

JAN 22 2008

S.B. NO. 2945

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1           SECTION 1. The legislature finds that Hawaii currently  
2 allows three types of cooperatives: agricultural, consumer, and  
3 housing. A cooperative is a group of people working together in  
4 a joint economic activity that is owned and operated by its  
5 members for their mutual benefit.

6           This Act authorizes the formation of cooperatives for the  
7 purpose of generating electricity from renewable energy  
8 resources to be sold to its membership. Further, this Act  
9 authorizes the issuance of revenue bonds to finance costs  
10 related to constructing, upgrading, and acquiring transmission  
11 facilities.

12           SECTION 2. Chapter 421C, Hawaii Revised Statutes, is  
13 amended by adding a new part to be appropriately designated and  
14 to read as follows:

15                       "PART     .   RENEWABLE ENERGY COOPERATIVES

16           §421C-A Definitions. As used in this part, unless the  
17 context requires otherwise:



1 "Board" means the board of directors of the cooperative.

2 "Cooperative" means any corporation organized under this  
3 part for the mutual benefit of its members as a producer or  
4 buyer of electricity from renewable resources or technologies  
5 that confines its operations to purposes authorized by this part  
6 and restricts the return on the stock or membership capital to  
7 the limits placed thereon by this part.

8 "Member" includes the holder of a membership in a  
9 cooperative without capital stock or the holder of common stock  
10 in a cooperative organized with capital stock.

11 "Person" means any natural person, firm, association,  
12 corporation, limited liability company, business trust,  
13 partnership, or other entity.

14 "Renewable resources or technologies" means electrical  
15 energy produced by wind, solar energy, hydropower, landfill gas,  
16 waste-to-energy, ocean thermal energy conversion, wave energy,  
17 biomass including municipal solid waste, biofuels or fuels  
18 derived from organic sources, hydrogen fuels derived primarily  
19 from renewable energy, or fuel cells where the fuel is derived  
20 primarily from renewable resources.

21 **§421C-B Purposes.** Pursuant to this part, five or more  
22 persons may organize a cooperative, nonprofit, membership



1 corporation for the purposes of generating electricity from  
2 renewable resources or technologies, and transmitting and  
3 selling the electricity to its membership; provided that a  
4 cooperative organized under this part shall derive no more than  
5 twenty-five per cent of the electricity produced by the  
6 cooperative from fossil fuels.

7       **§421C-C Powers of the cooperative.** (a) A cooperative  
8 formed under this part or made applicable to its provisions  
9 pursuant to section 421C-T, may act in the manner as natural  
10 persons; provided that the cooperative may perform only those  
11 acts as are necessary or proper to accomplish the purposes as  
12 set forth in its articles of incorporation and that are not  
13 unlawful.

14       A cooperative shall be a not-for-profit corporation,  
15 inasmuch as the cooperative's primary object is not to pay  
16 dividends on invested capital but to render services and provide  
17 means and facilities by or through which the producers of  
18 electricity may receive a reasonable and fair return for their  
19 services.

20       (b) Without limiting or enlarging the authority granted  
21 under subsection (a), every cooperative may:

22       (1) Sue and be sued in its corporate name;



- 1           (2)    Have perpetual existence;
- 2           (3)    Adopt and alter a corporate seal;
- 3           (4)    Generate electricity from renewable resources or
- 4                    technologies, and transmit and sell the electricity to
- 5                    its membership;
- 6           (5)    Purchase electricity from a renewable energy
- 7                    cooperative and transmit and sell the electricity to
- 8                    its membership;
- 9           (6)    Purchase electricity from a renewable energy company
- 10                   and transmit and sell the electricity to its
- 11                   membership;
- 12           (7)    Construct, purchase, lease, equip, maintain, operate,
- 13                   sell, assign, convey, mortgage, pledge, and encumber
- 14                   electric transmission lines or systems, electric
- 15                   generating plants, equipment, lands, buildings,
- 16                   structures, easements, rights-of-way, and any other
- 17                   real or personal property, tangible or intangible,
- 18                   necessary to accomplish the purposes of this part;
- 19                   provided that:
- 20                   (A)   Overhead electric transmission lines or systems
- 21                            may be constructed or purchased only if an
- 22                            environmental assessment is filed and approved by



1                   the appropriate agency; and an underground line  
2                   is not practical; and

