

JAN 28 2009

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY OPPORTUNITY ZONES.

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, as well as 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 Hawaii unique in its
15 near total reliance on imported oil and vulnerability to supply
16 disruptions. The catastrophic events of September 11, 2001,

1 underline the need for Hawaii to severely reduce its dependence
2 on foreign oil.

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

16 The Legislature further finds that Hawaii is blessed with
17 an abundance of renewable energy resources, including wind,
18 solar, hydropower, geothermal, and ocean technologies such as
19 wave energy and thermal energy conversion. Act 272, Session
20 Laws of Hawaii 2001, recognized "the economic, environmental,
21 and fuel diversity benefits of renewable energy resources" and
22 the need to "encourage the establishment of a market for

1 renewable energy in Hawaii using the State's renewable energy
2 resources....." Act 272 further noted that "while Hawaii is a
3 national leader in the development of renewable energy resources
4 for electricity production, there may be more that the State can
5 do to encourage the development and implementation of renewable
6 energy. These efforts can reduce the amount of imported oil
7 used for the generation of electricity."

8 In the transportation sector, improving fuel economy to
9 slow the rise in oil use and greenhouse gas emissions may only
10 be a short-term tactic. Reducing oil consumption and carbon
11 dioxide emissions over the long-term can be achieved only by
12 switching to low-carbon non-petroleum fuels. However, even
13 engines with the best batteries cannot store enough of a charge
14 to keep cars running for the long distances that gasoline
15 engines can. In contrast, fuel-cell vehicles, which combine
16 hydrogen fuel and oxygen from the air to generate power to run
17 electric motors, face fewer technical hurdles and are several
18 times as efficient as today's conventional gasoline cars. The
19 only emission caused from the use of hydrogen fuel is water
20 vapor which does not cause greenhouse gas emissions. Over the
21 past decade, seventeen countries have announced national
22 programs to develop hydrogen energy. More than thirty states in
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1 the U.S., and several Canadian provinces, are developing similar
2 plans. Major automakers are demonstrating prototype hydrogen
3 vehicles. Toyota and General Motors have announced plans to
4 commercialize fuel-cell vehicles sometime between 2010 and
5 2020. Automakers and energy companies such as Shell, Chevron,
6 and BP are working with governments to introduce the first
7 fleets of hydrogen vehicles along with small refueling networks
8 in California, the northeastern United States, Europe, and
9 China. In Hawaii, the first hydrogen fueling station was opened
10 at Hickam Air Force Base in November 2006.

11 The purpose of this Act is to lessen Hawaii's dependence on
12 imported oil and encourage the greater use of renewable energy
13 by facilitating the development of renewable energy resources,
14 and by establishing renewable energy opportunity zones to
15 accommodate various types of renewable energy producing
16 facilities with a minimum of red tape.

17 The intent of the Legislature is to have the groundwork
18 prepared in anticipation of the entry of qualified businesses
19 that are willing and able to invest in the State to develop
20 renewable energy resources by having certain areas in the
21 respective counties designated as renewable energy opportunity
22 zones, approved for certain types of renewable energy

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1 generation, with all the necessary environmental impact
2 statements performed and in place, and by expediting the
3 issuance of necessary county permits, in consultation with the
4 respective counties through their active participation in an
5 advisory committee.

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

9 "CHAPTER

10 RENEWABLE ENERGY OPPORTUNITY ZONES

11 § -1 Purpose. The purpose of this chapter is to reduce
12 the State's dependence on imported oil and increase the State's
13 energy self-sufficiency by providing for the establishment of
14 renewable energy opportunity zones.

15 § -2 Definitions. As used in this chapter, unless the
16 context clearly requires otherwise:

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

19 "Director" means the director of business, economic
20 development, and tourism.

21 "Establishment" means a single physical location where
22 electric energy is generated. A qualified business may include

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1 one or more establishments, any number of which may be in a
2 renewable energy opportunity zone.

3 "Full-time employee" means any employee for whom the
4 employer is legally required to provide employee fringe
5 benefits.

6 "Qualified business" means any renewable energy generator
7 that is:

- 8 (1) Authorized to do business in this state;
- 9 (2) Qualified under section -8; and
- 10 (3) Is engaged in producing electric power from:
 - 11 (A) Hydrogen fuels derived entirely from renewable
 - 12 energy;
 - 13 (B) Wind energy;
 - 14 (C) Solar energy;
 - 15 (D) Hydropower;
 - 16 (E) Landfill gas;
 - 17 (F) Waste to energy;
 - 18 (G) Geothermal resources;
 - 19 (H) Ocean thermal energy conversion;
 - 20 (I) Wave energy;
 - 21 (J) Biomass, including municipal solid waste;

1 (K) Biofuels or fuels derived entirely from organic
2 sources; or

3 (L) Fuel cells where the fuel is derived entirely
4 from renewable sources;

5 for sale primarily to an energy utility for resale to the
6 public.

