

NELHA Enabling Legislation  
Chapter 227D Hawaii Revised Statutes

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**§227D-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Authority" means the natural energy laboratory of Hawaii authority established by section 227D-2.

"Board" means the board of directors of the authority established by section 227D-2 and any successor thereto.

"Bonds" means special purpose bonds issued under this chapter and shall include notes, other instruments of indebtedness, and refunding bonds.

"Cost" means the total cost in carrying out all undertakings that the authority deems reasonable and necessary for the development of a project or research and technology park, including but not limited to the cost of studies, surveys, plans, and specifications, architectural, design, engineering, or any other special related services; the cost of site preparation and development, demolition, construction, reconstruction, rehabilitation, and improvement; the cost of financing the project or research and technology park from the date thereof to the estimated date of completion of the project or research and technology park as determined by the board; the cost of an allocable portion of the administrative and operating expenses of the authority related to the development of the project or research and technology park; and the cost of indemnity and surety bonds, premiums on policies of insurance, legal fees, and fees and expenses of trustees, depositories, and paying agents for the bonds, and for the issuance of letters of credit or other banking arrangements whether for the authority credit or a qualified person; all as the authority shall deem necessary.

"Project" means any combination of land and buildings and other improvements thereon for use in, but not limited to research, development, demonstration, processing, or manufacturing activities or enterprises utilizing or in support of the utilization of natural resources and geothermal energy which are located in a research and technology park and acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by or on behalf of the authority.

"Project agreement" means any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof entered into under this chapter by the authority, including the financing from the proceeds of bonds of a project or a research and technology park.

"Public agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the federal, state, or county government.

"Qualified person" means any individual, partnership, corporation, public agency, or any combination or association of the foregoing, possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of a project and other qualifications as may be deemed desirable by the authority in administering this chapter and that enters into a project agreement with the authority.

"Qualified security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

"Real property" means lands, structures, and interests therein, and natural resources including water, minerals, and all things connected with land, including lands under water and riparian rights, space rights, air rights, and any and all other things and rights usually included within the term. Real property also means any and all interests in property less than fee title, such as leasehold interests, easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

"Research advisory committee" means the research committee that is advisory to the board and is established by section 227D-4 and any successor thereto.

"Research and technology park" means a tract of real property determined by the board as being suitable for use as building sites for projects engaged in research, development, demonstration, processing, or manufacturing activities or retail or commercial enterprises utilizing or in support of the utilization of natural resources or geothermal energy. This includes, but is not limited to, research, commercialization, training, education, technical analyses, pilot plant, or prototype product development, and may include the installation of improvements to tracts incidental to the use of real property as a research and technology park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the research and technology park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. [L 1990, c 224, pt of §3; am L 1993, c 252, §1; am L 1999, c 38, §1; am L 2010, c 142, §1]

**[§227D-1.5 Authority as public utility.]**

(a) The authority shall be exempt from the definition of "public utility" under section 269-1 and shall be exempt from regulation by the public utilities commission for the

sale or provision of electricity generated by the authority using renewable energy as its source in facilities located at the authority's research and technology park; provided that all sales or provisions of electricity are made directly to a user located adjacent to the authority's research and technology park on lands leased by the user from the State; and provided further that connection to the electrical grid shall not be required to provide any electricity to any user.

(b) If the sale or provision of any electricity generated by the authority requires connection to the electrical grid to transmit electricity to any user, then the authority shall be deemed to be a public utility as defined in section 269-1 and shall be subject to regulation by the public utilities commission. If the sale or provision of any electricity generated by the authority requires connection to the electrical grid, the authority shall be subject to any interconnection agreement or other agreement required by an electric utility or by the public utilities commission.

As used in this section, "renewable energy" shall have the same meaning as in section 269-91. [L 2009, c 157, §1]

**§227D-2 Establishment of the natural energy laboratory of Hawaii authority; purpose.**

(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawaii and to engage in retail, commercial, or tourism activities that will financially support that research, development, and commercialization at a research and technology park in Hawaii. Its duties shall include:

- (1) Establishing, managing, and operating facilities that provide sites for:
  - (A) Research and development;
  - (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
  - (C) Compatible businesses engaged in scientific and technological investigations, or retail, commercial, and tourism activities; and
  - (D) Businesses or educational facilities that support the primary projects and activities;
- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities;

- (5) Promoting and marketing the reasonable utilization of available natural resources;
- (6) Supporting ocean research and technology development projects that support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development; and
- (7) Engaging in retail, commercial, and tourism activities that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii; provided that all income derived from these activities shall be deposited in the natural energy laboratory of Hawaii authority special fund.