3                   (B) Construction, maintenance, and operation of  
4                   electric transmission lines along, upon, under,  
5                   and across publicly owned lands and public  
6                   thoroughfares, roads, highways, streets, alleys,  
7                   bridges, and causeways shall be in conformity  
8                   with the laws of the State;

9                   (8) Purchase, lease as lessee, or otherwise acquire, use,  
10                  exercise, sell, assign, convey, mortgage, pledge, or  
11                  otherwise dispose of or encumber franchises, rights,  
12                  privileges, licenses, and easements;

13                  (9) Borrow money and otherwise contract indebtedness, and  
14                  issue notes and other evidences of indebtedness, and  
15                  secure the payment thereof by mortgage, pledge, or  
16                  deed of trust of, or any other encumbrance upon, any  
17                  or all of its then-owned or after-acquired real or  
18                  personal property, assets, franchises, revenues, or  
19                  income;

20                  (10) Become an incorporator, promoter, manager, member,  
21                  stockholder, or owner of other corporations or  
22                  cooperatives, and conduct its business and exercise



1           its powers within this State and participate with  
2           other persons in any corporation, limited liability  
3           company, cooperative, partnership, limited  
4           partnership, joint venture, or other association of  
5           any kind or in any transaction, undertaking, or  
6           arrangement that a participating person would have  
7           power to conduct by itself, regardless of whether the  
8           participation involves sharing or delegation of  
9           control with or to others;

10          (11) Adopt, amend, and repeal bylaws; and

11          (12) Perform any other acts and exercise any other powers  
12               that may be necessary to accomplish the purpose for  
13               which the cooperative is organized.

14          **§421C-D Name.** Notwithstanding the provisions of sections  
15          421-5 and 421C-34, the name of every cooperative organized under  
16          this part shall include the words "renewable", "generation",  
17          "cooperative", and "incorporated" (or the abbreviation "Inc.").  
18          The name shall be distinct from the name of any other  
19          cooperative or corporation organized under the laws of, or  
20          authorized to do business in, the State. Only a cooperative  
21          doing business in this State pursuant to this part shall use all



1 of the following words in its name: "renewable", "generation",  
2 and "cooperative".

3       **§421C-E Articles of incorporation.** (a) The cooperative's  
4 articles of incorporation shall recite that they are executed  
5 pursuant to this part and shall state:

- 6       (1) The name of the cooperative;
- 7       (2) The address of its principal office;
- 8       (3) The names and addresses of its incorporators;
- 9       (4) The names and addresses of its directors; and
- 10      (5) The purposes for which it is organized.

11       (b) The articles of incorporation may contain any  
12 provisions not inconsistent with this part that are deemed  
13 necessary or advisable for the conduct of the cooperative's  
14 business.

15       (c) The articles of incorporation shall be signed by each  
16 incorporator and shall be filed in the office of the director of  
17 commerce and consumer affairs.

18       **§421C-F Bylaws.** The board of directors shall adopt the  
19 first bylaws of the cooperative following incorporation, merger,  
20 or consolidation. Thereafter, the members shall adopt, amend,  
21 or repeal bylaws by an affirmative vote of a majority of those  
22 members voting thereon at a meeting of the members. The bylaws



1 shall set forth the rights and duties of members and directors  
2 and may contain other provisions for the regulation and  
3 management of the affairs of the cooperative not inconsistent  
4 with this part or with the cooperative's articles of  
5 incorporation.

6       **§421C-G Members.** Each incorporator of a cooperative shall  
7 be a member of the cooperative. Membership in a cooperative  
8 shall not be transferable, except as provided in the bylaws.  
9 The bylaws shall prescribe additional qualifications and  
10 limitations with respect to membership.

11       **§421C-H Meetings.** (a) An annual meeting of the members  
12 of a cooperative shall be held at a time and place as shall be  
13 provided in the bylaws of the cooperative.

14       (b) Special meetings of the members may be called by the  
15 president, the board, any three directors, or not less than ten  
16 per cent of the members.

17       (c) Except as otherwise provided in this part, written or  
18 printed notice stating the time and place of each meeting of the  
19 members and, in the case of a special meeting, the purpose or  
20 purposes for which the meeting is called, shall be given to each  
21 member, either personally or by mail, not less than ten days nor  
22 more than thirty-five days before the date of the meeting. If





1 mailed, the notice shall be deemed to be given when deposited in  
2 the United States mail, with postage prepaid, addressed to the  
3 member at the member's address as it appears on the records of  
4 the cooperative.

