



GOV. MSG. NO. 1109

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 25, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

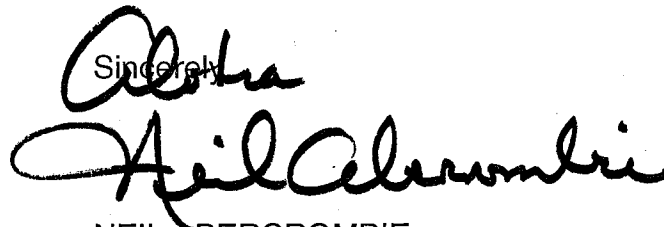
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 25, 2011, the following bill was signed into law:

SB704 SD2

RELATING TO RENEWABLE ENERGY
ACT 009 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 704
S.D. 2

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 the development of
2 renewable energy systems is critical to eliminating the State's
3 dependence on imported fossil fuels and reducing carbon
4 emissions. The legislature further finds that solar energy is
5 among Hawaii's most important renewable energy options,
6 representing an immediately available and substantial renewable
7 energy opportunity. Since not all Hawaii residents are willing
8 or able to purchase and operate individual renewable energy
9 systems, third party on-site systems may increase access to
10 renewable energy for more consumers.

11 The legislature also finds that exempting third party
12 suppliers of renewable energy-generated electricity or heat by
13 equipment located on a consumer's property from the definition
14 of "public utility" will promote the use of renewable energy by
15 more Hawaii residents. Third party renewable energy providers
16 serve a different purpose than large public utilities do. Third
17 party renewable energy systems provide a supplemental service to
18 voluntary customers who are able to negotiate terms and price



1 instead of supplying necessary services to captive consumers as
2 public utilities currently do. Therefore, third party renewable
3 energy systems should be exempt from regulation as public
4 utilities.

5 The purpose of this Act is to exempt third party owners and
6 operators of on-site renewable heat and energy generating
7 equipment from regulation as public utilities by the public
8 utilities commission.

9 SECTION 2. Section 269-1, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By adding a new definition to be appropriately inserted
12 and to read:

13 "Renewable energy system" means any identifiable facility,
14 equipment, apparatus, or the like that converts renewable
15 energy, as defined in section 269-91, to useful thermal or
16 electrical energy for heating, cooling, or reducing the use of
17 other types of energy that are dependent on fossil fuel for
18 their generation."

19 2. By amending the definition of "public utility" to read:
20 "Public utility":

21 (1) Includes every person who may own, control, operate,
22 or manage as owner, lessee, trustee, receiver, or



1 otherwise, whether under a franchise, charter,
2 license, articles of association, or otherwise, any
3 plant or equipment, or any part thereof, directly or
4 indirectly for public use~~[7]~~ for the transportation of
5 passengers or freight~~[7-~~ex~~]~~; for the conveyance or
6 transmission of telecommunications messages~~[7-~~ex~~]~~; for
7 the furnishing of facilities for the transmission of
8 intelligence by electricity ~~[by land or water or air]~~
9 within the State~~[7]~~ or between points within the
10 State~~[7-~~ex~~]~~ by land, water, or air; for the
11 production, conveyance, transmission, delivery, or
12 furnishing of light, power, heat, cold, water, gas, or
13 oil~~[7-~~ex~~]~~; for the storage or warehousing of goods~~[7-~~ex~~]~~;
14 or for the disposal of sewage; provided that the
15 term shall include:

16 (A) ~~[Any person insofar as that person owns or~~
17 ~~operates]~~ An owner or operator of a private sewer
18 company or sewer facility; and

19 (B) ~~[Any]~~ A telecommunications carrier or
20 telecommunications common carrier; and

21 (2) Shall not include:



- 1 (A) [~~Any person insofar as that person owns or~~
2 ~~operates~~] An owner or operator of an aerial
3 transportation enterprise;
- 4 (B) [~~Persons owning or operating taxicabs,~~] An owner
5 or operator of a taxicab as defined in this
6 section;
- 7 (C) Common carriers [~~transporting~~] that transport
8 only freight on the public highways, unless
9 operating within localities [e~~x~~], along routes,
10 or between points that the public utilities
11 commission finds to be inadequately serviced
12 without regulation under this chapter;
- 13 (D) Persons engaged in the business of warehousing or
14 storage unless the commission finds that
15 regulation [~~thereof~~] is necessary in the public
16 interest;
- 17 (E) [~~The business of any~~] A carrier by water to the
18 extent that the carrier enters into private
19 contracts for towage, salvage, hauling, or
20 carriage between points within the State [a~~nd~~];
21 provided that the towing, salvage, hauling, or
22 carriage is not pursuant to either an established



