
A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. The legislature finds that Hawaii is dependent
2 on imported oil for more than ninety-two per cent of its energy
3 needs, making it the most vulnerable state in the nation to
4 economic disruption in the event of upheavals in the world oil
5 market. Moreover, during periods of supply curtailment, the
6 State's need to ensure basic public emergency services to
7 safeguard public health, safety, and welfare, such as police and
8 fire protection, hospital and ambulance services, and utility
9 emergency services, competes with the need to maintain Hawaii's
10 economy and employment levels, not to mention the continued
11 operations of the State's transportation, commerce, industry,
12 construction, government, the military, and agriculture. Other
13 factors, including Hawaii's geographic isolation and lack of
14 overland access to energy sources, make the State unique in its
15 near total reliance on imported oil and vulnerability to supply
16 disruptions. The recent catastrophic events of Hurricane
17 Katrina underline the need for Hawaii to severely reduce its
18 dependence on foreign oil.



1 State law already requires the State to establish policies
2 designed to increase energy self-sufficiency and energy
3 security, including the use of renewable resources. In
4 particular, section 226-18(a), Hawaii Revised Statutes, of the
5 Hawaii State Planning Act requires planning for the State's
6 facility systems with regard to energy to include "[i]ncreased
7 energy self-sufficiency where the ratio of indigenous to
8 imported energy use is increased" and "[g]reater energy security
9 in the face of threats to Hawaii's energy supplies and systems."
10 Similarly, section 226-103(f), Hawaii Revised Statutes,
11 establishes priority guidelines for energy use and development
12 to "[e]ncourage the development, demonstration, and
13 commercialization of renewable energy sources."

14 The legislature further finds that Hawaii is blessed with
15 an abundance of renewable energy resources, including wind,
16 solar, hydropower, geothermal resources, ocean thermal energy
17 conversion, and wave energy. In particular, Act 272, Session
18 Laws of Hawaii 2001, recognized "the economic, environmental,
19 and fuel diversity benefits of renewable energy resources" and
20 the need to "encourage the establishment of a market for
21 renewable energy in Hawaii using the State's renewable energy
22 resources." Act 272 further noted that "while Hawaii is a



1 national leader in the development of renewable energy resources
 2 for electricity production, there may be more that the State can
 3 do to encourage the development and implementation of renewable
 4 energy. These efforts can reduce the amount of imported oil
 5 used for the generation of electricity."

6 Accordingly, the purpose of this Act is to lessen Hawaii's
 7 dependence on imported oil and encourage the greater use of
 8 renewable energy by establishing "energy enterprise zones" to
 9 accommodate wind farms and other indigenous and renewable energy
 10 resources with a minimum of red tape, and for encouraging the
 11 development of renewable energy resources.

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

15 **"CHAPTER**

16 **ENERGY ENTERPRISE ZONES**

17 § -1 **Purpose.** The purpose of this chapter is to reduce
 18 the State's dependence on imported oil and increase the State's
 19 energy self-sufficiency by providing for the establishment of
 20 energy enterprise zones.

21 § -2 **Definitions.** As used in this chapter:



1 "Department" means the department of business, economic
2 development, and tourism.

3 "Energy enterprise zone" means an area nominated by, and
4 within the jurisdiction of, a county government, and
5 subsequently declared by the department to be eligible for the
6 benefits of this chapter.

7 "Establishment" means a single physical location where
8 electric energy is generated. A qualified business may include
9 one or more establishments, any number of which may be in an
10 energy enterprise zone.

11 "Full-time employee" means any employee for whom the
12 employer is legally required to provide employee fringe
13 benefits.

14 "Nonutility generator" means a person that produces
15 electric power but is not an energy utility, including any
16 person who:

- 17 (1) Controls, operates, or manages plants or facilities
18 for the production, transmission, or furnishing of
19 power, whether in whole or in part, from any energy
20 source, including nonfossil fuel or renewable energy
21 sources; and



1 (2) Provides, sells, or transmits any or all of that
2 power, either directly or indirectly to an energy
3 utility for transmission to the public.

