

## ACT 207

H.B. NO. 2863

A Bill for an Act Relating to Renewable Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to establish a renewable energy facility siting process for state and county permits required for the siting, development, construction, and operation of a new renewable energy facility of at least two hundred megawatts of electricity. The legislature finds that coordinating the process for required permits is in the State's interests to reduce Hawaii's over-dependence on fossil fuels and meet Hawaii's energy self-sufficiency goals and mandates and will encourage the timely development of renewable energy projects that utilize Hawaii's indigenous renewable energy resources for the health, safety, and welfare of the residents of Hawaii.

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

**“CHAPTER  
RENEWABLE ENERGY FACILITY SITING PROCESS**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires: “County agency” means a department, division, office, officer, agency, or other organization of a county government, including a county council.

“County law” means a county charter provision, ordinance, or administrative rule.

“County permit” means a permit that is subject to approval by a county agency pursuant to federal, state, or county law.

“Delegated environmental permit” means an air or water quality permit subject to issuance by the department of health under authority delegated by the United States Environmental Protection Agency.

“Energy resources coordinator” or “coordinator” means the energy resources coordinator as designated in section 196-3.

“Permit”:

- (1) Means any approval, no matter the nomenclature, necessary for the siting, development, construction, or operation of a renewable energy facility; except that the term shall not include:
  - (A) Acceptance by an accepting authority of an environmental impact statement on a facility;
  - (B) Issuance by a county agency of a building or grading permit; or
  - (C) Approval by the public utilities commission of a power purchase agreement between a renewable energy facility and a public utility; and
- (2) Includes:
  - (A) A state land use reclassification;
  - (B) A county development, community, or community development plan amendment;
  - (C) A county zoning map amendment;
  - (D) A state conservation district use permit;
  - (E) A state special use permit for an agricultural or rural district;
  - (F) A special management area permit;
  - (G) A shoreline setback variance; and
  - (H) A grant of an easement on state or county real property.

“Permit plan” means the aggregated set of required permits for a renewable energy facility, coordinated by the department of business, economic development, and tourism.

“Power purchase agreement” means an agreement between a renewable energy facility owner and a public utility on the sale of electricity produced by the facility to the public utility.

“Renewable energy” has the same meaning as defined under section 269-91.

“Renewable energy facility” or “facility” means a new facility located in the State with the capacity to produce from renewable energy at least two hundred megawatts of electricity. The term includes any of the following associated with the initial permitting and construction of the facility:

- (1) The land parcel on which the facility is situated;
- (2) Any renewable energy production structure or equipment;
- (3) Any energy transmission line from the facility to a public utility’s electricity transmission or distribution system;
- (4) Any on-site infrastructure; and
- (5) Any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site, transmission of the electricity or biofuel, or any accommodation for employees of the facility.

“State agency” means a department, division, office, agency, or other organization of the state government, but not the legislature.

“State law” means a state constitutional provision, statute, or administrative rule.

“State permit” means a permit that is subject to the approval of a state agency pursuant to federal or state law; except that the term does not include a delegated environmental permit.

**§ -2 Renewable energy facility siting process staff.** The energy resources coordinator may employ and dismiss staff without regard to chapters 76 and 89 to assist the coordinator in the implementation of this chapter. The salary of each staff member shall be set by the coordinator. Each staff member shall be entitled to participate in any public employee benefit program plan or privilege.

The coordinator may also contract persons to assist the coordinator in the implementation of this chapter.