5 (d) Unless the bylaws prescribe the presence of a greater  
6 percentage or number of the members for a quorum, a quorum for  
7 the transaction of business at meetings shall be five per cent  
8 of all members, who shall be present in person. If less than a  
9 quorum is present at any meeting, a majority of those present  
10 may adjourn the meeting without further notice.

11 (e) Each member shall be entitled to one vote on each  
12 matter submitted to a vote at a meeting of the members. Voting  
13 shall be in person; provided that, if the bylaws so provide,  
14 voting may also be by proxy, mail, or both. If the bylaws  
15 provide for voting by proxy or mail, the bylaws shall also  
16 prescribe the conditions under which voting shall be permitted.  
17 No person shall vote as proxy for more than three members at any  
18 meeting of the members.

19 (f) Any member entitled to notice of a meeting may waive  
20 the notice in writing either before or after the meeting. Any  
21 member's attendance at a meeting shall constitute a waiver of  
22 notice of the meeting, unless the member participates at the



1 meeting solely to object to the transaction of any business at  
2 the meeting.

3       **§421C-I Directors.** (a) The business of a cooperative  
4 shall be managed by a board of not less than five directors,  
5 each of whom shall be a member of the cooperative. The bylaws  
6 shall prescribe the number of directors, their qualifications,  
7 other than those prescribed in this part, the manner of holding  
8 meetings of the board, and of electing successors to directors  
9 who resign, die, or are otherwise incapacitated. The bylaws may  
10 also provide for the removal of directors from office and for  
11 the election of their successors.

12       Directors shall not receive any salary for their services  
13 as directors and, except in emergencies, shall not be employed  
14 by the cooperative in any capacity involving compensation  
15 without the approval of the members. The bylaws may provide  
16 that a fixed fee and expenses of attendance may be allowed to  
17 each director for attendance at each meeting of the board and  
18 for other functions duly authorized for and on behalf of the  
19 cooperative.

20       (b) The directors of a cooperative named in any articles  
21 of incorporation, consolidation, or merger shall hold office  
22 until the next annual meeting of the members and until their



1 successors are elected and qualify. At each annual meeting, or  
2 at a special meeting called for that purpose, the members shall  
3 elect directors to hold office until the next annual meeting of  
4 the members, except as otherwise provided in this part. Each  
5 director shall hold office for the term for which the director  
6 is elected and until a successor is elected and qualifies.

7 (c) The bylaws may provide for staggered terms of office  
8 for directors, with half of the directors, or a number as near  
9 thereto as possible, to be elected to serve until the next  
10 annual meeting of the members, and the remaining directors to be  
11 elected to serve until the second succeeding annual meeting.  
12 Thereafter, as directors' terms expire, the members shall elect  
13 successor directors to serve for two-year terms.

14 (d) The bylaws may also provide that the directors shall  
15 be elected at annual meetings to serve for terms of three years,  
16 except that the terms of the first directors elected pursuant to  
17 this subsection may be fixed in the bylaws for a number of years  
18 not exceeding three and, upon the expiration thereof, all  
19 members thereafter are to be elected for terms of three years.

20 (e) A majority of the board shall constitute a quorum.

21 **§421C-J Officers.** The officers of a cooperative shall  
22 consist of a president, vice-president, secretary, and



1 treasurer. The officers shall be elected annually by and from  
2 the board of directors. When a person holding any office ceases  
3 to be a director, the person shall cease to hold the office.  
4 The office of secretary and the office of treasurer may be held  
5 by the same person. The board may also elect or appoint other  
6 officers, agents, or employees as the board deems necessary or  
7 advisable and the board shall prescribe the powers and duties of  
8 those officers, agents, or employees. Any officer may be  
9 removed from office and a successor elected in the manner  
10 prescribed in the bylaws.

11 **§421C-K Amendments of articles of incorporation.** (a) A  
12 cooperative may amend its articles of incorporation in any  
13 manner not inconsistent with this part by complying with the  
14 following requirements:

15 (1) The proposed amendment shall be presented to a meeting  
16 of the members, the notice of which shall set forth or  
17 have attached the proposed amendment; and

18 (2) If the proposed amendment, with any changes, is  
19 approved by the affirmative vote of not less than two-  
20 thirds of those members voting at the meeting,  
21 articles of amendment shall be executed on behalf of  
22 the cooperative by its president or vice-president and



1           attested to by its secretary. The articles of  
2           amendment shall recite that they are executed pursuant  
3           to this part and shall state the name of the  
4           cooperative, the address of its principal office, and  
5           the amendment to its articles of incorporation.

