

JAN 25 2017

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PROCEDURE.

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

1 SECTION 1. The legislature finds that the goals and
2 policies expressed in Act 97, Session Laws of Hawaii 2015, which
3 extended the State's renewable energy standard to achieve a one
4 hundred per cent renewable energy portfolio by December 31,
5 2045, remain of the utmost importance to the State and the
6 legislature reaffirms its commitment to them. The further
7 development of renewable energy sources to replace energy
8 derived from fossil fuels is critically important to the State
9 of Hawaii. Renewable energy from natural sources is a public
10 trust resource under article XI, section 1, of the Hawaii state
11 constitution, which provides that the state shall promote "the
12 development and utilization" of such resources.

13 Renewable energy projects typically require a number of
14 permits and other approvals by governmental agencies. These
15 agencies have a duty to consider the effects of such projects on
16 the environment, public health, and public safety and to ensure
17 that the projects meet criteria established by law and have



1 minimal adverse effects. When these approvals are made by
2 boards or commissions, the State's open meeting law requires
3 that the board or commission hear public testimony on the
4 project. Under the current law, some of these permits and
5 approvals are subject to formal contested case hearings.

6 Because a contested case hearing is procedurally similar to
7 a courtroom trial, these hearings are often very lengthy and can
8 seriously delay the implementation of important and beneficial
9 projects, even when permits are ultimately approved. There is
10 also some uncertainty under current law regarding whether
11 various types of permits and approvals are indeed subject to
12 contested case hearings. This can cause further barriers to the
13 development of renewable energy resources. If a formal
14 contested case hearing is ordered when it is not required, the
15 applicant will suffer unnecessary delay and expense. On the
16 other hand, if a contested case hearing is not held but a court
17 later determines it was required, a project could be stopped
18 mid-construction, resulting in even greater cost and delays.

19 Under current law, a contested case hearing may be required
20 by statute or administrative rule even if it is not
21 constitutionally required or requested by a party with



1 cognizable rights under the state or federal constitution. The
 2 legislature finds that the State's existing administrative
 3 approval process contains sufficient safeguards to protect the
 4 general public interest without the cost and time burdens
 5 inherent in the formal contested case hearing process.

6 The purpose of this Act is to limit the requirement for a
 7 contested case hearing on permits for renewable energy projects
 8 to situations where such a hearing is requested by the applicant
 9 seeking to develop a renewable energy project or another person
 10 who has the right to request such a hearing under the state or
 11 federal constitution. This Act further clarifies the
 12 administrative review process by specifying that the benefits of
 13 renewable energy shall be considered in the review of permit
 14 applications for renewable energy projects.

15 SECTION 2. Chapter 91, Hawaii Revised Statutes, is amended
 16 by adding a new section to be appropriately designated and to
 17 read as follows:

18 "§91- Administrative procedures for renewable energy
 19 projects. (a) For the purposes of this section:

20 "Applicant" means any person that has submitted an
 21 application for a license, permit, or other approval required to



1 construct a renewable energy project or portion of a renewable
2 energy project and includes the person's authorized
3 representative.

4 "Approval" means any license, permit, or other approval by
5 an agency required for a renewable energy project.

6 "Renewable energy" has the same meaning as in section 269-
7 91.

8 "Renewable energy project" means any project that will
9 generate renewable energy and includes electric transmission
10 infrastructure used to connect a renewable energy project to the
11 electrical grid.

12 (b) Notwithstanding any other law to the contrary, no
13 contested case hearing shall be held on an application for any
14 approval required for a renewable energy project unless the
15 contested case hearing is otherwise required by law and is
16 requested by:

17 (1) The applicant; or

18 (2) Another person whose rights, duties, or privileges are
19 required by the state or federal constitution to be
20 determined in a matter after an opportunity for a
21 contested case hearing.



1 The requesting party shall comply with all applicable
2 requirements contained in statute or administrative rules in
3 requesting a contested case hearing under this section.

4 (c) If a contested case hearing is not held on an
5 application subject to this section, any agency decision that is
6 adverse to the applicant:

7 (1) Shall be accompanied by written findings of fact and
8 conclusions of law; and

9 (2) May be appealed by the applicant pursuant to section
10 91-14.

11 The record for purposes of an administrative appeal of an
12 agency decision subject to this subsection shall consist of the
13 agency's complete file on the application, including any
14 environmental assessment or environmental impact statement, and
15 any testimony received at any public meeting or public hearing
16 held on the application.

17 (d) Subsection (c) shall be the sole means of review
18 available for an agency decision on an application for a
19 renewable energy project unless another method of judicial
20 review is specifically provided by law. Any allowable process
21 for judicial review shall be commenced within the time required



1 by section 91-14(b) and shall be limited in scope to the
2 criteria specified in 91-14(g).

3 (e) In reviewing an application for an approval for a
4 renewable energy project, the reviewing agency shall weigh the
5 public benefits of the renewable energy to be produced by the
6 project in its consideration of any criteria otherwise required
7 by law in making its decision on the application. This
8 subsection shall not be construed to override or invalidate any
9 specific standards or requirements for an approval established
10 by law for the protection of public health, safety, or welfare
11 or to exempt any renewable energy project from obtaining any
12 approval otherwise required by law.

13 (f) This section shall not apply to petitions for land use
14 district boundary amendments under section 205-3.1."

15 SECTION 3. An applicant in any contested case hearing for
16 an approval for a renewable energy project in which a final
17 decision has not been issued as of the effective date of this
18 Act may, within sixty days of the effective date, request agency
19 reconsideration of whether the contested case hearing may be
20 held pursuant to the terms of this Act. Any agency that
21 receives a request for reconsideration shall terminate any



S.B. NO. 1233

1 subject contested case hearing unless the hearing would be
2 allowable pursuant to this Act.

3 SECTION 4. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 5. New statutory material is underscored.

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

11

INTRODUCED BY: *M.D.M.*
By Request

S.B. NO. 1233

Report Title:

Renewable Energy; Administrative Approval; Contested Case Hearing

Description:

Prohibits administrative contested case hearings on applications for approvals for renewable energy production projects unless specifically required by law and requested by the applicant or another party with a constitutional right to do so for the matter. Provides for judicial review and specifies exceptions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

