A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

1 SECTION 1. The legislature finds that Hawaii's dependence 2 on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State 3 4 extremely vulnerable to any oil embargo, supply disruption, 5 international market dysfunction, and many other factors beyond 6 the control of the State. Furthermore, the continued 7 consumption of conventional petroleum fuel and price volatility 8 can negatively impact the environment and economic health of the 9 people of Hawaii. At the same time, Hawaii has among the most 10 abundant renewable energy resources in the world, in the form of 11 solar, geothermal, wind, biomass, and ocean energy assets.

12 The legislature further finds that increased energy 13 efficiency and use of renewable energy resources would increase 14 Hawaii's energy self-sufficiency, achieving broad societal 15 benefits, including increased energy security, resistance to 16 increases in oil prices, environmental sustainability, economic 17 development, and job creation.

HB589 HD1 HMS 2009-2483

1 To shape Hawaii's energy and environmental future and 2 achieve the goal of energy- and self-sufficiency for the State, 3 efforts must continue on all fronts, integrating new and 4 evolving technologies, seizing upon opportunities to become more 5 economically diversified, and providing incentives and 6 assistance to address barriers.

7 To develop and finance renewable energy facilities, a site 8 for the facilities and access to the site must often be leased, 9 granted as an easement, or mortgaged to provide financing for 10 the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already 11 12 subdivided lot boundaries. For instance, land required for a 13 project may be only a portion of a large legal lot, and it may 14 be impractical or undesirable to lease or convey the entire 15 legal lot for the renewable energy project or to encumber the 16 entire legal lot with a mortgage that provides financing for the 17 project. Currently, however, subdivision laws generally 18 prohibit the transfer of an interest in land that is not an 19 entire subdivided lot or easement that has been approved by the 20 applicable county. With respect to land in the land court 21 system, the additional step of obtaining land court approval is 22 required.

HB589 HD1 HMS 2009-2483

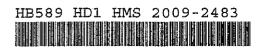
1 Reported Hawaii supreme court cases, including Whitlow v. 2 Jennings, 40 Haw. 523 (1954), have recognized that transactions 3 involving lots that have not been approved by the county 4 pursuant to subdivision laws may be unenforceable. 5 Unfortunately, the process of obtaining county, state, and land 6 court approval of subdivision and easement maps is relatively 7 time-consuming and often requires more than one year to 8 complete. 9 As recognized by the court in the Whitlow v. Jennings case, the purpose of laws requiring county subdivision approval is to 10 protect the consumer purchasing interests in land from 11 substandard subdivisions. However, these laws and court rulings 12 13 have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without 14 15 subdivision approval. This prevents or discourages the use or 16 financing of leases and easements for renewable energy projects. 17 The consumer protection purposes of subdivision laws are not 18 applicable or compelling with respect to sites for renewable 19 energy projects and sophisticated parties developing renewable 20 energy projects. Those subdivision purposes are also outweighed 21 by the State's compelling interests in facilitating,

HB589 HD1 HMS 2009-2483

Page 3

Page 4

1	encouraging, and expediting renewable energy projects for the		
2	health, safety, and welfare of the residents of Hawaii.		
3	Accordingly, the purpose of this Act is to facilitate the		
4	financing and development of renewable energy projects by		
5	allowing leases and easements pertaining to renewable energy		
6	projects, together with mortgages and other conveyances as		
7	security for finance, to be created, enforceable, and		
8	recordable, without requiring the landowner to obtain formal		
9	subdivision approval from the applicable county or other		
10	approving agency.		
11	SECTION 2. Chapter 201N, Hawaii Revised Statutes, is		
12	amended by adding a new section to be appropriately designated		
13	and to read as follows:		
14	" <u>§201N-</u> Exemption from subdivision requirements. (a)		
15	Notwithstanding any other law to the contrary:		
16	(1) Lands within the agricultural, conservation, or rural		
17	state land use district may be subdivided and leased;		
18	and		
19	(2) Easements may be created and granted over lands within		
20	the agricultural, conservation, or rural state land		
21	use district,		



5

1	for the p	ourpose of developing and financing a renewable energy
2	project c	or access to a renewable energy project that is a
3	permitted	use in the district.
4	(b)	Parcels and easements created under this section shall
.5	be legal	lots and easements of record for purposes of leasing,
6	granting	of easements, and mortgage lending, and shall be exempt
7	from subd	ivision requirements. Without limiting the generality
8	of the fo	regoing, fee owners of such lots and easements may:
9	(1)	Lease all or a portion of such lot as a site for a
10		renewable energy project or access to such project;
11	(2)	Grant easements or other possessory interests, whether
12		exclusive or nonexclusive, to use all or a portion of
13		the lot as a renewable energy project site or access
14		to such project; and
15	(3)	Record maps, leases, licenses, grants of easements, or
16		other instruments providing for the right to use all
17		or a portion of the lot as delineated on a map for a
18		renewable energy project site or access to such
19	-	project.
20	(c)	The land court, bureau of conveyances, and other
21	governmen	tal agencies shall accept for filing and recording all



1	instruments and maps pertaining to lots and easements created
2	pursuant to this section."
3	SECTION 3. Section 201N-1, Hawaii Revised Statutes, is
4	amended by adding a new definition to be appropriately inserted
5	and to read:
6	"Subdivision requirement" means any state or county law,
7	state or county permit setting forth standards or requirements
8	for improvements and approvals applicable to the subdivision or
9	consolidation of land, changes in legal boundaries, or the
10	creation or consolidation of parcels, easements, or other
11	interest in land."
12	SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on January 1, 2020.

Report Title: Renewable Energy Project; Subdivisions

Description:

HB589 HD1 HMS 2009-2483

Exempts renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing. (HB589 HD1)