**§ -3 General duties of the coordinator.** The coordinator shall:

- (1) Consult with appropriate state and county agencies to develop and establish a permit plan application format and procedure designed to ensure a timely review to obtain required permits and approvals for renewable energy facilities;
- (2) Receive a permit plan application, in a form as the coordinator shall prescribe, from an applicant for the approval of the siting, development, construction, and operation of a renewable energy facility, with an appropriate initial application fee as determined by the coordinator;
- (3) Identify all state and county permits necessary for approval of the renewable energy facility;
- (4) Assist in the permit plan application process by coordinating permitting processes, giving technical assistance, overseeing the creation of the permit plan, and providing general oversight to facilitate the timely review and permitting of the siting of a renewable energy facility;
- (5) Gather from the applicant any information the coordinator finds relevant and necessary for the reviewing and processing of a permit application by the federal, state, and county agencies;
- (6) Coordinate public meetings on the island where a renewable energy facility is proposed to be developed to:
  - (A) Allow members of the affected communities to provide input regarding the development of the renewable energy facility;
  - (B) Promote public awareness of the plan for the renewable energy facility in the proposed area; and
  - (C) Allow the coordinator, the applicant, and any applicable agency to gain public sentiment and input regarding the proposed development of the renewable energy facility, and incorporate the public sentiment and input into the planning of the proposed renewable energy facility; and
- (7) Work with the federal, state, and county agencies and the applicant to determine the terms and conditions of the permit plan and permits that are necessary to effectuate this chapter and to protect the public health and safety and promote the general welfare.

**§ -4 Permit plan application; coordinator; fee; pre-application conference.** (a) The coordinator shall establish and require the applicant to pay a fee for the coordinator's services in overseeing the permit plan process. The coordinator shall set the fee at an amount sufficient to cover the costs and expenses of the coordinator, coordinator's staff and any contractor contracted by the coordinator to assist the applicant, and relevant state and county agencies, if necessary, to provide input and advice on the state and county permits necessary for the facility and in obtaining the permits. Upon collection of the fee or periodically thereafter, the coordinator, if necessary, shall transmit to each relevant state or county agency the portion of the fee that reflects the cost to that state or county agency for providing its input or advice or issuing the required permits.

(b) Before accepting a permit plan application, the coordinator may hold a pre-application conference, without regard to acceptance of the final environmental impact statement, with the prospective applicant to discuss all the state and county permits necessary for the facility and notify the prospective applicant of the information that must be submitted for the necessary permits under the permit plan. After receiving a permit plan application, the coordinator shall accept the application after determining that the application is complete and complies with the permit plan format and procedure.

(c) Within ten days of acceptance of a permit plan application, the coordinator shall publish public notice of the acceptance of the application in two consecutive publications of the office of environmental quality control's environmental notice, published pursuant to section 343-3. The public notice shall include:

- (1) The name of the applicant;
- (2) The location of the proposed renewable energy facility;
- (3) A summarized description of the facility;
- (4) The state and county permits required for the facility; and
- (5) Any other information deemed necessary or desirable by the coordinator.

(d) In conjunction with the pre-application conference, the initial public meeting, and any subsequent coordinating meetings with permitting agencies, the coordinator shall compile a permit plan, which shall include:

- (1) All state and county permits needed;
- (2) All applicant information required;
- (3) A plan for permits to be processed concurrently;
- (4) A list of required state and county technical support and data required;
- (5) Agreement on timeline and coordination for potential environmental impact statements and permit concurrence, review, and issuance;
- (6) Agreement on conditions by which any timelines may be extended; and
- (7) Agreement on cost reimbursement agreement.

(e) The permit plan shall be a working document, available to the public and posted on the department of business<sup>1</sup> economic development and tourism's website, and shall be regularly updated with current information. The permit plan shall be used to promote efficiency and transparency in the permitting process and to achieve the purposes of this chapter through efficiencies in processes and procedures, including the coordinated and concurrent processing of permits where possible, while ensuring opportunities for appropriate public comment and participation, including hearings normally required for permits and mitigation of potential environmental impacts.

(f) The permit plan shall be designed to ensure that all permits identified in the permit plan shall be processed and either denied or approved no later than twelve months after the date that the project permit plan application is accepted by the coordinator, subject to any extensions that may be requested by the applicant.

(g) Each appropriate state and county agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and action as soon as practicable. If a permitting agency fails to provide this report and if the permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by the coordinator, the permit shall be deemed approved.