6           (b) The president or vice-president executing the articles  
7           of amendment shall make and annex thereto an affidavit stating  
8           that the amendment was submitted and adopted in compliance with  
9           this section and shall file the articles with the director of  
10          commerce and consumer affairs.

11          **§421C-L Principal office.** A cooperative, upon  
12          authorization of its board or its members, may change the  
13          location of its principal office to any place within the State  
14          by filing with the director of commerce and consumer affairs a  
15          certificate that recites the change of principal office, that is  
16          executed on behalf of the cooperative by its president or vice-  
17          president and attested to by its secretary.

18          **§421C-M Merger and consolidation.** (a) Any two or more  
19          cooperatives organized under this part may merge into a single  
20          cooperative with any one of the constituent cooperatives as the  
21          surviving cooperative, or may consolidate into a new cooperative



1 formed by the consolidation, by complying with the following  
2 requirements:

3 (1) The proposal for the merger or consolidation of the  
4 cooperatives and the proposed articles of merger or  
5 consolidation shall be presented to a meeting of the  
6 members of each merging or consolidating cooperative,  
7 the notice of which shall have attached a copy of the  
8 proposed articles of merger or consolidation; and

9 (2) If the proposed merger or consolidation and the  
10 proposed articles of merger or consolidation, with any  
11 amendments, are approved by the affirmative vote of  
12 not less than two-thirds of the members of each  
13 merging or consolidating cooperative voting at each of  
14 those meetings, the articles of merger or  
15 consolidation in the form approved shall be executed  
16 on behalf of each merging or consolidating cooperative  
17 by its president or vice-president and attested to by  
18 its secretary.

19 (b) Voting on the proposed articles of merger or  
20 consolidation shall be in accordance with section 421C-H(e).



1           (c) The articles of merger or consolidation shall recite  
2 that the articles are executed pursuant to this part and shall  
3 state:

4           (1) The name of each merging or consolidating cooperative  
5               and the address of each principal office;

6           (2) The name of the surviving or new cooperative and the  
7               address of its principal office;

8           (3) A statement that each merging or consolidating  
9               cooperative agrees to the merger or consolidation;

10          (4) The names and addresses of the directors of the  
11               surviving or new cooperative; and

12          (5) The terms and conditions of and the mode of carrying  
13               into effect the merger or consolidation, including the  
14               manner in which the members of the merging or  
15               consolidating cooperative may or shall become members  
16               of the surviving or new cooperative.

17 The articles of merger or consolidation may contain any  
18 provisions not inconsistent with this part that are deemed  
19 necessary or advisable for the conduct of the business of the  
20 surviving or new cooperative.

21          (d) The president or vice-president of each merging or  
22 consolidating cooperative executing the articles of merger or



1 consolidation shall make and annex thereto an affidavit stating  
2 that the articles were submitted and approved in compliance with  
3 this section.

4 (e) In the case of a consolidation, the existence of the  
5 consolidating cooperatives shall cease and the articles of  
6 consolidation shall be the articles of incorporation of the new  
7 cooperative. In the case of a merger, the separate existence of  
8 the non-surviving merging cooperatives shall cease and the  
9 articles of incorporation of the surviving cooperative shall be  
10 amended to the extent, if any, that changes therein are  
11 necessary under the articles of merger.

12 (f) All rights, privileges, immunities, franchises, real  
13 and personal property, including applications for membership,  
14 and all debts of each consolidating or merging cooperative shall  
15 be transferred to and vested in the new or surviving cooperative  
16 without further act or deed.

17 (g) The new or surviving cooperative shall be responsible  
18 and liable for all liabilities and obligations of each  
19 consolidating or merging cooperative, and any claim existing or  
20 action or proceeding pending by or against any of the  
21 consolidating or merging cooperatives may be prosecuted as if





1 the consolidation or merger had not taken place, but the new or  
2 surviving cooperative may be substituted in its place.

3 (h) Neither the rights of creditors nor any liens upon the  
4 property of any consolidating or merging cooperative shall be  
5 impaired by the consolidation or merger.

