

JAN 21 2011

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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 purpose of this Act is to exempt third-  
2 party owners and operators of on-site solar heat and energy  
3 generating equipment from regulation as public utilities by the  
4 public utilities commission. The legislature finds that the  
5 development of renewable energy systems is critical to  
6 eliminating the State's dependence on imported fossil fuels and  
7 reducing carbon emissions. The legislature further finds that  
8 solar energy is one of Hawaii's most important renewable energy  
9 options, representing an immediately available and substantial  
10 renewable energy opportunity. Since not all Hawaii residents  
11 are willing or able to purchase and operate individual solar  
12 energy systems, third-party on-site systems may increase access  
13 to solar energy for more consumers.

14           The legislature finds that exempting third-party suppliers  
15 of solar-generated electricity or heat from equipment located on  
16 a consumer's property from the definition of "public utility"  
17 will promote the use of solar energy by more Hawaii residents.  
18 Third-party solar energy providers serve a different purpose



1 than large public utilities do; they provide a supplemental  
2 service to voluntary customers who are able to negotiate terms  
3 and price instead of supplying necessary services to captive  
4 consumers as public utilities do. Therefore, third-party solar  
5 energy providers should be exempt from regulation as public  
6 utilities.

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

9 1. By adding a new definition to be appropriately inserted  
10 and to read:

11 "Solar energy system" means any identifiable facility,  
12 equipment, apparatus, or the like that converts solar energy to  
13 useful thermal or electrical energy for heating, cooling, or  
14 reducing the use of other types of energy that are dependent on  
15 fossil fuel for their generation."

16 2. By amending the definition of "public utility" to read:

17 "Public utility":

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



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

13 (A) [~~Any person insofar as that person owns or~~  
14 ~~operates~~] The owner or operator of a private  
15 sewer company or sewer facility; and

16 (B) [~~Any~~] A telecommunications carrier or  
17 telecommunications common carrier; and

18 (2) Shall not include:

19 (A) [~~Any person insofar as that person owns or~~  
20 ~~operates~~] The owner or operator of an aerial  
21 transportation enterprise;



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



- 1 (F) [~~The business of any~~] A carrier by water,  
2 substantially engaged in interstate or foreign  
3 commerce, [~~transporting~~] that transports  
4 passengers on luxury cruises between points  
5 within the State or on luxury round-trip cruises  
6 returning to the point of departure;
- 7 (G) Any person who:
  - 8 (i) Controls, operates, or manages plants or  
9 facilities for the production, transmission,  
10 or furnishing of power primarily or entirely  
11 from nonfossil fuel sources; and
  - 12 (ii) Provides, sells, or transmits all of that  
13 power, except [~~such power~~] as is used in its  
14 own internal operations, directly to a  
15 public utility for transmission to the  
16 public;
- 17 (H) A telecommunications provider only to the extent  
18 determined by the public utilities commission  
19 pursuant to section 269-16.9;
- 20 (I) Any person who controls, operates, or manages  
21 plants or facilities developed pursuant to  
22 chapter 167 for conveying, distributing, and



1 transmitting water for irrigation and ~~[such]~~  
2 other purposes ~~[that shall be held]~~ for public  
3 use and purpose;

4 (J) Any person who owns, controls, operates, or  
5 manages plants or facilities for the reclamation  
6 of wastewater; provided that:

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

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

19 (iii) The facility ~~[shall]~~ does not make sales of  
20 water to residential customers;

21 (iv) The facility may distribute and sell  
22 recycled or reclaimed water to entities not



1 covered by a state or county service  
2 contract; provided that, in the absence of  
3 regulatory oversight and direct competition,  
4 the distribution and sale of recycled or  
5 reclaimed water shall be voluntary and its  
6 pricing fair and reasonable. For purposes  
7 of this subparagraph, "recycled water" and  
8 "reclaimed water" means treated wastewater  
9 that by design is intended or used for a  
10 beneficial purpose; and

11 (v) The facility [~~shall~~] is not [~~be~~] engaged,  
12 either directly or indirectly, in the  
13 processing of food wastes;

14 (K) Any person who owns, controls, operates, or  
15 manages any seawater air conditioning district  
16 cooling project; provided that at least fifty per  
17 cent of the energy required for the seawater air  
18 conditioning district cooling system is provided  
19 by a renewable energy resource, such as cold,  
20 deep seawater; [and]

21 (L) Any person who owns, controls, operates, or  
22 manages plants or facilities primarily used to



1 charge or discharge a vehicle battery that  
2 provides power for vehicle propulsion[-]; and

3 (M) Any person who:

4 (i) Owns, controls, operates, or manages a solar  
5 energy system that is located on a  
6 customer's property; and

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

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





1 presumed to be necessary to the public convenience and  
 2 necessity, but any certificate issued under this proviso shall  
 3 nevertheless be subject to [~~such~~] terms and conditions as the  
 4 public utilities commission may prescribe, as provided in  
 5 sections 269-16.9 and 269-20."

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

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

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INTRODUCED BY:

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**Report Title:**

Renewable Energy; Public Utilities Commission

**Description:**

Exempts third-party customer-generated solar energy facilities and equipment from the definition of public utility; makes nonsubstantive technical amendments to the definition of public utility.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

