action recommended in the proposed order,
22 including any recommended conditions of the approval,

1 differs materially from that described in the draft
2 proposed order, in which case only new issues related
3 to such differences may be raised.

4 (f) If no person requests party status to challenge the
5 council's proposed order, the contested case hearing shall be
6 concluded.

7 (g) At the conclusion of the contested case hearing, the
8 council shall issue a final order, either approving or rejecting
9 the application based upon the standards adopted by the council
10 and any additional statutes, rules, or local ordinances
11 determined to be applicable to the facility by the project
12 order, as amended. The council shall make its decision by the
13 affirmative vote of a majority of the members established
14 pursuant to section ___-3 approving any application for a site
15 certificate. The council may amend or reject the proposed
16 order, and shall provide an opportunity for the applicant and
17 any other party to the contested case hearing to comment on
18 material changes to the proposed order, including material
19 changes to conditions of approval resulting from the council's
20 review. The council's order shall be considered a final order
21 for purposes of appeal.

1 (h) Rejection or approval of an application, together with
2 any conditions that may be attached to the certificate, shall be
3 subject to judicial review as provided in chapter 602.

4 (i) The council shall either approve or reject an
5 application for a site certificate:

6 (1) Within nine months after the filing of an
7 application for a site certificate for a
8 renewable energy facility; or

9 (2) Within six months after the filing of an
10 application for a site certificate for a
11 renewable energy facility, if the application is:

12 (A) To expand an existing industrial facility to
13 include an energy facility; or

14 (B) To expand an existing energy facility to
15 achieve a nominal electric generating
16 capacity of between twenty-five and seventy-
17 five megawatts.

18 (j) At the request of the applicant, the council may
19 expedite processing of an application for a site certificate for
20 a renewable energy facility with an average electric generating
21 capacity of fewer than ten megawatts. No notice of intent shall
22 be required. Following approval of a request for expedited

1 review, the council shall issue a project order, which may be
2 amended at any time. The council shall either approve or reject
3 an application for a site certificate within six months after
4 the site certificate application is filed if there are no
5 intervenors in the contested case conducted under subsection
6 (e). If there are intervenors in the contested case, the
7 council shall either approve or reject an application within
8 nine months after the site certificate application is filed.

9 (k) Failure of the council to comply with the deadlines
10 set forth in subsection (i) or (j) shall not result in the
11 automatic issuance or denial of a site certificate.

12 (l) The council shall specify in the site certificate a
13 date by which construction of the facility shall begin.

14 (m) For a facility that is subject to and has been or will
15 be reviewed by a federal agency under the National Environmental
16 Policy Act, 42 U.S.C. section 4321, et seq., the council shall
17 conduct its site certificate review, to the maximum extent
18 feasible, in a manner that is consistent with and does not
19 duplicate the review conducted by the federal agency or the
20 agency to which the federal agency delegated its authority.
21 Such coordination shall include, but need not be limited to:

- 1 (1) Elimination of duplicative application, study,
2 and reporting requirements;
- 3 (2) Council use of information generated and
4 documents prepared for the federal agency review;
- 5 (3) Development with the federal agency and reliance
6 on a joint record to address applicable council
7 standards;
- 8 (4) Whenever feasible, joint hearings and issuance of
9 a site certificate decision in a time frame
10 consistent with the federal agency review; and
- 11 (5) To the extent consistent with applicable state
12 standards, establishment of conditions in any
13 site certificate that are consistent with the
14 conditions established by the federal agency.

15 **§ -11 Energy facility site certificate; conditions;**
16 **effect of issuance on state and local government agencies. (a)**
17 Upon approval, the site certificate or any amended site
18 certificate with any conditions prescribed by the council shall
19 be signed by the chairperson of the council and by the
20 applicant. The certificate or amended certificate shall
21 authorize the applicant to construct, operate, and retire the
22 facility subject to the conditions set forth in the site

1 certificate or amended site certificate. The duration of the
2 site certificate or amended site certificate shall be the life
3 of the facility, including project extensions.

4 (b) The site certificate or amended site certificate shall
5 contain conditions to protect the public health and safety, to
6 set the time for completion of construction, and to ensure
7 compliance with any applicable standards, statutes, and rules.
8 The site certificate or amended site certificate shall require
9 both parties to abide by county ordinances and state law and the
10 rules of the council in effect on the date the site certificate
11 or amended site certificate is signed, except that upon a clear
12 showing of a significant threat to the public health, safety, or
13 the environment that requires application of later-adopted laws
14 or rules, the council may require compliance with such later-
15 adopted laws or rules, after notice to the applicant and an
16 opportunity for hearing.