4 "Qualified business" means any nonutility generator that
5 is:

6 (1) Authorized to do business in this State; and

7 (2) Is engaged in producing electric power from:

8 (A) Wind energy;

9 (B) Solar energy;

10 (C) Hydropower;

11 (D) Landfill gas;

12 (E) Waste to energy;

13 (F) Geothermal resources;

14 (G) Ocean thermal energy conversion;

15 (H) Wave energy;

16 (I) Biomass, including municipal solid waste;

17 (J) Biofuels or fuels derived entirely from organic
18 sources;

19 (K) Hydrogen fuels derived entirely from renewable
20 energy; or

21 (L) Fuel cells where the fuel is derived entirely
22 from renewable sources;



1 for sale primarily to an energy utility for resale to
2 the public.

3 "Taxes due the State" means income taxes due under chapter
4 235.

5 § -3 **Administration.** The department shall administer
6 this chapter and have the power and duty:

7 (1) Establish criteria for determining what areas qualify
8 as energy enterprise zones. The criteria shall be the
9 minimum required for implementation of the purpose of
10 this chapter;

11 (2) Monitor the implementation and operation of this
12 chapter;

13 (3) Conduct a continuing evaluation program of energy
14 enterprise zones;

15 (4) Assist counties in obtaining the reduction of rules
16 within energy enterprise zones;

17 (5) Submit annual reports evaluating the effectiveness of
18 the program and any recommendations for legislation to
19 the legislature and the governor;

20 (6) Administer and enforce the rules adopted by the
21 department; and



1 (7) Administer this chapter in such a manner that the area
2 to be designated as an energy enterprise zone will
3 most benefit the area and the State.

4 § -4 **Energy enterprise zone designation.** (a) The
5 governing body of any county may apply in writing to the
6 department to have an area declared to be an energy enterprise
7 zone. The application shall include a description of the
8 location of the area or areas in question, and a general
9 statement identifying proposed local incentives to complement
10 the state and any federal incentives.

11 (b) The department shall approve the designation of up to
12 twenty areas in each county as energy enterprise zones for a
13 period of twenty years. The department shall adopt rules
14 setting forth appropriate standards for the designation of
15 energy enterprise zones.

16 § -5 **Application review.** (a) The department shall
17 review each application upon receipt and shall secure any
18 additional information that the department deems necessary for
19 the purpose of determining whether the area described in the
20 application qualifies to be declared an energy enterprise zone.

21 (b) The department shall complete review of the
22 application within sixty days of the last date designated for



1 receipt of an application. After review of an application, the
2 department shall approve, in writing, those applications having
3 the greatest potential for accomplishing the purposes of this
4 chapter; provided that the number of allowable energy enterprise
5 zones for the county as established under section -4(b), is
6 not exceeded. If an application is denied, the department shall
7 inform the governing body in writing of that fact together with
8 the reasons for the denial.

9 § -6 **Government assistance; prohibition.** There shall be
10 no duplication of existing state tax incentives to qualified
11 businesses that locate in an energy enterprise zone.

12 § -7 **Rules.** The department, in consultation with the
13 department of taxation, shall adopt rules pursuant to chapter 91
14 to implement this chapter, including rules relating to health,
15 safety, building, planning, zoning, and land use that shall
16 supersede all other inconsistent ordinances and rules relating
17 to the use, zoning, planning, and development of land and
18 construction in an energy enterprise zone. Rules adopted under
19 this section shall follow existing law, rules, and ordinances as
20 closely as is consistent with standards meeting minimum
21 requirements of energy efficiency, health, and safety. The
22 department may provide by rule that lands within an energy



1 enterprise zone shall not be developed beyond existing uses or
2 that improvements thereon shall not be demolished or
3 substantially reconstructed, or provide other restrictions on
4 the use of the zone.

