

ENERGY AND ENVIRONMENT

The Committee on Energy and Environment has jurisdiction over programs relating to energy resources, including the development of alternative energy resources; population; and environmental quality control and protection, including litter control, recycling, wastewater treatment, endangered species, and hazardous waste.

Highlights

GEOTHERMAL EXPLORATION AND DEVELOPMENT

In the 1980s and 1990s, in response to community concerns, the Legislature enacted laws that restrict geothermal development activities. For example, Act 296, Session Laws of Hawaii 1983, requires the Board of Land and Natural Resources to assess all areas with geothermal potential, to propose areas for geothermal development, and to conduct public hearings in the affected community before an area may be used for geothermal development activities. Hawaii has since become the most fossil-fuel dependent state in the nation, and fossil-fuel dependency has degraded the State's economy and quality of life. In April 2012, the Honolulu Star-Advertiser reported that Hawaii typically has the highest cost for electricity in the nation, with the average Oahu household paying more than \$200 per month for electricity, or three times the national average. Neighbor island residents pay even more for electricity than Oahu residents, despite their abundance of renewable energy resources.

SB3003, SD1, HD2 (Act 97), relaxes the restrictions on geothermal development by:

- Requiring geothermal resources exploration and development, as defined in the Act, to be permissible uses in all state land use districts; and
- Repealing provisions relating to geothermal resource subzones and exploratory wells – the provisions that mandated a "go-slow" approach to geothermal energy.

The intent of **Act 97** is to put geothermal resources to use and reduce the negative impacts of fossil-fuel dependency.

INTERISLAND ELECTRIC CABLE

The cost of electricity continues to rise and place a growing burden on the State's residents. The Chairperson of the Public Utilities Commission recently testified that electricity rates are currently cheaper on Oahu than on the neighbor islands, because Oahu has lower cost fuels. The neighbor islands, on the other hand, have an excess of renewable energy that they cannot use and may have to curtail production, essentially throwing away that capacity. Building an undersea electric cable to connect two island grids would create the opportunity for those islands to economically share their power, stabilizing electricity rates throughout the State. An undersea electric cable is a potentially expensive and ambitious project, however, and government oversight is necessary to ensure that consumers are protected from unfair rate adjustments and that private developers and investors have sufficient incentives to undertake the financial risk. **SB2785, SD2, HD2**, establishes a regulatory framework through

which a cable project would be reviewed and, if approved, developed. Specifically, this measure outlines the certification process, the cost recovery mechanism, and surcharges and fees for parties involved in a cable project. This measure does not require the development of an interisland electric cable and does not stipulate where such a cable would be established or the source of the energy that it may carry.

ENVIRONMENTAL IMPACT STATEMENTS

According to the University of Hawaii's October 2010 report on the environmental review process, entitled "Final Report on Hawaii's Environmental Review System", stakeholders share the sense that the four-decades-old process is in need of a change. One of the goals of the report is to modernize the process, and it includes the study team's recommendations for reform. To increase efficiency, the report recommends allowing project proponents to bypass the environmental assessment process – a low-level scrutiny of environmental impacts – and proceed directly to environmental impact statement preparation – a higher-level scrutiny of environmental impacts – when warranted. **SB2281, SD1, HD1**, adopts this recommendation. That measure authorizes an agency to bypass the preparation of an environmental assessment for a proposed action, or to authorize an applicant to bypass the preparation of an environmental assessment for a proposed action, if the agency determines that the proposed action is likely to require an environmental impact statement. **SB2281, SD1, HD1**, also requires the agency or the applicant, as appropriate, to prepare the environmental impact statement instead of the environmental assessment if the agency determines that the proposed action will likely require an environmental impact statement. **SB2281, SD1, HD1**, reduces duplication and improves efficiency based on an agency's expertise and experience with previous projects.

Bills Passed

I. Energy Resources

Energy Systems Development Special Fund; Hawaii Natural Energy Institute. (HB1726, HD1, SD2, CD1) Extends the repeal date of the:

- Energy Systems Development Special Fund, which is administered by the Hawaii Natural Energy Institute;
- Mandatory periodic evaluation of the projects and activities funded by the Energy Systems Development Special Fund; and
- Mandatory development of a plan of action by the Hawaii Natural Energy Institute in coordination with the State Energy Resources Coordinator prior to the initiation of any projects or activities using Energy Systems Development Special Fund monies,

to June 30, 2013.