6 **§421C-N Dissolution.** (a) A cooperative that has not  
7 commenced business may be dissolved by delivering to the  
8 director of commerce and consumer affairs articles of  
9 dissolution that shall be executed on behalf of the cooperative  
10 by a majority of the incorporators and state:

- 11 (1) The name of the cooperative;
- 12 (2) The address of its principal office;
- 13 (3) That the cooperative has not commenced business;
- 14 (4) That any sums received by the cooperative, less any  
15 amounts disbursed for expenses of the cooperative,  
16 have been returned or paid to those entitled to those  
17 sums;
- 18 (5) That no debt of the cooperative remains unpaid; and
- 19 (6) That a majority of the incorporators elect that the  
20 cooperative be dissolved.

21 (b) A cooperative that has commenced business may be  
22 dissolved pursuant to this subsection and subsections (c) and



1 (d). The members at any meeting shall approve, by the  
2 affirmative vote of not less than two-thirds of those members  
3 voting on the proposal at the meeting, a proposal that the  
4 cooperative be dissolved. Upon approval, a certificate of  
5 election to dissolve shall be executed on behalf of the  
6 cooperative by its president or vice-president and attested to  
7 by its secretary. The certificate shall state:

- 8 (1) The name of the cooperative;
- 9 (2) The address of its principal office; and
- 10 (3) That the members of the cooperative have duly voted  
11 that the cooperative be dissolved.

12 The certificate shall be submitted to the director of commerce  
13 and consumer affairs for filing, together with an affidavit made  
14 by the cooperative's president or vice-president executing the  
15 certificate and stating that the statements in the certificate  
16 are true.

17 (c) Upon the filing of the certificate and affidavit by  
18 the director of commerce and consumer affairs, the cooperative  
19 shall cease to carry on its business, except to the extent  
20 necessary for the winding up thereof, but its corporate  
21 existence shall continue until articles of dissolution have been  
22 filed by the director of commerce and consumer affairs.



1           The board shall immediately cause notice of the dissolution  
2 proceedings to be mailed to each known creditor of and claimant  
3 against the cooperative and to be published once a week for two  
4 successive weeks in a newspaper of general circulation in the  
5 county where the principal office of the cooperative is located.

6           The board shall wind up and settle the affairs of the  
7 cooperative, collect sums owing to it, liquidate its property  
8 and assets, pay and discharge its debts, obligations, and  
9 liabilities, and do all other things required to wind up its  
10 business. After paying or discharging or adequately providing  
11 for the payment or discharge of all its debts, obligations, and  
12 liabilities, the board shall distribute any remaining sums among  
13 its members and former members in proportion to the patronage of  
14 the respective members or former members during the seven years  
15 next preceding the date of the filing of the certificate by the  
16 director of commerce and consumer affairs or, if the cooperative  
17 has not been in existence for that period, then during the  
18 period of its existence prior to the filing. The board shall  
19 thereupon authorize the execution of articles of dissolution,  
20 which shall be executed on behalf of the cooperative by its  
21 president or vice-president, and attested to by its secretary.



1 (d) The articles of dissolution shall recite that they are  
2 executed pursuant to this part and shall state:

3 (1) The name of the cooperative;

4 (2) The address of its principal office;

5 (3) The date on which the certificate of election to  
6 dissolve was filed with the director of commerce and  
7 consumer affairs;

8 (4) That there are no actions or suits pending against the  
9 cooperative;

10 (5) That all debts, obligations, and liabilities of the  
11 cooperative have been paid and discharged or that  
12 adequate provision has been made therefor; and

13 (6) That subsections (b) and (c) have been duly complied  
14 with.

15 The president or vice-president executing the articles of  
16 dissolution shall make and annex thereto an affidavit stating  
17 that the statements made therein are true.

18 **§421C-0 Filing.** Articles of incorporation, amendment,  
19 consolidation, merger, or dissolution, when executed and  
20 accompanied by affidavits required by this part, shall be  
21 presented to the director of commerce and consumer affairs for  
22 filing in the records of the director's office. If the director



1 finds that the articles presented conform to the requirements of  
2 this part, the director, upon the payment of any fees required  
3 by the director, shall file the articles in the records of the  
4 director's office. Upon the filing, the incorporation,  
5 amendment, consolidation, merger, or dissolution shall be in  
6 effect. This section shall also apply to certificates of  
7 election to dissolve and affidavits executed in connection with  
8 the certificates of election to dissolve pursuant to section  
9 421C-N(b) and amendments thereto.