5 § -8 Eligibility; qualified business; sale of property

6 or services. (a) Any nonutility generator may be eligible to
7 be designated a qualified business for purposes of this chapter
8 if the nonutility generator:

9 (1) Begins the operation of a nonutility generator within
10 an energy enterprise zone;

11 (2) During each taxable year has at least per cent
12 of its energy enterprise zone establishment's gross
13 receipts attributable to the active production of
14 electric power within the energy enterprise zone;

15 (3) Increases its average annual number of full-time
16 employees by at least per cent by the end of its
17 first tax year of participation; and

18 (4) During each subsequent taxable year at least maintains
19 that higher level of employment.

20 (b) A nonutility generator also may be eligible to be
21 designated a qualified business for purposes of this chapter if
22 the nonutility generator:



1 (1) Is actively engaged in producing electric power in an
2 area immediately prior to an area being designated an
3 energy enterprise zone;

4 (2) Meets the requirements of subsection (a)(2); and

5 (3) Increases its average annual number of full-time
6 employees employed at the nonutility generator's
7 establishment or establishments located within the
8 energy enterprise zone by at least per cent
9 annually.

10 (c) After designation as an energy enterprise zone, each
11 qualified business in the zone shall annually complete and
12 submit to the department, on a form supplied by the department,
13 the information necessary for the department to determine
14 whether the nonutility generator qualifies as a qualified
15 business. If the department determines that the nonutility
16 generator qualifies as a qualified business, then the department
17 shall approve the completed form and forward copies of the
18 completed and approved form to the department of taxation and the
19 governing body of the county.

20 (d) A completed form approved by the department, referred
21 to in subsection (c), shall be prima facie evidence of the



1 eligibility of a nonutility generator for the purposes of this
2 section.

3 (e) Any electric power produced by a nonutility generator
4 outside of an energy enterprise zone shall not be included in
5 the determination of gross receipts attributable to the active
6 production of electric power under subsection (a)(2).

7 § -9 State business tax credit. (a) The department
8 shall certify annually to the department of taxation the
9 applicability of the tax credit provided in this chapter for a
10 qualified business against any income taxes imposed under title
11 14 that are due the State. The credit shall be:

12 (1) Eighty per cent of the tax due for the first taxable
13 year that the business qualifies as a qualified
14 business;

15 (2) Seventy per cent of the tax due for the second taxable
16 year that the business qualifies as a qualified
17 business;

18 (3) Sixty per cent of the tax due in the third taxable
19 year that the business qualifies as a qualified
20 business;



1 (4) Fifty per cent of the tax due in the fourth taxable
2 year that the business qualifies as a qualified
3 business;

4 (5) Forty per cent of the tax due in the fifth taxable
5 year that the business qualifies as a qualified
6 business;

7 (6) Thirty per cent of the tax due in the sixth taxable
8 year that the business qualifies as a qualified
9 business; and

10 (7) Twenty per cent of the tax due in the seventh year
11 that the business qualifies as a qualified business.

12 Any tax credit not usable shall not be applied to future taxable
13 years.

14 (b) When a partnership is eligible for a tax credit under
15 this section, each partner shall be eligible for the tax credit
16 provided for in this section on the partner's income tax return
17 in proportion to the partner's income tax liability from the
18 partnership. Any qualified business earning taxable income from
19 the production of electric power, both within and without the
20 energy enterprise zone, shall allocate and apportion its taxable
21 income attributable to that production. Tax credits provided
22 for in this section shall only apply to taxable income of a



1 qualified business attributable to the production of electric
2 power within the energy enterprise zone.

3 (c) In addition to any tax credit authorized under this
4 section, a qualified business shall be entitled to a tax credit
5 against any taxes due the State in an amount equal to a
6 percentage of unemployment taxes paid pursuant to chapter 383.
7 The amount of the credit shall be equal to:

- 8 (1) Eighty per cent of the unemployment taxes paid for
9 during the first taxable year that the business
10 qualifies as a qualified business;
- 11 (2) Seventy per cent of the unemployment taxes paid for
12 the second year that the business qualifies as a
13 qualified business;
- 14 (3) Sixty per cent of the unemployment taxes paid for the
15 third year that the business qualifies as a qualified
16 business;
- 17 (4) Fifty per cent of the unemployment taxes paid for the
18 fourth year that the business qualifies as a qualified
19 business;
- 20 (5) Forty per cent of the unemployment taxes paid for the
21 fifth year that the business qualifies as a qualified
22 business;



1 (6) Thirty per cent of the unemployment taxes paid for the
2 sixth year that the business qualifies as a qualified
3 business; and

4 (7) Twenty per cent of the unemployment taxes paid for the
5 seventh year that the business qualifies as a
6 qualified business.

