

JAN 26 2009

A BILL FOR AN ACT

RELATING TO ENERGY RESOURCES.

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

1 SECTION 1. The legislature finds that there is a need to
2 coordinate the development of the State's energy resources to
3 preserve energy security by increasing the use of indigenous
4 renewable energy, and reducing the State's overdependence on
5 oil. The legislature also finds that energy data and analysis
6 are essential to energy planning, policy development, and energy
7 emergency preparedness and response. In recent years, energy
8 markets, resources, systems and technologies, the variety and
9 types of fuels, environmental standards and specifications of
10 fuels, and policies related to energy and fuels have undergone
11 dramatic changes. Current and future transitional trends are
12 expected to continue to influence Hawaii's energy situation.
13 These events reveal a critical need to develop the State's
14 technical and analytic capabilities and understanding of
15 Hawaii's energy resources, markets, and systems for effective
16 energy planning to achieve energy independence and increase the
17 State's energy security.

1 The legislature finds that the director of business,
2 economic development, and tourism, who serves as the state
3 energy resources coordinator pursuant to section 196-3, Hawaii
4 Revised Statutes, is responsible for coordinating the
5 development of the State's energy resources, policies, programs,
6 and plans.

7 The legislature finds that the energy data and analytic
8 functions of the state energy resources coordinator are
9 statutorily distinctive and different from, and not redundant to
10 other agencies' functions; e.g., the functions of the public
11 utilities commission, which focus primarily on monitoring
12 petroleum prices and industry profits, a state "watchdog" role.

13 The legislature, in Act 182, Session Laws of Hawaii 2007,
14 explicitly acknowledged the difference between the department of
15 business, economic development, and tourism's energy analysis
16 role and the public utilities commission's role to conduct
17 analysis with a focus on petroleum prices and petroleum industry
18 profits. The statute directed the department of business,
19 economic development, and tourism to use this data "to
20 effectuate the purposes of chapters 125C and 196, Hawaii Revised
21 Statutes, and other relevant laws." The legislature recognized
22 that the use and analysis of energy and fuels data remain

1 critical to virtually all of the department of business,
2 economic development, and tourism's statutory energy program
3 functional requirements.

4 The legislature, therefore, finds that it is essential and
5 appropriate to include within chapter 196, Hawaii Revised
6 Statutes, that the department of business, economic development,
7 and tourism shall be responsible for developing and ensuring the
8 achievement of the State's energy policies, programs, and plans.

9 Therefore, the legislature finds that it is necessary to
10 amend chapter 196, Hawaii Revised Statutes, to:

- 11 (1) Update certain definitions for clarity and to take
12 into account the changes in the State's energy
13 resources, markets, and systems;
- 14 (2) Establish definitive policy guidance needed on the
15 nature and relationship of energy data analyses to the
16 State's energy program, and to clearly delineate
17 distinctive analytic roles and responsibilities of
18 state agencies conducting energy data functions; and
- 19 (3) Provide the statutory basis for a systematic state
20 energy analytic capacity and capability, which is
21 essential to support the energy resources
22 coordinator's role.

SECTION 2. Section 196-1, Hawaii Revised Statutes, is amended to read as follows:

"§196-1 Findings and declaration of necessity. The legislature finds that:

(1) The global demand for petroleum and its derivatives has resulted in a significant and fundamental market escalation in oil prices and has caused severe economic hardships throughout the State, and threatens to impair the public health, safety, and welfare.

The State of Hawaii, with its near total dependence on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market. This [~~is an anomalous~~] situation[7] can be changed, as there are few places in the world so generously endowed with natural energy: geothermal, solar radiation, ocean temperature differential, wind, biomass, waves, and currents--all potential non-polluting power sources;

(2) There is a real need for comprehensive strategic [~~comprehensive~~] planning in the effort towards achieving full [~~utilization~~] use of Hawaii's energy [~~resource programs~~] resources and the most effective

1 allocation of energy resources throughout the State.
2 Planning is necessary and desirable in order that the
3 State may recognize and declare the major problems and
4 opportunities in the field of energy resources. Both
5 short-range and long-range planning will permit the
6 articulation of:

- 7 (A) Broad policies, goals, and objectives;
8 (B) Criteria for measuring and evaluating
9 accomplishments of objectives;
10 (C) Identification and implementation of programs
11 that will carry out such objectives; and
12 (D) A determination of requirements necessary for the
13 optimum development of Hawaii's energy resources.