(b) The governing body of the authority shall consist of a board of directors having thirteen voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The director of business, economic development, and tourism, the chairperson of the board of land and natural resources, the president of the University of Hawaii, the mayor of the county of Hawaii, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the Hawaii strategic development corporation, or their designated representatives, shall serve as ex officio, voting members of the board. The tenants of the authority shall elect two members to the board from among the tenants of the authority, of which one member shall serve a two-year term, and one member shall serve a four-year term. In electing the tenant members, each tenant shall be entitled to cast one vote for each member position. The tenant members shall be recused from voting on setting lease rents, water rates, or utility rates, but may participate in discussions. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint an executive director, who shall serve at the pleasure of the board and shall be exempt from chapter 76. The board shall set the salary and duties of the executive director. [L 1990, c 224, pt of §3; am L 1993, c 252, §2; am L 1997, c 151, §2 and c 193, §2; am L 1999, c 38, §2; am L 2000, c 253, §150 and c 297, §31; am L 2009, c 104, §1]

**§227D-3 Powers of the authority.** The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
- (4) Through its executive director appoint officers, agents and employees without regard to chapter 76 and to establish the salaries therefor;
- (5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
- (6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments, including concessions for cell towers, necessary or convenient for the exercise of its powers and functions under this chapter with any private person, firm, partnership, association, company, or corporation only as it may be necessary in the conduct of its business and on such terms as it may deem appropriate; provided that the authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority may enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or with any political subdivision thereof;
- (7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;
- (8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
- (9) Formulate budgets to provide for the operation of the facilities of the authority;
- (10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
- (11) Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as its agent for this purpose, and own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (13) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishings or improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with a research and technology park;
- (14) Prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement,

- alteration, or repair of any project or research and technology park, and from time to time, modify these plans, specifications, designs, or estimates;
- (15) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
  - (16) Procure insurance against any loss in connection with its properties and other assets and operations in amounts and from insurers as it deems desirable;
  - (17) Issue bonds pursuant to this chapter in principal amounts as may be authorized from time to time by law to finance the cost of a project, including the repair or addition to its parks and facilities as authorized by law and to provide for the security thereof as permitted by this chapter;
  - (18) Lend or otherwise apply the proceeds of the bonds issued for a project or a research and technology park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or research and technology park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
  - (19) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement;
  - (20) Create an environment that supports appropriate natural resource utilization and results in economic development, including:
    - (A) Supporting research projects and facilitating the transition from research and development to pilot scale and then to full commercial operation of companies using the natural resources available at the research and technology parks;
    - (B) Developing educational and conservation programs;
    - (C) Supporting commercialization of the natural resources available at the research and technology parks, if the commercialization is compatible with the research, development, and other retail, commercial, and tourism activities of the research and technology parks;
    - (D) Identifying issues and impediments to the development of natural resource utilization; and
    - (E) Providing policy analysis and information important to the development of natural resource utilization in Hawaii;
  - (21) Develop programs that support projects and companies which locate at the research and technology parks;
  - (22) Attract appropriate new uses of the natural resources in Hawaii, including retail, commercial, and tourism activities;
  - (23) Acquire, hold, and sell qualified securities; provided that the authority shall not acquire qualified securities using authority funds or capital or moneys of the natural energy laboratory of Hawaii authority special fund; provided further that the authority shall not acquire, hold, or sell qualified securities of its

tenants without first obtaining the approval of the board by a simple majority vote in each case considered. The acquisition and sale of qualified securities shall be detailed in the annual report of the natural energy laboratory of Hawaii authority;