7 (d) Tax credits provided for in subsection (c) shall only
8 apply to the unemployment tax paid on employees employed at the
9 qualified business' establishment or establishments located
10 within the energy enterprise zone. Any tax credit not usable
11 shall not be applied to future tax years.

12 § -10 **State general excise and use tax exemptions.** The
13 department shall certify annually to the department of taxation
14 that any qualified business is exempt from the payment of
15 general excise taxes on the gross proceeds from the sale of
16 electric power to an energy utility for resale to the public.
17 The department shall also certify annually to the department of
18 taxation that any qualified business is exempt from the use tax
19 for purchases by the qualified business. The gross proceeds
20 received by a contractor licensed under chapter 444 shall be
21 exempt from the general excise tax for construction within an
22 energy enterprise zone performed for a qualified business within



1 an energy enterprise zone. The exemption shall extend for a
2 period not to exceed seven years after the effective date of
3 this Act.

4 § -11 **Local incentives.** (a) In applying for
5 designation as an energy enterprise zone, the applying county
6 may propose local incentives, including:

- 7 (1) Reduction of permit fees;
- 8 (2) Reduction of user fees; and
- 9 (3) Reduction of real property taxes.

10 (b) The application also may contain proposals for
11 regulatory flexibility, including, but not limited to:

- 12 (1) Special zoning districts;
- 13 (2) Permit process reform;
- 14 (3) Exemptions from local ordinances; and
- 15 (4) Other public incentives proposed in the locality's
16 application, which shall be binding upon the locality
17 upon designation of the energy enterprise zone.

18 § -12 **Termination of energy enterprise zone.** Upon
19 designation of an area as an energy enterprise zone, the
20 proposals for regulatory flexibility, tax incentives, and other
21 public incentives specified in this chapter shall be binding
22 upon the county governing body to the extent and for the period



1 of time specified in the application for zone designation. If
2 the county governing body is unable or unwilling to provide any
3 of the incentives set forth in section -11 or other
4 incentives acceptable to the department, and the department has
5 not adopted rules pursuant to section -7 that supersede
6 inconsistent ordinances and rules relating to the use, zoning,
7 planning, and development of land and construction in an energy
8 enterprise zone, then the energy enterprise zone shall
9 terminate. Qualified businesses located in the energy
10 enterprise zone shall be eligible to receive the state tax
11 incentives provided by this chapter even though the zone
12 designation has terminated. No nonutility generator may become
13 a qualified business after the date of zone termination. The
14 county governing body may amend an application submitted
15 pursuant to section -4 with the approval of the department;
16 provided that the county governing body proposes an incentive
17 equal to or superior to the unamended application."

18 SECTION 3. It is the intent of this Act not to jeopardize
19 the receipt of any federal aid nor to impair the obligation of
20 the State or any agency thereof to the holders of any bond
21 issued by the State or by any such agency, and to the extent,
22 and only to the extent, necessary to effectuate this intent, the



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1 governor may modify the strict provisions of this Act, but shall
 2 promptly report any such modification with reasons therefor to
 3 the legislature at its next session thereafter for review by the
 4 legislature.

5 SECTION 4. This Act does not affect rights and duties that
 6 matured, penalties that were incurred, and proceedings that were
 7 begun, before its effective date.

8 SECTION 5. If any provision of this Act, or the
 9 application thereof to any person or circumstance is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of the Act, which can be given effect without the
 12 invalid provision or application, and to this end the provisions
 13 of this Act are severable.

14 SECTION 6. This Act shall take effect upon its approval.
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Report Title:

Hawaii Energy Enterprise Zones

Description:

Establishes energy enterprise zones to encourage the development of renewable energy resources.