7 "Renewable energy" means electrical energy produced by
8 hydrogen fuels derived entirely from renewable energy, wind
9 energy, solar energy, hydropower, landfill gas, waste to energy,
10 geothermal resources, ocean thermal energy conversion, wave
11 energy, biomass including municipal solid waste, biofuels or
12 fuels derived entirely from organic sources, or fuel cells where
13 the fuel is derived entirely from renewable sources. "Renewable
14 energy" also means electrical energy savings brought about by
15 the use of solar and heat pump water heating.

16 "Renewable energy opportunity zone" means an area
17 designated by the director of business, economic development,
18 and tourism under this chapter in consultation with the
19 renewable energy opportunity zone advisory committee that is
20 within the jurisdiction of a county government, and that is
21 eligible for the benefits under this chapter.

"Renewable energy generator" means a person who produces electric power, including any person who:

- (1) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power, whether in whole or in part, from any renewable energy source; and
- (2) Provides, sells, or transmits any or all of that power, either directly or indirectly to an energy utility for transmission to the public.

"Taxes due the state" means income taxes due under chapter 235.

§ -3 Energy opportunity zone designation; consultation with renewable energy opportunity zone advisory committee; rules. (a) The director, in consultation with the renewable energy opportunity zone advisory committee, shall:

- (1) Designate areas within the State as renewable energy opportunity zones;
- (2) Establish criteria for determining which areas qualify as renewable energy opportunity zones;
- (3) Determine what types of renewable energy generation shall be approved for each designated renewable energy opportunity zone;

(4) Determine the number of areas in each county that may be designated as renewable energy opportunity zones; and

(5) Set the period of time an area shall remain a designated renewable energy opportunity zone.

(b) The director shall adopt rules in accordance with chapter 91 to carry out the effect of this chapter.

§ -4 Environmental impact statement; county issuance of permits; reports. (a) The director shall:

(1) Perform the necessary environmental impact statement or statements for the renewable energy generation approved by the director in a designated renewable energy opportunity zone; and

(2) Cooperate with the relevant county in which a designated renewable energy opportunity zone is located to expedite the issuance of all necessary county permits by June 30, 2010.

(b) The director shall submit annual reports evaluating the effectiveness of this chapter, including any recommendations for legislation to the legislature and the governor.

1 § -5 **Government assistance; prohibition.** There shall be
2 no duplication of existing state tax incentives to qualified
3 businesses that locate in a renewable energy opportunity zone.

4 § -6 **Rules; consultation with county.** The department, in
5 consultation with each relevant county, shall adopt rules in
6 accordance with chapter 91 to implement this chapter, including
7 rules relating to health, safety, building, planning, zoning,
8 and land use, which shall supersede all other inconsistent
9 ordinances and rules relating to the use, zoning, planning, and
10 development of land and construction in a renewable energy
11 opportunity zone. Rules adopted under this section shall follow
12 existing laws, rules, and ordinances as closely as is consistent
13 with standards meeting minimum requirements of energy
14 efficiency, health, and safety. The department may provide by
15 rule that lands within a renewable energy opportunity zone shall
16 not be developed beyond existing uses, or that improvements
17 thereon shall not be demolished or substantially reconstructed,
18 or provide other restrictions on the use of the zone.

19 § -7 **Renewable energy opportunity zone advisory**
20 **committee.** (a) There is established a renewable energy
21 opportunity zone advisory committee, to be placed within the
22 department for administrative purposes. The advisory committee

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shall consist of five members appointed by the governor as follows:

(1) One member knowledgeable in the renewable energy industry from the department who shall serve as chairperson; and

(2) Four members representing each of the mayors of the respective counties.

(b) Members shall not be compensated but shall be reimbursed for necessary expenses, including travel expenses, incurred in the course of carrying out their duties.

(c) The advisory committee shall provide consultation to the director regarding matters enumerated in section -3.

§ -8 Eligibility; qualified business; sale of property or services. (a) Any renewable energy generator may be eligible to be designated a qualified business for purposes of this chapter if the renewable energy generator:

(1) Begins the operation of a renewable energy generator within a renewable energy opportunity zone;

(2) During each taxable year has at least per cent of its renewable energy opportunity zone establishment's gross receipts attributable to the active production

of electric power within the renewable energy
opportunity zone;

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

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

(b) A renewable energy generator also may be eligible to
be designated a qualified business for purposes of this chapter
if the renewable energy generator:

(1) Is actively engaged in producing electric power in an
area immediately prior to an area being designated a
renewable energy opportunity zone;

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

(3) Increases its average annual number of full-time
employees employed at the renewable energy generator's
establishment or establishments located within the
renewable energy opportunity zone by at least
per cent annually.

(c) After designation as a renewable energy opportunity
zone, each qualified business in the zone shall submit annually
to the department an approved form supplied by the department

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1 that provides the information necessary for the department to
2 determine if the renewable energy generator qualifies as a
3 qualified business. The approved form shall be submitted by
4 each business to the governing body of the county in which the
5 renewable energy opportunity zone is located, then forwarded to
6 the department by the governing body of the county.