17 (c) Subject to the conditions set forth in the site
18 certificate or amended site certificate, any certificate or
19 amended certificate signed by the chairperson of the council
20 shall bind the State and all local governments in this State
21 provided with notice of the application as to the approval of
22 the site and the construction and operation of the facility.

1 After issuance of the site certificate or amended site
2 certificate, any affected state agency or local government
3 shall, upon submission by the applicant of the proper
4 applications and payment of the proper fees, but without
5 hearings or other proceedings, promptly issue the permits,
6 licenses, and certificates addressed in the site certificate or
7 amended site certificate, subject only to conditions set forth
8 in the site certificate or amended site certificate. After the
9 site certificate or amended site certificate is issued, the only
10 issue to be decided in an administrative or judicial review of a
11 state agency or local government permit for which compliance
12 with governing law was considered and determined in the site
13 certificate or amended site certificate proceeding shall be
14 whether the permit is consistent with the terms of the site
15 certificate or amended site certificate. Each state or local
16 government agency that issues a permit, license, or certificate
17 shall continue to exercise enforcement authority over the
18 permit, license, or certificate. If the requisite permits are
19 not issued within forty-five days, they shall be deemed approved
20 and issued.

21 (d) Nothing in this chapter shall be construed to preempt
22 the jurisdiction of any state agency or local government over

1 matters that are not included in and governed by the site
2 certificate or amended site certificate. Such matters include
3 public utility regulation as set forth in chapters 269, 271,
4 271G, and 486J, employee health and safety, building code
5 compliance, wage and hour or other labor regulations, local
6 government fees and charges, or other design or operational
7 issues that do not relate to siting the facility.

8 **§ -12 Rehearing on approval or rejection of application**
9 **for site certificate or amendment; appeal; judicial review; stay**
10 **of order.** (a) Any party to a contested case proceeding may
11 apply for rehearing within thirty days from the date the
12 approval or rejection order is served. The date of service
13 shall be the date on which the council delivered or mailed its
14 order of approval or rejection. The application for rehearing
15 shall set forth specifically the ground upon which the
16 application is based. No objection to the council's approval or
17 rejection of an application for a site certificate or a site
18 certificate amendment shall be considered on rehearing without
19 good cause shown unless the basis for the objection is urged
20 with reasonable specificity before the council in the site
21 certificate or amended site certificate process. Upon such
22 application, the council shall have the power to grant or deny

1 rehearing or to abrogate or modify its order without further
2 hearing. Unless the council acts upon the application for
3 rehearing within thirty days after the application is filed, the
4 application shall be considered denied. The filing of an
5 application for rehearing shall not, unless specifically ordered
6 by the council, operate as a stay of the site certificate or
7 amended site certificate for the facility.

8 (b) Any party to a contested case proceeding on a site
9 certificate or amended site certificate application may appeal
10 the council's approval or rejection of the site certificate or
11 amended site certificate application. Issues on appeal shall be
12 limited to those raised by the parties to the contested case
13 proceeding before the council.

14 (c) Jurisdiction for judicial review of the council's
15 approval or rejection of an application for a site certificate
16 or amended site certificate shall lie, subject to chapter 602,
17 in the manner provided for civil appeals from the circuit
18 courts.

19 (d) The filing of a petition for judicial review may not
20 stay the order, except that a party to the contested case may
21 apply to the court for a stay upon a showing that there is a
22 colorable claim of error and that:

1 (1) The petitioner will suffer irreparable injury; or

2 (2) Construction of the renewable energy facility

3 will result in irreparable harm to resources

4 protected by applicable council standards or

5 applicable agency or local government standards.

6 (e) If the court grants a stay pursuant to subsection (d),

7 the court:

8 (1) May grant a stay in whole or in part.

9 (2) May impose other reasonable conditions on the

10 stay.

11 **§ -13 Amendment of site certificate.** A site certificate

12 may be amended with the approval of the council. The council

13 may establish by rule the type of amendment that may be

14 considered in a contested case proceeding. Judicial review of

15 an amendment to a site certificate shall be as provided in this

16 chapter.