**§ -5 Approval of state permits.** When the coordinator accepts a permit plan application for a renewable energy facility that requires state permits, the coordinator shall facilitate the timely processing of the permit plan with the state agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

**§ -6 Approval of county permits.** When the coordinator accepts a permit plan application for a renewable energy facility that requires county permits, the coordinator shall facilitate the timely processing of the permit plan with the relevant county agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

**§ -7 Coordination with federal permits and delegated environmental permits.** (a) The coordinator shall establish and implement a system to coordinate the approval of required federal permits with state and county permits for a renewable energy facility. The system shall include a process for coordinating the federal environmental impact statement process with the state environmental impact statement process.

(b) The coordinator also shall establish and implement a system to coordinate the issuance of delegated environmental permits by the department of health with approval of state and county permits for a renewable energy facility.

(c) The coordinator may convene interagency working groups for the purpose of this section.

**§ -8 Environmental impact review process; applicability.** (a) Chapter 343 shall apply to any permit plan application for a renewable energy facility.

(b) Notwithstanding any provision in this chapter or in chapter 343 to the contrary, the coordinator shall not accept a permit plan application for a renewable energy facility prior to the acceptance of an environmental impact statement for the renewable energy facility. An agency may review and commence processing applications for permits for a renewable energy facility prior to the acceptance of a permit plan by the coordinator, provided that action to grant or deny a permit shall not be taken until after final acceptance of an environmental impact statement.

(c) Notwithstanding any provision of chapter 343 to the contrary, the department of business, economic development, and tourism shall be the accepting authority for any final environmental impact statement that is prepared by an applicant for any renewable energy facility under this chapter.

**§ -9 Building or grading permit required from county.** All applicable county-issued permits shall be required to grade a site or construct a structure for a renewable energy facility. The applicable county shall establish an expedited process for review and issuance of all required building or grading permits. Under the process, the county may contract with a third party to conduct the review of the permit application and require the applicant for the permit to pay the cost incurred for the third party review.

**§ -10 Public participation; public meetings.** Upon acceptance of the permit plan application for a renewable energy facility, the coordinator shall hold a public meeting on the island on which the renewable energy facility will be built. The purpose of the public meetings shall be to promote public awareness of the proposed renewable energy facility in the affected areas. The public meeting shall be an opportunity for any members of the affected community to provide input regarding the development and construction of the renewable energy facility and regarding the permit plan developed pursuant to section -4. The public meeting shall also be

an opportunity for the coordinator, the applicant, and any applicable state or county agencies to gain public and community sentiment regarding the proposed development of the renewable energy facility and incorporate the public sentiment and input into the planning of the proposed renewable energy facility.

**§ -11 Renewable energy facility siting special fund; uses.** (a) There is created within the state treasury a renewable energy facility siting special fund, which shall consist of:

- (1) Moneys appropriated to the fund by the legislature;
- (2) Permit plan application fees collected by the coordinator under this chapter; and
- (3) Moneys allotted to the fund from other sources.

(b) Moneys from the fund shall be expended by the energy resources coordinator for the purposes of section -4(a) and for the operation and administration of the renewable energy facility siting process pursuant to this chapter.

**§ -12 Rules.** The coordinator may adopt interim rules to implement this chapter without regard to the notice and public hearing requirements of section 91-3 or the small business impact review requirements of chapter 201M; provided that any amendment of the interim rules shall be subject to chapters 91 and 201M.”

SECTION 3. Section 343-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Renewable energy facility” has the same meaning as defined in section -1.”

SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and [~~which~~] the producers [~~of same~~] are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public. To assist the energy resources coordinator in effectuating the purposes of chapter , the public utilities commission may develop reasonable guidelines and timetables for the creation and implementation of power purchase agreements.”

SECTION 5. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required[-]; provided that, for an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and

- (3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

SECTION 6. There is appropriated out of the renewable energy facility siting special fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2008.

(Approved July 1, 2008.)

#### Note

1. So in original.