10 **§421C-P Revenues.** (a) Except as otherwise determined by  
11 a vote of the members of the cooperative, revenues of a  
12 cooperative for any fiscal year in excess of the following items  
13 shall be distributed by the cooperative to its members in  
14 accordance with the cooperative's bylaws:

15 (1) Amounts necessary to defray the expenses of operation  
16 and maintenance of facilities of the cooperative  
17 during the fiscal year;

18 (2) Amounts necessary to pay interest and principal  
19 obligations of the cooperative coming due in the  
20 fiscal year;

21 (3) Amounts necessary to finance, or to provide a reserve  
22 for the financing of, the construction or acquisition



1 by the cooperative of additional facilities to the  
2 extent determined by the board; and

3 (4) Amounts necessary to provide a reserve for the payment  
4 of indebtedness of the cooperative in an amount not  
5 less than the total of the interest and principal  
6 payments in respect thereof required to be made during  
7 the next following fiscal year.

8 (b) Nothing in this section shall be construed to prohibit  
9 the payment by a cooperative of all or any part of its  
10 indebtedness prior to the date when the payment shall become  
11 due.

12 **§421C-Q Powers of the board of directors.** (a) The board  
13 of a cooperative shall have full power and authority, without  
14 authorization by the members thereof, to authorize the execution  
15 and delivery of a mortgage or mortgages or a deed or deeds of  
16 trust of, or the pledge or encumbering of, any or all of the  
17 property, assets, rights, privileges, licenses, franchises, and  
18 permits of the cooperative, whether acquired or to be acquired,  
19 and wherever situated, as well as the revenues and income  
20 therefrom, all upon such terms and conditions as the board shall  
21 determine, to secure any indebtedness of the cooperative.



1           (b) Except as provided in subsection (a), the board may  
2 not otherwise sell, mortgage, lease, or otherwise dispose of or  
3 encumber all or a substantial portion of its property unless the  
4 sale, mortgage, lease, or other disposition or encumbrance is  
5 authorized by the affirmative vote of not less than a majority  
6 of all the members of the cooperative.

7           **§421C-R Members.** (a) No member of a cooperative shall be  
8 personally liable or responsible for any debts of the  
9 cooperative and the property of the members shall not be subject  
10 to execution therefor.

11           (b) If a member of a cooperative is located within the  
12 certificated territory of a retail electric supplier, the  
13 supplier may charge the member of the cooperative a monthly fee  
14 that reflects the cost of providing standby electric service,  
15 distribution system repair and maintenance, and other reasonable  
16 costs of being the provider of last resort.

17           **§421C-S General corporation laws, when applicable.** Except  
18 where otherwise provided, chapter 414D shall apply to  
19 cooperatives organized under this part.

20           **§421C-T Application to existing association.** Except where  
21 otherwise expressly stated in this part, this part shall be  
22 applicable to any association formed under any law of this State



1 in existence on the effective date of this part, that provides  
2 for the incorporation of a renewable energy cooperative for any  
3 purpose for which a cooperative may be formed under this part.

4       **§421C-U Annual reports.** (a) Every cooperative subject to  
5 this part shall make an annual report in writing to the director  
6 of commerce and consumer affairs showing the financial condition  
7 of the cooperative at the close of business on the last day of  
8 its fiscal year. If a cooperative's fiscal year is other than  
9 the calendar year, it shall give notice thereof to the director  
10 of commerce and consumer affairs prior to December 31 of the  
11 year it commences operation, whereupon the report shall be filed  
12 on or before the fifteenth day of the fourth month following the  
13 close of the fiscal year of the cooperative. An extension for  
14 filing the annual report may be granted by the director of  
15 commerce and consumer affairs, provided that no extension may be  
16 granted for a period of more than ninety days. The report shall  
17 be made on a form provided by the director of commerce and  
18 consumer affairs, and shall contain the following information:

- 19       (1) The name of the cooperative;  
20       (2) The location of the principal office of the  
21               cooperative;





1           (3) The names and addresses of the president, vice-  
2           president, secretary, treasurer, and directors of the  
3           cooperative;

4           (4) The number of members of the cooperative;

5           (5) A balance sheet showing the financial condition of the  
6           cooperative at the close of business on the last day  
7           of its fiscal year next preceding the date of filing;  
8           and

9           (6) The change or changes, if any, in the particulars made  
10          since the last annual report.

11          (b) The annual report shall be signed by the president,  
12 vice-president, or secretary of the cooperative, sworn to before  
13 an officer duly authorized to administer oaths, and forwarded to  
14 the director of commerce and consumer affairs. At the time of  
15 filing the annual report, the cooperative shall pay an annual  
16 franchise tax of \$20.