7 (d) The form referred to in subsection (c) shall be prima
8 facie evidence of the eligibility of a renewable energy
9 generator for the purposes of this section.

10 (e) Any electric power produced by a renewable energy
11 generator outside of a renewable energy opportunity zone shall
12 not be included in the determination of gross receipts
13 attributable to the active production of electric power under
14 subsection (a) (2).

15 § -9 State business tax credit. (a) The director shall
16 certify annually to the department of taxation the applicability
17 of the tax credit provided in this chapter for a qualified
18 business against any taxes due the state. Except for the
19 general excise tax, the credit shall be:

20 (1) Eighty per cent of the tax due for the first tax year;

21 (2) Seventy per cent of the tax due for the second tax

22 year;

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(3) Sixty per cent of the tax due for the third year;

(4) Fifty per cent of the tax due the fourth year;

(5) Forty per cent of the tax due the fifth year;

(6) Thirty per cent of the tax due the sixth year; and

(7) Twenty per cent of the tax due the seventh year.

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

(b) When a partnership is eligible for a tax credit under this section, each partner shall be eligible for the tax credit provided for in this section on the partner's income tax return in proportion to the amount of income received by the partner from the partnership. Any qualified business having taxable income from the production of electric power, both within and without the renewable energy opportunity zone, shall allocate and apportion its taxable income attributable to that production. Tax credits provided for in this section shall only apply to taxable income of a qualified business attributable to the production of electric power within the renewable energy opportunity zone.

(c) In addition to any tax credit authorized under this section, any qualified business shall be entitled to a tax credit against any taxes due the state in an amount equal to a

percentage of unemployment taxes paid. The amount of the credit shall be equal to:

(1) Eighty per cent of the taxes paid during the first year;

(2) Seventy per cent of the taxes paid during the second year;

(3) Sixty per cent of the taxes paid during the third year;

(4) Fifty per cent of the taxes paid during the fourth year;

(5) Forty per cent of the taxes paid during the fifth year;

(6) Thirty per cent of the taxes paid during the sixth year; and

(7) Twenty per cent of the taxes paid during the seventh year.

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

1 § -10 State general excise and use tax exemptions. The
2 director shall certify annually to the department of taxation
3 that any qualified business is exempt from the payment of
4 general excise taxes on the gross proceeds from the sale of
5 electric power to an energy utility for resale to the public.
6 The director shall also certify annually to the department of
7 taxation that any qualified business is exempt from the use tax
8 for purchases by the qualified business. The gross proceeds
9 received by a contractor licensed under chapter 444 shall be
10 exempt from the general excise tax for construction within a
11 renewable energy opportunity zone performed for a qualified
12 business within a renewable energy opportunity zone. The
13 exemption shall extend for a period not to exceed seven years.

14 § -11 Local incentives. A county may propose local
15 incentives to be made available in a renewable energy
16 opportunity zone, including:

- 17 (1) Reduction of permit fees;
18 (2) Reduction of user fees;
19 (3) Reduction of real property taxes; and
20 (4) Regulatory flexibility, including, but not limited to:
21 (A) Special zoning districts;
22 (B) Permit process reform;

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1 (C) Exemptions from local ordinances; and

2 (D) Other public incentives,

3 which shall be binding upon the locality upon designation of the
4 renewable energy opportunity zone.

5 § -12 **Termination of energy opportunity zone.** Upon
6 designation of an area as a renewable energy opportunity zone,
7 the proposals for regulatory flexibility, tax incentives, and
8 other public incentives specified in this chapter shall be
9 binding upon the county governing body to the extent and for the
10 period of time specified by the director pursuant to section

11 -3. If the county governing body is unable or unwilling to
12 provide any of the incentives set forth in section -11 or other
13 incentives acceptable to the director, and the director has not
14 adopted rules pursuant to section -6 that supersede
15 inconsistent ordinances and rules relating to the use, zoning,
16 planning, and development of land and construction in a
17 renewable energy opportunity zone, then the renewable energy
18 opportunity zone shall terminate. Qualified businesses located
19 in the renewable energy opportunity zone shall be eligible to
20 receive the state tax incentives provided by this chapter even
21 though the zone designation has terminated. No renewable energy

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1 generator may become a qualified business after the date of zone
2 termination."

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$, or so much
5 thereof as may be necessary for fiscal year 2009-2010, for the
6 department of business, economic development, and tourism, to
7 implement chapter , including the designation of renewable
8 energy opportunity zones and performing required environmental
9 impact statements.

10 The sums appropriated shall be expended by the department
11 of business, economic development, and tourism for the purposes
12 of this Act.

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun, before its effective date.

16 SECTION 5. This Act shall take effect upon approval except
17 that section 3 shall take effect on July 1, 2009.

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INTRODUCED BY:

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Report Title:

Renewable Energy Opportunity Zones

Description:

Requires the director of business, economic development, and tourism, in consultation with the renewable energy opportunity zone advisory committee to: designate renewable energy opportunity zones, determine the types of energy generation for such zones, determine the number of zones and the period of zones, perform required environmental impact statements for zones, and expedite issuance of county permits.