
A BILL FOR AN ACT

RELATING TO ELECTRICITY.

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

1 SECTION 1. The legislature finds that it is critical to
2 the State's energy security and energy independence to hasten
3 the transition to nonfossil fuels as a source for generating
4 electricity. However, existing power purchase agreements
5 between electric utility companies and producers of electricity
6 generated from nonfossil fuels or geothermal steam frequently
7 contain terms that are counterproductive to this goal and which
8 may continue to perpetuate the use of fossil fuels in Hawaii.
9 For example, many power purchase agreements contain terms that
10 allow an electric utility to curtail the amount of electricity
11 that it purchases from a supplier. This has the effect of
12 limiting the electricity purchased from nonfossil fuel
13 generators in favor of electricity generated by the utility's
14 own fossil fuel power plants. This creates profits for the
15 electric utility at the expense of Hawaii's nascent alternative
16 energy industry and utility ratepayers. Another example of
17 regressive contract terms are exclusivity provisions that
18 restrict nonfossil fuel electricity generators or geothermal



1 electricity generators from selling electricity to purchasers
2 other than the electric utility company. This practice prevents
3 alternative energy generators from realizing their full
4 production and profit potential by selling excess electrical
5 capacity to private electricity purchasers.

6 The public utilities commission is currently authorized to
7 approve the rates that electric utilities pay for electricity
8 produced by nonfossil fuel generators of electricity and
9 geothermal generators of electricity. The legislature finds
10 that other contract terms, such as curtailment or exclusivity
11 provisions, that are often contained in power purchase
12 agreements also have a direct effect on the electricity rates
13 that are paid by the public. In addition, these terms may slow
14 the State's transition to alternative sources of electricity and
15 delay the State's energy security and independence from costly
16 imported fossil fuels.

17 The purpose of this Act is to prohibit any provision of a
18 power purchase agreement between an electric utility and a
19 producer of electricity generated from nonfossil fuels or
20 geothermal steam that curtails the amount of electricity that
21 may be purchased or prohibits the producer from selling
22 electricity other than to the utility.



1 SECTION 2. Section 269-27.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§269-27.1[+] **Establishment of geothermal energy rates.**

4 (a) The rate payable by a public utility to the producer of
5 geothermal steam or electricity generated from geothermal steam
6 shall be established by agreement between the public utility and
7 the supplier, subject to approval by the public utilities
8 commission; provided that if the public utility and the supplier
9 fail to reach an agreement for such rate, or if the agreed upon
10 rate is disapproved by the commission, the public utilities
11 commission shall establish a just and reasonable rate for the
12 geothermal steam or electricity generated from geothermal steam
13 supplied to the public utility by the producer.

14 (b) The producer of geothermal steam or electricity
15 generated from geothermal steam shall be excluded from coverage
16 of the term "public utility" as defined in section 269-1.

17 (c) No agreement for the purchase of electricity generated
18 from geothermal steam by an electric utility company from a
19 producer of geothermal steam shall contain provisions that:

20 (1) Limit or curtail the amount of electricity generated
21 from geothermal steam that may be purchased from the
22 producer by the electric utility; or



1 (2) Prohibit the producer from selling electricity
2 generated from geothermal steam to purchasers other
3 than the electric utility;
4 except in an emergency situation that imminently threatens the
5 stability of the electrical grid or due to a natural or manmade
6 disaster."

7 SECTION 2. Section 269-27.2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§269-27.2 Utilization of electricity generated from**
10 **nonfossil fuels.** (a) The public utilities commission shall
11 investigate and determine the extent to which electricity
12 generated from nonfossil fuel sources is available to public
13 utilities that supply electricity to the public, which
14 electricity is in excess of that utilized or otherwise needed by
15 the producers for their internal uses and which the producers
16 are willing to make available to the electric public utilities.