Geothermal Resources; Exploration and Development. (SB3003, SD1, HD2; Act 97) Defines "geothermal resources exploration" and "geothermal resources development" for purposes of

state laws on the reservation and disposition of government mineral rights and permissible uses in state land use districts. Amends the definitions of "mining lease" and "mining operations" for purposes of the state law on the reservation and disposition of government mineral rights. Clarifies that the Board of Land and Natural Resources is authorized to issue exploration permits for geothermal resources and minerals.

Requires geothermal resources exploration and geothermal resources development to be permissible uses in all state land use districts.

Repeals provisions relating to geothermal resource subzones and exploratory wells and references to geothermal resource subzones.

Interisland Electric Transmission Cable System. (SB2785, SD2, HD2) Establishes a regulatory framework for the development, financing, and use of a high-voltage undersea electric transmission cable system that will permit the transmission of power generated on one or more islands of the State to an electric utility system located on another island of the State. Specifically, this measure:

- Requires a cable company to be selected through a request for proposals, developed by the electric utility company and the Energy Resources Coordinator, or the Energy Resources Coordinator's designee, or through another process approved by the Public Utilities Commission;
- Prohibits the selected cable company from commencing commercial operations of the cable system until it is issued a certificate of public convenience and necessity by the Commission;
- Specifies considerations and conditions for the Commission to use to determine whether to issue a certificate of public convenience and necessity;
- Subjects a certified cable company to regulation by the Commission;
- Requires the Commission to approve, disapprove, or approve subject to certain conditions, by order, the tariff that the certified cable company imposes on an electric utility company to make the capacity of its high-voltage electric transmission cable system available to the company;
- Requires the Commission to establish a cable surcharge to recover certain costs of the high-voltage electric transmission cable system and designate the electric utility companies to which the capacity of the high-voltage electric transmission cable system shall be made available to collect the cable surcharge;
- Requires the Commission to approve a fee for acting as the collection agent for the certified cable company, to be collected by the electric utility companies with the cable surcharge;
- Authorizes an electric utility company to recover, through an automatic rate adjustment clause, its revenue requirement resulting from the capital costs that it prudently incurs for on-island transmission infrastructure if the Commission has approved the utility's commitment of capital expenditure costs for the project;

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- Requires the Commission to establish a separate automatic rate adjustment clause, or to modify an existing automatic rate adjustment clause, to provide for timely recovery of an electric utility company's revenue requirement;
- Requires the on-island transmission infrastructure for the high-voltage electric transmission cable system to be available for service before the commercial operations date of the system;
- Allows an electric utility company to recover reasonable costs determined by the Commission to have been prudently incurred by the electric utility company with respect to the on-island transmission infrastructure, if the electric utility company elects not to complete the on-island transmission infrastructure and the Commission approves this election, or if the electric utility company is precluded from completing construction of the on-island transmission infrastructure;
- Exempts the amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company, except any amounts retained by the electric utility company for collection or other costs, from the public service company tax, franchise tax, income tax, and public utility fee.

Naphtha Fuel Tax. (HB2740, HD1, SD1, CD1) Extends the sunset date of the two-cent rate of tax for each gallon of naphtha sold for use in a power-generating facility, to December 31, 2015.

Public Utilities Commission; Electricity; Costs. (HB425, HD3, SD2; Act 99) Requires the Public Utilities Commission to consider the costs and benefits of a diverse fossil fuel portfolio and of maximizing the efficiency of all electric utility assets, in exercising its authority and performing its duties, for the purpose of lowering and stabilizing the cost of electricity.

Seawater Air Conditioning Project; Special Purpose Revenue Bonds. (SB745, SD2, HD2) Extends the Department of Budget and Finance's authorization to issue, with the approval of the Governor, special purpose revenue bonds to assist Honolulu Seawater Air Conditioning LLC, until June 30, 2015.