14 Such planning efforts will identify present conditions
15 and major problems relating to energy resources, their
16 exploration, development, production, and
17 distribution. It will show the projected nature of
18 the situation and rate of change [~~and~~], present
19 conditions for the foreseeable future based on a
20 projection of current trends in the development of
21 energy resources in Hawaii[+], and include initiatives
22 designed to fundamentally change how Hawaii consumes

1 energy, by accelerating the production of renewable
2 and alternative energy, increasing energy efficiency,
3 developing and adopting new technologies, and ensuring
4 the State's energy security;

5 (3) The State requires an in-depth understanding of the
6 causes and effects of any transitional issues and
7 trends related to changes in the State's energy
8 resources, systems, and markets;

9 ~~[(+3)]~~ (4) There are many agencies of the federal, state,
10 and county governments in Hawaii, as well as many
11 private agencies~~[7]~~ and a broad set of non-
12 governmental entities, engaged in, or expressing an
13 interest in, various aspects of the exploration,
14 research, distribution, transportation, storage,
15 conservation, and production of all forms of energy
16 resources in Hawaii. Some of these agencies include
17 the University of Hawaii~~[7]~~; the department of land
18 and natural resources~~[7]~~; the department of business,
19 economic development, and tourism~~[7]~~; the division of
20 consumer advocacy~~[7]~~; the public utilities commission;
21 the state civil defense agency; the federal energy
22 office~~[7]~~; and various county agencies, as well as

1 ~~[the oil companies, gas stations, and other private~~
2 ~~enterprises,]~~ Hawaii's energy and energy-related
3 companies; and

4 ~~[(+4+)]~~ (5) There is ~~[immediate]~~ an ongoing need in this
5 State to coordinate the efforts of [all these
6 ~~agencies,]~~ statewide industry and government energy
7 sectors, maintain the technical capability and
8 adequate capacity to quantitatively and qualitatively
9 evaluate, analyze, develop, and coordinate
10 implementation of private and public sector energy
11 planning efforts, recommend market-based policies to
12 develop Hawaii's energy resources, systems, and
13 markets, establish and coordinate programs to preserve
14 and protect the State's energy security, maintain a
15 robust energy emergency preparedness program, and
16 effectuate the conservation of [fuel,] energy
17 resources, to provide for the equitable distribution
18 thereof, and to formulate plans for the development
19 and use of alternative energy sources. There is a
20 need for such coordination, capability, and capacity
21 so that there will be maximum conservation and
22 ~~[utilization]~~ use of energy resources in the State."

SECTION 3. Section 196-2, Hawaii Revised Statutes, is amended as follows: (1) By adding twelve new definitions to be appropriately inserted and to read as follows:

"Agent" means a person who is designated by the coordinator as an authorized representative.

"Commission" means the public utilities commission.

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

"Distributor" means:

(1) Every person who refines, manufactures, produces, or compounds fuel in the State and sells it at wholesale or retail, or who uses it directly in the manufacture of products or for the generation of power;

(2) Every person who imports or causes to be imported into the State, or exports or causes to be exported from the State, any fuel;

(3) Every person who acquires fuel through exchanges with another distributor; and

(4) Every person who purchases fuel for resale at wholesale or retail from any person described in paragraph (1), (2), or (3).

1 "Electricity" means all electrical energy produced by
2 combustion of any fuel as defined in this section, or generated
3 or produced using wind, the sun, geothermal, ocean water,
4 falling water, currents, and waves, or any other source.

5 "Energy" means work or heat that is, or may be, produced
6 from any fuel or source whatsoever.

7 "Fuel" means fuels, whether liquid, solid, or gaseous,
8 commercially usable for energy needs, power generation, and
9 fuels manufacture, that may be manufactured, grown, produced, or
10 imported into the State or that may be exported therefrom,
11 including petroleum and petroleum products and gases to include
12 all fossil fuel-based gases, coal tar, vegetable ferments,
13 biomass, municipal solid waste, biofuels, hydrogen, agricultural
14 products used as fuels and as feedstock to produce fuels, and
15 all fuel alcohols.

16 "Major energy marketer" means any person who sells energy
17 resources in amounts determined by the coordinator as having a
18 major effect on the supplies of, or demand for, energy
19 resources.

20 "Major energy producer" means any person who produces
21 energy resources in amounts determined by the coordinator as

1 having a major effect on the supplies of, or demand for, energy
2 resources.