17 (b) The public utilities commission may direct public
18 utilities that supply electricity to the public to arrange for
19 the acquisition of and to acquire electricity generated from
20 nonfossil fuel sources as is available from and the producers
21 are willing and able to make available to the public utilities,
22 and to employ and dispatch the nonfossil fuel generated



1 electricity in a manner consistent with the availability thereof
2 to maximize the reduction in consumption of fossil fuels in the
3 generation of electricity to be provided to the public. To
4 assist the energy resources coordinator in effectuating the
5 purposes of chapter 201N, the public utilities commission may
6 develop reasonable guidelines and timetables for the creation
7 and implementation of power purchase agreements.

8 (c) The rate payable by the public utility to the producer
9 for the nonfossil fuel generated electricity supplied to the
10 public utility shall be as agreed between the public utility and
11 the supplier and as approved by the public utilities commission;
12 provided that in the event the public utility and the supplier
13 fail to reach an agreement for a rate, the rate shall be as
14 prescribed by the public utilities commission according to the
15 powers and procedures provided in this chapter.

16 The commission's determination of the just and reasonable
17 rate shall be accomplished by establishing a methodology that
18 removes or significantly reduces any linkage between the price
19 of fossil fuels and the rate for the nonfossil fuel generated
20 electricity to potentially enable utility customers to share in
21 the benefits of fuel cost savings resulting from the use of
22 nonfossil fuel generated electricity. As the commission deems



1 appropriate, the just and reasonable rate for nonfossil fuel
2 generated electricity supplied to the public utility by the
3 producer may include mechanisms for reasonable and appropriate
4 incremental adjustments, such as adjustments linked to consumer
5 price indices for inflation or other acceptable adjustment
6 mechanisms.

7 (d) Upon application of a public utility that supplies
8 electricity to the public, and notification of its customers,
9 the commission, after an evidentiary hearing, may allow payments
10 made by the public utility to nonfossil fuel producers for firm
11 capacity and related revenue taxes to be recovered by the public
12 utility through an interim increase in rates until the effective
13 date of the rate change approved by the commission's final
14 decision in the public utility's next general rate proceeding
15 under section 269-16, notwithstanding any requirements to the
16 contrary of any other provision in this chapter or in the
17 commission's rules or practices; provided the amount recovered
18 by the utility and the amount of increase in rates due to the
19 payments for firm capacity and related revenue taxes to be
20 charged to the consumers of the electricity are found by the
21 commission to be:

22 (1) Just and reasonable;



1 (2) Not unduly prejudicial to the customers of the public
2 utility;

3 (3) Promotional of Hawaii's long-term objective of energy
4 self-sufficiency;

5 (4) Encouraging to the maintenance or development of
6 nonfossil fueled sources of electrical energy; and

7 (5) In the overall best interest of the general public.

8 The evidentiary hearing provided for in this subsection shall be
9 conducted expeditiously and shall be limited to evidence related
10 to the above findings. Notwithstanding section 269-16, no
11 public hearing shall be required, except as the commission in
12 its discretion may require.

13 (e) No agreement for the purchase of electricity generated
14 from nonfossil fuel sources by an electric utility company from
15 a producer of electricity from nonfossil fuel sources shall
16 contain provisions that:

17 (1) Limit or curtail the amount of electricity generated
18 from nonfossil fuel sources that may be purchased from
19 the producer by the electric utility; or

20 (2) Prohibit the producer from selling electricity
21 generated from nonfossil fuel sources to purchasers
22 other than the electric utility;



1 except in an emergency situation that imminently threatens the
2 stability of the electrical grid or due to a natural or manmade
3 disaster."

4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

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

10

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H.B. NO. 2041

Report Title:

Electricity; Nonfossil Fuels; Geothermal; Power Purchase Agreements

Description:

Prohibits exclusivity or curtailment provisions in power purchase agreements between an electric utility and producers of electricity generated from geothermal steam or nonfossil fuel sources.

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