17          **§421C-V Agreements for interconnection.** (a) Agreements  
18 for interconnection between a cooperative and a public utility  
19 shall be subject to public utilities commission review and  
20 approval.

21          (b) The public utilities commission shall establish  
22 standard provisions, including applicable fees, for agreements



1 providing for interconnection between the facilities of an  
2 electric public utility and a member of a cooperative.

3       **§421C-W Revenue bonds.** (a) The director of finance may  
4 issue revenue bonds in amounts sufficient to pay the following  
5 described costs:

6       (1) Construction of electric transmission lines and  
7 appurtenances to be used for the transfer of thirty-  
8 four kilovolts or more of electricity;

9       (2) Acquisition of the right-of-way on which transmission  
10 lines and appurtenances to be used for the transfer of  
11 thirty-four kilovolts or more of electricity are to be  
12 constructed; and

13       (3) Upgrading of electric transmission lines and  
14 appurtenances to be used for the transfer of thirty-  
15 four kilovolts or more of electricity.

16 These costs shall also include any required interest on the  
17 bonds during the construction, acquisition, and upgrading, plus  
18 all amounts required for the costs of bond issuance and any  
19 required reserves on the bonds. The bonds, and interest  
20 thereon, issued pursuant to this section shall be payable from  
21 revenues derived from use of the transmission lines.



1           (b) Revenue bonds, including refunding revenue bonds,  
2 issued under this section shall not constitute an indebtedness  
3 of the State, nor shall the bonds constitute indebtedness within  
4 the meaning of any constitutional or statutory provision  
5 limiting the incurring of indebtedness.

6           (c) Revenue bonds, including refunding revenue bonds,  
7 issued under this section and the income derived therefrom shall  
8 be exempt from all state, county, and municipal taxation, except  
9 estate taxes.

10          (d) As used in this section:

11           "Appurtenances" means all substations, towers, poles, and  
12 other structures or equipment necessary for the bulk transfer of  
13 electricity.

14           "Electric transmission line" means any line that is used  
15 for the bulk transfer of electricity.

16          **§421C-X Taxation.** Cooperatives shall pay an annual  
17 license fee of \$10 to the director of commerce and consumer  
18 affairs, that shall be in lieu of all other corporation,  
19 franchise, and income taxes, and taxes and charges upon reserves  
20 held by the cooperative for distribution to members, including  
21 without limitation upon the generality of the foregoing any  
22 taxes imposed under chapter 235. All fees collected under this



1 section shall be deposited into the compliance resolution fund  
2 established in section 26-9(o).

3       **§421C-Y Penalty.** Every cooperative failing to comply with  
4 this part shall be fined \$10 for every violation, neglect, or  
5 failure. This penalty shall be in addition to any fee provided  
6 in this part. A continuance of a failure to file the required  
7 report and to pay the required license fee shall be a separate  
8 offense for each thirty days of continuance. The director of  
9 commerce and consumer affairs, for good cause shown, may reduce  
10 or waive the penalty imposed by this section. Fines assessed  
11 pursuant to this section shall be deposited into the compliance  
12 resolution fund established in section 26-9(o)."

13       SECTION 3. Section 269-1, Hawaii Revised Statutes, is  
14 amended by amending the definition of "public utility" to read  
15 as follows:

16       ""Public utility":

17       (1) Includes every person who may own, control, operate,  
18           or manage as owner, lessee, trustee, receiver, or  
19           otherwise, whether under a franchise, charter,  
20           license, articles of association, or otherwise, any  
21           plant or equipment, or any part thereof, directly or  
22           indirectly for public use, for the transportation of



1 passengers or freight, or the conveyance or  
2 transmission of telecommunications messages, or the  
3 furnishing of facilities for the transmission of  
4 intelligence by electricity by land or water or air  
5 within the State, or between points within the State,  
6 or for the production, conveyance, transmission,  
7 delivery, or furnishing of light, power, heat, cold,  
8 water, gas, or oil, or for the storage or warehousing  
9 of goods, or the disposal of sewage; provided that the  
10 term shall include:

11 (A) Any person insofar as that person owns or  
12 operates a private sewer company or sewer  
13 facility; and

14 (B) Any telecommunications carrier or  
15 telecommunications common carrier;

16 (2) Shall not include:

17 (A) Any person insofar as that person owns or  
18 operates an aerial transportation enterprise;

19 (B) Persons owning or operating taxicabs, as defined  
20 in this section;

21 (C) Common carriers transporting only freight on the  
22 public highways, unless operating within