17 **§ -14 Amendment of site certificate to demonstrate**

18 **compliance with carbon dioxide emissions standard.** Any site

19 certificate holder that is required by its site certificate or

20 by law to demonstrate need for the facility shall demonstrate

21 compliance with the carbon dioxide emissions standard applicable

22 to the type of facility subject to the site certificate before

1 beginning construction. Such a demonstration shall be made as
2 an amendment to the site certificate. Notwithstanding any
3 applicable state law or any council rule, if the site
4 certificate holder proceeds, the council shall not conduct a
5 contested case hearing on such amendment and the council's order
6 shall not be subject to judicial review.

7 **§ -15 Renewable energy facility site certificate**
8 **applications filed or under construction prior to July 1, 2007;**
9 **conditions of site certificate.** (a) Any applicant for a site
10 certificate for an energy facility under construction prior to
11 or on July 1, 2007, shall be deemed to have met all the
12 requirements of this chapter relating to eligibility for a site
13 certificate and a site certificate shall be issued by the
14 council for any renewable energy facility under construction on
15 July 1, 2007.

16 (b) Each applicant for a site certificate under this
17 section shall pay the fees required by the council, if
18 applicable, and shall execute a site certificate in which the
19 applicant agrees to abide by any rules adopted by the council.

20 **§ -16 Fees.** (a) All fees submitted to the council
21 pursuant to this chapter shall be paid to the council, for
22 deposit into the general fund of the State.

1 (b) Any person submitting a notice of intent, a request
2 for exemption under this chapter, a request for an application
3 for a site certificate, or a request to amend a site
4 certificate, shall pay all expenses incurred by the council
5 related to the review and decision of the council. These
6 expenses may include legal expenses, expenses incurred in
7 processing and evaluating the application, issuing a final order
8 or site certificate, commissioning an independent study by a
9 contractor, state agency, or local government, and changes to
10 the rules of the council that are specifically required and
11 related to the particular site certificate.

12 (c) Every person submitting a notice of intent to file for
13 a site certificate or a request for exemption shall submit the
14 fee required under the fee schedule established by the council
15 when the notice or request is submitted to the council. To the
16 extent possible, the full cost of the evaluation shall be paid
17 from the fee paid under this subsection. However, if costs of
18 the evaluation exceed the fee, the person submitting the notice
19 or request shall pay any excess costs shown in an itemized
20 statement prepared by the council. In no event shall the
21 council incur evaluation expenses in excess of one hundred ten
22 per cent of the fee initially paid unless the council provides

1 prior notification to the applicant and a detailed projected
2 budget the council believes necessary to complete the project.
3 If costs are less than the fee paid, the excess shall be
4 refunded to the person submitting the notice or request.

5 (d) Before submitting a site certificate application, the
6 applicant may request from the council an estimate of the costs
7 expected to be incurred in processing the application. The
8 council shall inform the applicant of the fee amount and the
9 expenses of the council that will be covered by such fees, and
10 shall require the applicant to make periodic payments of such
11 costs pursuant to a cost reimbursement agreement. The cost
12 reimbursement agreement shall provide for payment of twenty-five
13 per cent of the estimated costs when the applicant submits the
14 application. If costs of the evaluation exceed the estimate,
15 the applicant shall pay any excess costs shown in an itemized
16 statement prepared by the council. In no event shall the
17 council incur evaluation expenses in excess of one hundred ten
18 per cent of the fee initially estimated unless the council
19 provided prior notification to the applicant and a detailed
20 projected budget the council believes is necessary to complete
21 the project. If costs are less than the fee paid, the council
22 shall refund the excess to the applicant.

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1 (e) Any person who is delinquent in the payment of fees
2 under subsections (b) to (d) shall be subject to the provisions
3 of subsection (i).

4 (f) Subject to the provisions of this chapter, each holder
5 of a certificate shall pay an annual fee, due every July 1
6 following issuance of a site certificate. For each fiscal year,
7 upon approval of the council's budget authorization by a regular
8 session of the legislature, the council promptly shall enter an
9 order establishing an annual fee based on the amount of revenues
10 that the council estimates is needed to fund the cost of
11 ensuring that the facility is being operated consistently with
12 the terms and conditions of the site certificate and any order
13 issued by the council. In determining this cost, the council
14 shall include both the actual direct cost to be incurred by the
15 council to ensure that the facility is being operated
16 consistently with the terms and conditions of the site
17 certificate, any order issued by the council, and any applicable
18 health or safety standards, and the general costs to be incurred
19 by the council, to ensure that all certificated facilities are
20 being operated consistently with the terms and conditions of the
21 site certificates, any orders issued by the council, and any
22 applicable health or safety standards that cannot be allocated

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1 to an individual, licensed facility. Not more than thirty-five
2 per cent of the annual fee charged each facility shall be for
3 the recovery of these general costs. The fees for direct costs
4 shall reflect the size and complexity of the facility and its
5 certificate conditions.