3 "Major energy transporter" means any person who transports
4 energy resources in amounts determined by the coordinator as
5 having a major effect on the supplies of, or demand for, energy
6 resources.

7 "Major energy user" means any person who uses energy
8 resources in the manufacture of products or for the generation
9 of electricity in amounts determined by the coordinator as
10 having a major effect on the supplies of, or demand for, energy
11 resources.

12 "Major fuel storer" means any person who stores fuels in
13 amounts determined by the coordinator as having a major effect
14 on the supplies of, or demand for, energy resources.

15 (2) By amending the definition of "energy resources" to
16 read as follows:

17 "Energy resources" means [~~and includes fossil fuel,~~
18 ~~nuclear, geothermal, solar, hydropower, wind, and other means of~~
19 ~~generating energy.] fuels, whether liquid, solid, or gaseous,~~
20 commercially usable for energy needs, power generation, and
21 fuels manufacture, that may be manufactured, grown, produced, or
22 imported into the State or that may be exported therefrom,

1 including petroleum and petroleum products and gases, and all
2 fossil fuel-based gases, coal tar, vegetable ferments, biomass,
3 municipal solid waste, biofuels, hydrogen, agricultural products
4 used as fuels and as feedstock to produce fuels, and all fuel
5 alcohols. Energy resources also includes all electrical energy
6 produced by combustion of any fuel, or generated or produced
7 using wind, the sun, geothermal, ocean water, falling water,
8 currents, and waves, or any other source."

9 SECTION 4. Section 196-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§196-4 Powers and duties.** Subject to the approval of the
12 governor, the coordinator shall:

13 (1) Formulate plans, including objectives, criteria to
14 measure accomplishment of objectives, programs through
15 which the objectives are to be attained, and financial
16 requirements for the optimum development of Hawaii's
17 energy resources;

18 (2) Conduct systematic analysis of existing and proposed
19 energy resource programs, evaluate the analysis
20 conducted by government agencies and other
21 organizations and recommend to the governor and to the
22 legislature programs ~~[which]~~ that represent the most

1 effective allocation of resources for the development
2 of energy [~~sources,~~] resources;

3 (3) Formulate and recommend specific proposals, as
4 necessary, for conserving energy [~~and fuel,~~]
5 resources, including the allocation and distribution
6 thereof, to the governor and to the legislature;

7 (4) Assist public and private agencies in implementing
8 energy conservation and related measures;

9 (5) Coordinate the State's energy conservation and
10 allocation programs with that of the federal
11 government, other state governments, governments of
12 nations with interest in common energy resources, and
13 the political subdivisions of the State;

14 (6) Develop programs to encourage private and public
15 exploration and research of alternative energy
16 resources [~~which~~] that will benefit the State;

17 (7) Conduct public education programs to inform the public
18 of the energy resources situation as may exist from
19 time to time and of the government actions taken
20 [~~thereto~~];

21 (8) Serve as consultant to the governor, public agencies,
22 and private industry on matters related to the

1 acquisition, [~~utilization~~] use, and conservation of
2 energy resources;

3 (9) Contract for services when required for implementation
4 of this chapter;

5 (10) Review proposed state actions [~~which~~] that the
6 coordinator finds to have significant effect on energy
7 [~~consumption~~] resources and report to the governor
8 their effect on the energy conservation program, and
9 perform such other services as may be required by the
10 governor and the legislature;

11 (11) Prepare and submit an annual report and [~~such~~] other
12 reports as may be requested to the governor and to the
13 legislature on the implementation of this chapter and
14 all matters related to energy resources; [~~and~~]

15 (12) Adopt rules for the administration of this chapter
16 pursuant to chapter 91[~~7~~]; provided that the rules
17 shall be submitted to the legislature for review[~~-~~];
18 and

19 (13) Develop and maintain a comprehensive and systematic
20 quantitative and qualitative capacity to analyze the
21 status of energy resources, systems, and markets, both
22 in-state and those to which Hawaii is directly tied,

S.B. NO. 868

1 particularly in relation to the State's economy, and
2 to recommend, develop proposals for, and assess the
3 effectiveness of policy and regulatory decisions, and
4 conduct energy emergency planning."

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect upon its approval.