II. Environment

Climate Change; Hawaii State Planning Act. (SB2745, SD1, HD2, CD1) Adds climate change adaptation as a major area of statewide concern that the State is required to act upon to improve the quality of life for Hawaii's present and future population. Requires climate change adaptation priority guidelines to:

- Ensure that Hawaii's people are educated and aware of the impacts climate change may have on their communities;
- Encourage community stewardship groups and local stakeholders to participate in planning and implementation of climate change policies;

- Invest in continued monitoring and research of Hawaii's climate and the impacts of climate change on the State;
- Consider native Hawaiian traditional knowledge and practices in planning for the impacts of climate change;
- Encourage the preservation and restoration of natural landscape features that have the inherent capacity to avoid, minimize, or mitigate the impacts of climate change;
- Explore adaptation strategies that moderate harm or exploit beneficial opportunities in response to actual or expected climate change impacts to the natural and built environments;
- Promote sector resilience in areas such as water, roads, airports, and public health, by encouraging the identification of climate change threats, assessment of potential consequences, and evaluation of adaptation options;
- Foster cross-jurisdictional collaboration between governmental agencies and partnerships between government and non-governmental entities;
- Use management and implementation approaches that encourage the continual collection, evaluation, and integration of new information and strategies into new and existing practices, policies, and plans; and
- Encourage planning and management of the natural and built environments that effectively integrate climate change policy.

Emergency Rules for Threats to Natural Resources or Environmental Health. (HB2593, HD2, SD1, CD1) Authorizes an agency to proceed, without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable, to adopt an emergency rule if the agency finds that an imminent peril to natural resources requires adoption, amendment, or repeal of a rule upon less than 30 days' notice of hearing. Authorizes an agency to extend the effective period of an emergency rule beyond 120 days without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable, if the agency finds that immediate adoption of the rule is necessary because of imminent peril to natural resources.

Endangered and Threatened Species. (SB2277, SD2, HD2, CD1) Repeals section 195D-27, Hawaii Revised Statutes, which contains provisions on the administrative enforcement of:

- Administrative rules for conservation of wildlife;
- Habitat conservation plans;
- Safe harbor agreements; and
- Incidental take licenses.

Extends the Department of Land and Natural Resources' authority to issue safe harbor agreements, habitat conservation plans, and incidental take licenses through June 29, 2017.

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Environmental Impact Statements. (SB2281, SD1, HD1) Authorizes an agency to bypass the preparation of an environmental assessment for a proposed action if the agency determines that the proposed action is likely to require an environmental impact statement and requires the agency to prepare the environmental impact statement instead of the environmental assessment. Authorizes an agency to allow an applicant to bypass the preparation of an environmental assessment for a proposed action if the agency determines that the proposed action is likely to require an environmental impact statement and requires the applicant to prepare the environmental impact statement instead of the environmental assessment.

Environmental Impact Statements; Exemption. (SB2873, SD1, HD3, CD2) Exempts ancillary secondary actions, limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, from the environmental impact statements law if the applicant for the primary action submits documentation from the appropriate agency confirming that no further discretionary approvals are required. Repeals Act 87, Session Laws of Hawaii 2009 (Act 87), which exempts primary actions that are not subject to discretionary consent and involve an ancillary secondary action, from the environmental impact statements law. Repeals Act 45, Session Laws of Hawaii 2011, which extends the sunset date of Act 87 to July 1, 2013, and requires the Office of Environmental Quality Control to report findings and recommendations on the application of the environmental impact statements law and the effectiveness of Act 87 to the Legislature no later than 20 days before the convening of the Regular Session of 2012. Requires an applicant that proposes an action, rather than an approving agency, to prepare the environmental assessment of the proposed action. In situations when an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of determining whether an environmental assessment is required, requires the Office of Environmental Quality Control to determine which agency has the responsibility for determining whether an environmental assessment by the applicant is required, except in situations involving exempt secondary actions. Prohibits the Office of Environmental Quality Control from being considered an approving agency.

Hawaii Electric Device Recycling Task Force. (SB2822, SD2, HD2; Act 78) Establishes the Hawaii Electric Device Recycling Task Force within the Department of Health to make recommendations for a workable recycling program for electric devices in Hawaii. Specifies the membership of the Task Force but authorizes the Director of Health to reduce the size of the Task Force if it maintains representation from various sectors. Requires the Department of Health to submit a report of the Task Force's findings and recommendations, including any proposed legislation, to the Legislature no later than 20 days prior to the convening of the 2013 Regular Session. Dissolves the Task Force on June 30, 2013.

Resolutions Adopted

Geothermal Resources; Islands of Hawaii and Maui. (SR25, SD1) Urges the Public Land Development Corporation to identify public trust land on the Islands of Hawaii and Maui with geothermal resources that may be developed. Urges the Public Land Development Corporation to work with the Department of Land and Natural Resources to develop and implement geothermal projects on the Islands of Hawaii and Maui. Requests the Public Land Development Corporation to submit its written findings and policy recommendations to the Legislature no later than 20 days prior to the convening of the Regular Session of 2013.