1 schedule or an undertaking to perform carriage
2 services on behalf of the public generally;

3 (F) [~~The business of any~~] A carrier by water,
4 substantially engaged in interstate or foreign
5 commerce, [~~transporting~~] that transports
6 passengers on luxury cruises between points
7 within the State or on luxury round-trip cruises
8 returning to the point of departure;

9 (G) Any person who:

10 (i) Controls, operates, or manages plants or
11 facilities for the production, transmission,
12 or furnishing of power primarily or entirely
13 from nonfossil fuel sources; and

14 (ii) Provides, sells, or transmits all of that
15 power, except [~~such power~~] as is used in its
16 own internal operations, directly to a
17 public utility for transmission to the
18 public;

19 (H) A telecommunications provider only to the extent
20 determined by the public utilities commission
21 pursuant to section 269-16.9;



1 (I) Any person who controls, operates, or manages
2 plants or facilities developed pursuant to
3 chapter 167 for conveying, distributing, and
4 transmitting water for irrigation and ~~[such]~~
5 other purposes ~~[that shall be held]~~ for public
6 use and purpose;

7 (J) Any person who owns, controls, operates, or
8 manages plants or facilities for the reclamation
9 of wastewater; provided that:

10 (i) The services of the facility ~~[shall be]~~ are
11 provided pursuant to a service contract
12 between the person and a state or county
13 agency and at least ten per cent of the
14 wastewater processed is used directly by the
15 ~~[State]~~ state or county ~~[which has]~~ agency
16 that entered into the service contract;

17 (ii) The primary function of the facility ~~[shall~~
18 ~~be]~~ is the processing of secondary treated
19 wastewater that has been produced by a
20 municipal wastewater treatment facility
21 ~~[that is]~~ owned by a state or county agency;



- 1 (iii) The facility [~~shall~~] does not make sales of
- 2 water to residential customers;
- 3 (iv) The facility may distribute and sell
- 4 recycled or reclaimed water to entities not
- 5 covered by a state or county service
- 6 contract; provided that, in the absence of
- 7 regulatory oversight and direct competition,
- 8 the distribution and sale of recycled or
- 9 reclaimed water shall be voluntary and its
- 10 pricing fair and reasonable. For purposes
- 11 of this subparagraph, "recycled water" and
- 12 "reclaimed water" means treated wastewater
- 13 that by design is intended or used for a
- 14 beneficial purpose; and
- 15 (v) The facility [~~shall~~] is not [~~be~~] engaged,
- 16 either directly or indirectly, in the
- 17 processing of food wastes;
- 18 (K) Any person who owns, controls, operates, or
- 19 manages any seawater air conditioning district
- 20 cooling project; provided that at least fifty per
- 21 cent of the energy required for the seawater air
- 22 conditioning district cooling system is provided



1 by a renewable energy resource, such as cold,
2 deep seawater; [and]

3 (L) Any person who owns, controls, operates, or
4 manages plants or facilities primarily used to
5 charge or discharge a vehicle battery that
6 provides power for vehicle propulsion[-]; and

7 (M) Any person who:

8 (i) Owns, controls, operates, or manages a
9 renewable energy system that is located on a
10 customer's property; and

11 (ii) Provides, sells, or transmits the power
12 generated from that renewable energy system
13 to an electric utility or to the customer on
14 whose property the renewable energy system
15 is located; provided that, for purposes of
16 this clause, a customer's property shall
17 include all contiguous property owned or
18 leased by the customer without regard to
19 interruptions in contiguity caused by
20 easements, public thoroughfares,
21 transportation rights-of-way, and utility
22 rights-of-way.

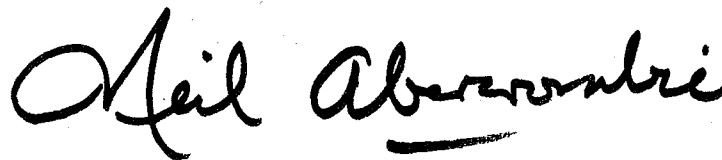


1 If the application of this chapter is ordered by the
2 commission in any case provided in paragraphs (2) (C), (2) (D),
3 (2) (H), and (2) (I), the business of any public utility that
4 presents evidence of bona fide operation on the date of the
5 commencement of the proceedings resulting in the order shall be
6 presumed to be necessary to the public convenience and
7 necessity, but any certificate issued under this proviso shall
8 nevertheless be subject to [~~such~~] terms and conditions as the
9 public utilities commission may prescribe, as provided in
10 sections 269-16.9 and 269-20."

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

13 SECTION 4. This Act shall take effect on July 1, 2011.
14

APPROVED this **25** day of **APR** , 2011



GOVERNOR OF THE STATE OF HAWAII