8
9 INTRODUCED BY: _____

10 BY REQUEST

Report Title:

Energy Resources; Power Generation Utilities, Transportation
Fuels; State Energy Resources Coordinator

Description:

To comprehensively address deficiencies in Hawaii's energy resources coordination statutes. Provide policy guidance needed to provide adequate detail on the nature and relationship of the energy data analyses functions required of the state energy resources coordinator and energy program.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO ENERGY RESOURCES.

PURPOSE: To comprehensively address deficiencies in Hawaii's energy resources coordination statutes. Provide policy guidance needed to provide adequate detail on the nature and relationship of the energy data analyses functions required of the state energy resources coordinator and energy program. The bill will:

- (1) Amend section 196-2, Hawaii Revised Statutes, by adding twelve new definitions and amending one other definition to account for transition issues related to biofuels and other alternate fuels, and the proliferation of new categories and specifications of petroleum fuels;
- (2) Amend section 196-1, Hawaii Revised Statutes, to address increasing unique economic and energy systems risks corresponding to transition issues or trends as a result of the increase in the variety of fuels and fuel production feedstocks being directly imported into the State and the new fuel- and feedstock-specific infrastructure requirements associated with such transitional issues and trends;
- (3) Amend section 196-2, Hawaii Revised Statutes, to amend the definition of energy resources to account for proliferation in variety and sources of fuels and electrical energy; and
- (4) Amend section 196-4, Hawaii Revised Statutes, to clarify that the duties of the energy resources coordinator include developing and maintaining a comprehensive and systematic

quantitative and qualitative capacity to analyze the status of energy resources, systems, and markets in order to recommend, develop proposals for, and assess the effectiveness of policy and regulatory decisions, and conduct energy emergency planning.

MEANS: Amend sections 196-1, 196-2, and 196-4, Hawaii Revised Statutes.

JUSTIFICATION: The Lingle Administration's Energy for Tomorrow (EFT) policy package and plan and the U.S. Department of Energy/State of Hawaii Hawaii Clean Energy Initiative (HCEI) were developed to fundamentally change how Hawaii consumes energy, by accelerating the production of renewable and alternative energy, increasing energy efficiency, developing and adopting new technologies, and ensuring the State's energy security, which comprise the net goals of energy statutes enacted in 2006, 2007, and 2008.

As the state energy resources coordinator, the DBEDT director is tasked with implementing the EFT and HCEI initiatives, as well as preserving and protecting the State's energy security. While the consumer advocate represents the consumers of energy in the State, the energy resources coordinator represents the State and its broader, strategic energy policy perspectives to coordinate and manage statewide energy resource development. The energy resources coordinator has historically been mandated to carefully consider and analyze the status of Hawaii's energy systems as an advocate for the State.

EFT and HCEI implementation initiatives and activities involve actions by and affect all energy industry sectors, and consumers, and require coordinated actions by state agencies - administrative and regulatory. In order to accomplish these goals, the energy resources coordinator needs the

technical capability and capacity to quantitatively and qualitatively evaluate, analyze, develop, and coordinate implementation of private and public sector energy planning efforts, and recommend market-based policies to develop Hawaii's energy systems and resources in all sectors.

The proposed amendments to chapter 196, Hawaii Revised Statutes, reflect these energy security-related analytic functional requirements and responsibilities of the energy resources coordinator, made operational by the state energy program.

Impact on the public: If these statutory changes are not made, DBEDT's mission will be severely degraded, and development of an effective energy security and resources program will be delayed. This would further delay improvement of the State's capabilities and capacity to plan and respond to any energy emergency or shortage, thereby causing a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The provisions do not directly impact any public activity.

Impact on the department and other agencies: DBEDT considers approval of these changes to be essential to its mission, because the energy and fuels data analytic and information functions are essential for the state energy program to support the governor and the state energy resources coordinator, and contributes significantly to other agencies' missions. If these statutory changes are not made, these missions will be severely degraded, and development of an effective energy security and resources program will be delayed. This would further delay improvement of the State's capabilities and capacity to plan and respond to any energy emergency or shortage. These amendments will support efforts to

achieve more reliable, secure, cost-effective, more self-reliant energy systems.

GENERAL FUND: N/A.

OTHER FUNDS: N/A.

PPBS PROGRAM
DESIGNATION: BED-120AD.

OTHER AFFECTED
AGENCIES: Attorney General, Budget and Finance,
Consumer Advocate, Public Utilities
Commission, Taxation, Transportation, and
State Civil Defense.

EFFECTIVE DATE: Upon approval.