6 (g) Each holder of a site certificate executed after
7 July 1 of any fiscal year shall pay a fee for the remaining
8 portion of the year. The amount of the fee shall be set at the
9 cost of regulating the facility during the remaining portion of
10 the year determined in the same manner as the annual fee.

11 (h) When the actual costs of regulation incurred by the
12 council for the year, including that portion of the general
13 regulation costs that have been allocated to a particular
14 facility, are less than the annual fees for that facility, the
15 unexpended balance shall be refunded to the site certificate
16 holder. When the actual regulation costs incurred by the
17 council for the year, including that portion of the general
18 regulation costs that have been allocated to a particular
19 facility, are projected to exceed the annual fee for that
20 facility, the council may issue an order revising the annual
21 fee.

1 (i) Applicants or holders of a site certificate who fail
2 to pay a fee provided under this chapter after it is due and
3 payable shall pay, in addition to that fee, a penalty of two per
4 cent of the fee per month for the period that the fee is past
5 due. The director of finance may bring an action to collect any
6 unpaid fee or penalty in the name of the State in a court of
7 competent jurisdiction. The court may award reasonable
8 attorneys' fees to the director if the director prevails in an
9 action under this subsection. The court may award reasonable
10 attorneys' fees to a defendant who prevails in an action under
11 this subsection if the court determines that the director had no
12 objectively reasonable basis for asserting a claim or no
13 reasonable basis for appealing an adverse decision of the trial
14 court.

15 **§ -17 Grounds for revocation or suspension of**
16 **certificates.** A site certificate or an amended site certificate
17 may be revoked or suspended:

- 18 (1) For failure to comply with the terms or
19 conditions of the site certificate or amended
20 site certificate; or
21 (2) For violation of the provisions of this chapter.

1 **§ -18 Justification of fees charged; judicial review.**

2 (a) All expenses incurred by the council that are charged to or

3 allocated to the fee paid by an applicant or the holder of a

4 site certificate shall be necessary, just, and reasonable. Upon

5 request, the council shall provide a detailed justification for

6 all charges to the applicant or site certificate holder. Not

7 later than January 1 of each odd-numbered year, the council by

8 order shall establish a schedule of fees that those persons

9 submitting a notice of intent or a request for an exemption must

10 submit at the time of submitting the notice of intent or request

11 for exemption. The fee schedule shall be designed to recover

12 the council's actual costs of evaluating the notice of intent or

13 request for exemption, subject to any applicable expenditure

14 limitation in the council's budget. Fees shall be based upon

15 actual, historical costs incurred by the council to the extent

16 historical costs are available. The fees established by the

17 schedule shall reflect the size and complexity of the project

18 for which a notice of intent or request for exemption is

19 submitted, whether the notice of intent or request for exemption

20 is for a new or existing facility, and other appropriate

21 variables having an effect on the expense of evaluation.

1 (b) If a dispute arises regarding the necessity or
2 reasonableness of expenses charged to or allocated to the fee
3 paid by an applicant or site certificate holder, the applicant
4 or holder may seek judicial review for the amount of expenses
5 charged or allocated in circuit court. If the court establishes
6 that any of the charges or allocations are unnecessary or
7 unreasonable, the council shall refund the amount found to be
8 unnecessary or unreasonable. The applicant or holder shall not
9 waive the right to judicial review by paying the portion of the
10 fee or expense in dispute.

11 **§ -19 Local government advisory group; special advisory**
12 **groups; compensation and expenses.** (a) The council may
13 designate as a special advisory group the governing body of any
14 local government within whose jurisdiction the facility is
15 proposed to be located.

16 (b) In addition to advisory groups required by subsection
17 (a), the council may establish such special advisory groups as
18 are considered necessary. Such advisory groups shall include
19 membership as determined by the council to represent interests
20 and disciplines as needed to carry out the responsibility
21 assigned to such advisory groups, which shall report findings,
22 recommendations, and decisions to the council.