1                   localities or along routes or between points that  
2                   the public utilities commission finds to be  
3                   inadequately serviced without regulation under  
4                   this chapter;

5                   (D) Persons engaged in the business of warehousing or  
6                   storage unless the commission finds that  
7                   regulation thereof is necessary in the public  
8                   interest;

9                   (E) The business of any carrier by water to the  
10                  extent that the carrier enters into private  
11                  contracts for towage, salvage, hauling, or  
12                  carriage between points within the State and the  
13                  carriage is not pursuant to either an established  
14                  schedule or an undertaking to perform carriage  
15                  services on behalf of the public generally;

16                  (F) The business of any carrier by water,  
17                  substantially engaged in interstate or foreign  
18                  commerce, transporting passengers on luxury  
19                  cruises between points within the State or on  
20                  luxury round-trip cruises returning to the point  
21                  of departure;

22                  (G) Any person who:



- 1                   (i) Controls, operates, or manages plants or
- 2                   facilities for the production, transmission,
- 3                   or furnishing of power primarily or entirely
- 4                   from nonfossil fuel sources; and
- 5                   (ii) Provides, sells, or transmits all of that
- 6                   power, except such power as is used in its
- 7                   own internal operations, directly to a
- 8                   public utility for transmission to the
- 9                   public;
- 10                  (H) A telecommunications provider only to the extent
- 11                  determined by the commission pursuant to section
- 12                  269-16.9;
- 13                  (I) Any person who controls, operates, or manages
- 14                  plants or facilities developed pursuant to
- 15                  chapter 167 for conveying, distributing, and
- 16                  transmitting water for irrigation and such other
- 17                  purposes that shall be held for public use and
- 18                  purpose;
- 19                  (J) Any person who owns, controls, operates, or
- 20                  manages plants or facilities for the reclamation
- 21                  of wastewater; provided that:



- 1                   (i) The services of the facility shall be  
2                   provided pursuant to a service contract  
3                   between the person and a state or county  
4                   agency and at least ten per cent of the  
5                   wastewater processed is used directly by the  
6                   State or county which has entered into the  
7                   service contract;
- 8                   (ii) The primary function of the facility shall  
9                   be the processing of secondary treated  
10                  wastewater that has been produced by a  
11                  municipal wastewater treatment facility that  
12                  is owned by a state or county agency;
- 13                  (iii) The facility shall not make sales of water  
14                  to residential customers;
- 15                  (iv) The facility may distribute and sell  
16                  recycled or reclaimed water to entities not  
17                  covered by a state or county service  
18                  contract; provided that, in the absence of  
19                  regulatory oversight and direct competition,  
20                  the distribution and sale of recycled or  
21                  reclaimed water shall be voluntary and its  
22                  pricing fair and reasonable. For purposes





1 of this subparagraph, "recycled water" and  
2 "reclaimed water" mean treated wastewater  
3 that by design is intended or used for a  
4 beneficial purpose; and

5 (v) The facility shall not be engaged, either  
6 directly or indirectly, in the processing of  
7 food wastes; [~~and~~]

8 (K) Any person who owns, controls, operates, or  
9 manages any seawater air conditioning district  
10 cooling project; provided that at least fifty per  
11 cent of the energy required for the seawater air  
12 conditioning district cooling system is provided  
13 by a renewable energy resource, such as cold,  
14 deep seawater[-] and

15 (L) Any renewable energy cooperatives organized under  
16 part of chapter 421C.

17 If the application of this chapter is ordered by the  
18 commission in any case provided in paragraphs (2)(C), (2)(D),  
19 (2)(H), and (2)(I), the business of any public utility that  
20 presents evidence of bona fide operation on the date of the  
21 commencement of the proceedings resulting in the order shall be  
22 presumed to be necessary to public convenience and necessity,



1 but any certificate issued under this proviso shall nevertheless  
2 be subject to such terms and conditions as the commission may  
3 prescribe, as provided in sections 269-16.9 and 269-20."

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2008.

7

INTRODUCED BY:

*Paul Manning*  
*Timothy J. ...*  
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*...*



**Report Title:**

Renewable Energy Electric Generation Cooperatives

**Description:**

Provides for the organization of renewable energy cooperatives to generate, transmit, and sell electricity to their membership. Authorizes issuance of revenue bonds to finance costs related to constructing, upgrading, and acquiring transmission facilities. Exempts cooperatives from Public Utilities Commission regulation, except for interconnection agreements.

