

**ACT 151**

H.B. NO. 2450

A Bill for an Act Relating to Renewable Energy Facilities.

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

SECTION 1. Act 173, Session Laws of Hawaii 2009 (Act 173), recognized that to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. However, renewable energy projects may

require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may constitute only a portion of a large legal lot, and it may be impractical or undesirable to lease or convey the entire legal lot for a renewable energy project, or to encumber the entire legal lot with a mortgage that provides financing for the project.

Therefore, the purpose of Act 173 was to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision approval, and instead requiring approval for exemption from subdivision requirements, from the applicable county or other approving agency.

However, the application of Act 173 was limited to solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E or wind energy facilities and related appurtenances located within a conservation state land use district. The legislature now finds that there may be other renewable energy projects that have been approved or permitted by the appropriate agencies that are required to go through the subdivision process threatening the financial viability of these projects.

Therefore, the purpose of this Act is to extend the applicability of Act 173 to include any renewable energy facilities approved by the land use commission or county planning commission under chapter 205, or any renewable energy facilities permitted or approved by the board of land and natural resources under chapter 183C. Further, it is the intent of the legislature that the remaining land (i.e. the portion of the original legal lot of record less the area used for the renewable energy facility) receive the same legal lot status as the renewable energy parcel and be recognized as a legal lot of record by the counties, thus allowing for those remaining lands to be put to other use and receive its own mortgage financing and title insurance.

SECTION 2. Section 201N-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements and shall be subject to the following limitations:

- (1) The lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land;
- (2) The lease shall have an initial term of at least twenty years;
- (3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for ~~[solar]~~:
  - (A) Solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E; and
  - (B) Any renewable energy facilities approved by the land use commission or county planning commission under chapter 205;
- (4) With respect to leases and easements on lands within a conservation state land use district, the exemption from subdivision requirements provided by this section shall be for ~~[wind]~~:

- (A) Wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; and
  - (B) Any renewable energy facilities permitted or approved by the board of land and natural resources under chapter 183C; and
- (5) The county agency charged with administering subdivisions in the county in which the renewable energy project is to be situated or, if the land is in a conservation state land use district, the department of land and natural resources, shall approve the exemption from subdivision requirements within ninety days after the project's developer and the owner of the land on which the renewable energy project is to be situated have submitted the conceptual schematics or preliminary plans and specifications for the renewable energy project to the county agency or the department of land and natural resources, and have provided to such county agency or the department of land and natural resources, as applicable, a certification and agreement that all applicable and appropriate environmental reviews and permitting shall be completed prior to commencement of development of the renewable energy project. If, on the ninety-first day, an exemption has not been approved, it shall be deemed disapproved by the county agency or the department of land and natural resources, whichever is applicable."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall be repealed on the same date as section 2 of Act 173, Session Laws of Hawaii 2009.

(Approved May 28, 2010.)