1 (c) Subject to applicable laws regulating travel and other
2 expenses of state officers and employees, members of any
3 advisory committee appointed under subsection (a) shall receive
4 no compensation but may receive their actual and necessary
5 travel and other expenses incurred in the performance of their
6 official duties.

7 **§ -20 Energy facility siting, construction, operation and**
8 **retirement standards; exemptions.** (a) To the extent consistent
9 with existing laws, rules, or ordinances governing the siting of
10 renewable energy facilities, the council may adopt standards to
11 facilitate the siting, construction, operation, and retirement
12 of such facilities. The standards may address the following
13 subjects:

- 14 (1) The organizational, managerial, and technical
15 expertise of the applicant to construct and
16 operate the proposed facility;
- 17 (2) Areas designated for protection by the state or
18 federal government, including but not limited to
19 monuments, wilderness areas, wildlife refuges,
20 scenic waterways, and similar areas;
- 21 (3) The financial ability and qualifications of the
22 applicant;

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- 1 (4) Effects of the facility, taking into account
2 mitigation, on fish and wildlife, including
3 threatened and endangered fish, wildlife, or
4 plant species;
- 5 (5) Impacts of the facility on historic, cultural, or
6 archaeological resources listed on, or determined
7 by the state historic preservation officer to be
8 eligible for listing on, the national register of
9 historic places or the state register of historic
10 properties;
- 11 (6) Protection of public health and safety, including
12 necessary safety devices and procedures;
- 13 (7) Impacts of the facility on recreation, scenic,
14 and aesthetic values;
- 15 (8) Reduction of solid waste and wastewater
16 generation to the extent reasonably practicable;
- 17 (9) Ability of the communities in the affected area
18 to provide sewers and sewage treatment, water,
19 storm water drainage, solid waste management,
20 housing, traffic safety, police and fire
21 protection, health care, and schools;
- 22 (10) Soil protection; and

1 (11) For energy facilities that emit carbon dioxide,
2 the impacts of those emissions on climate change.

3 (b) The council may adopt exemptions from any standard
4 adopted under this section if the exemption is consistent with
5 the State's energy policy.

6 (c) The council may issue a site certificate for a
7 facility that does not meet one or more of the standards adopted
8 under subsection (a) if the council determines that the overall
9 public benefits of the facility outweigh the damage to the
10 resources protected by the standards the facility does not meet.

11 **§ -21 Consultation with other agencies.** (a) In making a
12 determination regarding compliance with statutes, rules, and
13 ordinances administered by another agency where another agency
14 has special expertise, consultation with the other agency shall
15 occur during the notice of intent and site certificate
16 application process. Any permit application for which the
17 permitting decision has been delegated by the federal government
18 to a state agency other than the renewable energy facility
19 siting council shall be reviewed, whenever feasible,
20 simultaneously with the council's review of the site certificate
21 application. Any hearings required on such permit applications

1 shall be consolidated, whenever feasible, with hearings under
2 this chapter.

3 (b) Before resolving any conflicting conditions in site
4 certificates or amended site certificates, the council shall
5 notify and consult with the agencies and local governments
6 responsible for administering the statutes, administrative
7 rules, or substantive local criteria that result in the
8 conflicting conditions regarding potential conflict resolution.

9 **§ -22 Cooperation of state governmental bodies; adoption**
10 **of rules by state agencies on energy facility development. (a)**

11 Each state agency and local government in this State that is
12 concerned with renewable energy facilities shall inform the
13 council promptly of its activities and programs relating to
14 renewable energy.

15 (b) Each state agency proposing to adopt, amend, or repeal
16 a rule relating to renewable energy facility development first
17 shall file a copy of its proposal with the council, which may
18 order such changes as it considers necessary to conform to state
19 policy."

20 SECTION 3. There is established in the state treasury a
21 renewable energy facilities siting council special fund to be
22 administered by the council. The proceeds of the fund shall be

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1 used by the council for all expenses incurred in the
2 administration of this chapter; provided that the expenditures
3 of the council shall be in accordance with legislative
4 appropriations.

5 SECTION 4. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$1,000,000, or so
7 much thereof as may be necessary for fiscal year 2007-2008, and
8 the sum of \$1,000,000, or so much thereof as may be necessary
9 for fiscal year 2008-2009, for all expenses incurred in the
10 administration of this chapter. The sum appropriated shall be
11 expended by the department of budget and finance for the
12 purposes of this Act.