- (24) Accept donations, grants, bequests, and devises of money, property, services, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this chapter. Receipt of each donation, grant, bequest, or devise shall be detailed in the annual report of the natural energy laboratory of Hawaii authority. The report shall include the identity of the donor or grantor, the nature of the transaction, and any conditions attaching thereto; and
- (25) Do any or all other acts reasonably necessary to carry out the purposes of the authority. [L 1990, c 224, pt of §3; am L 1993, c 252, §3; am L 1999, c 38, §3; am L 2000, c 253, §150; am L 2010, c 61, §1 and c 142, §2]

**[§227D-3.5 Confidentiality of information.]**

- (a) Notwithstanding chapter 92F or any other law to the contrary, any government record made or received by any member or employee of the authority shall be subject to segregation, and information contained therein shall not be subject to public disclosure, inspection, or duplication to the extent that the information:
  - (1) Consists of business trade secrets of a tenant or prospective tenant of the authority;
  - (2) Consists of confidential or proprietary commercial or financial information regarding the operation of any business of a tenant or prospective tenant of the authority; or
  - (3) Relates to the competitive position in a particular business or field of endeavor of a tenant or prospective tenant of the authority.

Information described in paragraphs (1), (2), and (3) that is contained in a business plan attached to a lease of state land shall be subject to segregation as required by this section. This section, however, shall not apply to leases of state land themselves and other information required to be public by section 92F-12(a)(5).

- (b) Notwithstanding chapter 92 or any other law to the contrary, any discussion or consideration by the board or any committee of the board of the type of non-disclosable information described in subsection (a) may be held in an executive meeting closed to the public. [L 2004, c 23, §1]

**[§227D-4] Research advisory committee.**

The authority shall appoint a research advisory committee for the purpose of obtaining expert and specialized counsel and advice on matters relating to scientific research and may include as members of the committee officers and employees of any government department or agency or members of the scientific community; provided that at least two members of the board shall be appointed to the committee. Members of the advisory committee shall elect the chairperson and secretary of the committee, who shall serve as members of the board. The authority may assign its own staff to aid and assist the committee and may reimburse any member of the committee for necessary expenses incurred in the performance of the member's work for the authority. [L 1990, c 224, pt of §3]

**§227D-5 Special fund.**

There is established in the state treasury a fund to be known as the natural energy laboratory of Hawaii authority special fund, into which shall be deposited all moneys and fees from tenants or other users of the authority's parks, projects, other leased facilities, and other services and publications as well as any grants or gifts received by the authority. All moneys in the fund are appropriated for the purposes of and shall be expended by the authority for the operation, maintenance, and management of its parks, projects, facilities, services, and publications, and for the design and construction of new facilities and the renovation of or addition to existing facilities. [L 1990, c 224, pt of §3; am L 1993, c 252, §4 and c 280, §19; am L 1994, c 179, §§2 to 4]

**[§227D-6] Meetings of the board.**

- (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interest of the enterprise, the board may enter into an executive meeting that is closed to the public.
- (b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be in addition to the exceptions listed in section 92-5, to enable the authority to respect the proprietary requirements of enterprises with which it has business dealings. [L 1990, c 224, pt of §3]

**§227D-7 Exemption of authority from taxation and competitive bidding.**

- (a) All revenues and receipts derived by the authority from any project or research and technology park or under a project agreement or other agreement pertaining thereto shall be exempt from all state taxation. Any right, title, and interest of the authority in any project or research and technology park shall also be exempt from all state taxation. Except as otherwise provided by law,

the interest of a qualified person or other user of a project or research and technology park under a project agreement or other agreements related to a project or research and technology park shall not be exempt from taxation to a greater extent than it would be if the costs of the project or research and technology park were directly financed by the qualified person or user.

- (b) The authority shall not be subject to the requirements of chapter 103 for project agreements, construction contracts, retail concession or tour-related contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise. [L 1990, c 224, pt of §3; am L Sp 1993, c 8, §19; am L 1997, c 151, §3; am L 2004, c 216, §9]

[§227D-8] Assistance by state and county agencies. Every state or county agency may render services to the authority upon request of the authority. [L 1990, c 224, pt of §3]

**[§227D-9] Court proceedings; preferences.** Any action or proceeding to which the authority, the State, or a county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil causes, except election cases, without respect to position on the calendar. The same preference shall be given upon application of counsel for the authority in any action or proceeding questioning the validity of this chapter in which the authority has duly intervened. [L 1990, c 224, pt of §3]

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