

ACT 201

H.B. NO. 122

A Bill for an Act Relating to Renewable Energy.

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. 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.

The need to encourage and facilitate renewable energy facilities in the State persists, but critical sections of Act 173 will be repealed on July 1, 2013, unless the legislature acts.

The purpose of this Act is to extend the repeal date of Act 173 to highlight the State's commitment to encouraging and facilitating renewable energy projects throughout the State and to clarify that wind energy projects qualify for the exemptions.

SECTION 2. Section 201N-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“[§201N-13] Subdivision exemptions in existence on June 30, [2013-] 2020.

(a) Any lease or easement (together with any mortgages or other documents encumbering either) that received a subdivision exemption that is in existence on June 30, [2013-] 2020, may continue to be effective and shall continue to enjoy the exemption from subdivision requirements granted under section 201N-14 after that section is repealed on July 1, [2013-] 2020; provided that the following restrictions are complied with:

- (1) The terms of 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; and
- (2) The lease shall have an initial term of at least twenty years.”

2. By amending subsection (e) to read:

“(e) Any material change after June 30, [2013-] 2020, regarding the leased land or easement area shall be subject to subdivision requirements; provided that the county agency charged with administering subdivisions (for land within the agricultural state land use district) or the department of land and natural resources (for land within the conservation state land use district) shall deem all subdivision requirements from which the lease or easement was exempt pursuant to the original subdivision exemption to be met and the lease or easement shall continue to be exempt from the requirements. The lease or easement shall only be subject to the additional subdivision requirements, if any, necessitated by the material change.”

SECTION 3. 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:
 - (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) Wind energy facilities permitted under section 205-2(d)(4) and (8), including the appurtenances associated with the production and transmission of wind-generated energy; and

- [(B)] (C) 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:
- (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 4. Act 173, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval; provided that sections 2 and 4 of this Act shall be repealed on July 1, ~~2013.~~ 2020."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

(Approved July 8, 2011.)