13 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

~~_____~~
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Department of Commerce and Consumer Affairs

TITLE A BILL FOR AN ACT RELATING TO FORMATION OF A RENEWABLE ENERGY FACILITIES SITING COUNCIL.

PURPOSE: To create a state renewable energy facilities siting council

MEANS: Add a new chapter to the Hawaii Revised Statutes.

JUSTIFICATION: Renewable energy resources, though mandated for use by the State, have proven popular in concept, but problematic to implement. It is very difficult and time-consuming to obtain the necessary regulatory approvals. Under the current process, applicants must navigate a number of state and county rules to determine which agencies' permits apply to their project, file sometimes duplicative applications with each agency, and coordinate the completion of each application with each separate agency.

Hawaii has an abundance of renewable energy resources which can and should be used as an alternative to fossil fuels. However, problems continue to surface relating to where renewable energy producing facilities should be built, including the numerous and sometimes lengthy permitting review processes. Bureaucratic review at various levels of government poses an additional obstacle to timely siting of renewable resource facilities.

Many of these obstacles can be more effectively negotiated by creating a state renewable energy facility siting council for renewable energy facilities to consolidate the various reviews and streamline the various processes that currently hamper renewable energy facility siting.

The creation of a renewable energy facilities siting council for renewable energy developments is one significant way the State can illustrate its commitment to lessening Hawaii's dependence on imported oil.

Description of the siting process:

Five phases to the site certificate process are envisioned: (1) the notice of intent phase; (2) the completeness phase; (3) the draft proposed order phase; (4) the proposed order phase; and (5) the final decision phase.

The notice of intent phase starts when an applicant submits a notice of intent (NOI). The NOI phase ends when the applicant submits an application for a site certificate. During the notice of intent phase: (1) the public and state, federal, and local agencies receive information about the proposed project and the council's review process; (2) the public and agencies have an opportunity to ask questions, get more information, and raise concerns; (3) the council holds a public informational meeting in the vicinity of the project site; (4) the applicant gets a sense of the public and agency concerns and what the difficult issues will be; (5) the applicant and the council determine what statutes, state rules, and local government requirements apply to the project; (6) the council identifies key issues and information that the application must address; and (7) the council prepares a project order.

The completeness phase begins when the applicant submits an application for a site certificate. It ends when the council finds the application complete. During the completeness phase: (1) the council consults with affected state agencies and local governments and asks for their comments on the application; (2) the council may request

additional information from the applicant on specific aspects of the project that require more detailed analysis; and (3) the council may conduct public informational meetings on the application.

The draft proposed order phase begins when the application is complete and ends when the council issues a draft proposed order. The draft proposed order describes the proposed facility and summarizes the council's recommendations.

The decision phase begins when the council issues the proposed order and ends when the council issues its final order.

Upon issuance of the proposed order, the council issues a notice of a contested case proceeding.

The council deliberates on the hearing officer's proposed contested case order and the proposed order (with regard to non-contested matters) and makes a decision whether to approve a site certificate and on what conditions. The council then issues a final order.

The council's decision is subject to reconsideration and judicial review, under chapter 602, Hawaii Revised Statutes.

Impact on the public: Streamlining the permitting process will enable developers of renewable energy projects to more efficiently complete their projects while ensuring meaningful public input into the process. Public utility companies charged with meeting, and regulating agencies charged with enforcing, the State's renewable portfolio standard ("RPS") would be provided with additional, and more timely opportunities to meet the RPS. The public will benefit as more of Hawaii's energy will come from renewable resources.

Impact on the department and other agencies:

This bill creates another agency to be created within the Department of Budget and Finance, which will receive input from and assume some of the permitting requirements of other state departments or agencies, for example, the Department of Health, the Department of Land and Natural Resources, and the Land Use Commission.

GENERAL FUND: \$1,000,000, or so much thereof as may be necessary for fiscal year 2007-2008, and \$1,000,000, or so much thereof as may be necessary for fiscal year 2008-2009.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED
AGENCIES: Department of Budget and Finance, Department of Business, Economic Development, and Tourism, Department of Health, Department of Land and Natural Resources, and Land Use Commission, among others.

EFFECTIVE DATE: Upon approval.