

JAN 25 2012

A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1 SECTION 1. The legislature finds that the State's
2 renewable energy goals for electricity cannot be achieved by the
3 current regulated but market-driven mixed public utility
4 organization. The current organization relies heavily upon
5 fossil fuel-based power plants that are lightly complemented by
6 independently produced renewable energy acquired under a market
7 driven request for proposal and power purchase agreement
8 process. Oversight of acquisition and transmission costs is
9 handled by the public utilities commission using a classic rate
10 case model. The legislature finds that this organization
11 requires the public utilities commission to work with multiple
12 public utility companies to share renewable energy technologies
13 and human resources while processing multiple rate tariffs and
14 engaging in other duplicative efforts that delay and inhibit the
15 Hawaii clean energy initiative. Existing statutes that allow
16 the utilities to merge renewable portfolio standards and share
17 renewable energy costs add complexity to the management process.



1 These statutes create a virtual single electric utility between
2 counties.

3 It has been clearly documented that the city and county of
4 Honolulu, with its large population base, has the highest demand
5 for electricity. It has also been clearly documented that Maui
6 and Hawaii counties have far greater wind and geothermal
7 resources for the generation of electricity. The existing
8 organization of multiple county-based public utilities that
9 supply electricity does not facilitate a shared or distributed
10 use of renewable electricity. The legislature finds that this
11 Act will facilitate the development of excess renewable electric
12 energy from counties with small populations for utilization by
13 counties with larger populations.

14 The legislature finds that the State needs a single
15 electricity development plan and supporting organization because
16 the one hundred year old county-based public utility
17 organizations will not support our future. For more than
18 twenty-four years, the State has recognized that development of
19 geothermal energy and a cable system should be a priority, as
20 evidenced by Chapter 196D, Hawaii Revised Statutes. Further,
21 wind and photovoltaic energy is intermittent and would provide



1 only twenty to thirty per cent of the State's energy needs in
2 the future. The State must focus on identifying and developing
3 the remaining necessary firm renewable energy resources to meet
4 our electricity needs.

5 The legislature finds that a new electric utility
6 organization model should be focused on transmission, delivery,
7 network reliability, and lowest cost modeling. The
8 prioritization of lower cost renewable electricity over fossil
9 fuel-based electricity must be a key component of the new
10 system. Energy sources and electricity production costs of all
11 power plants should be clearly identified to facilitate
12 decisions on whether to curtail or retire those plants.

13 The purpose of this Act is to facilitate the transition
14 from fossil fuel-based energy to renewable energy for
15 production, distribution, and management of electricity to
16 stabilize or reduce electricity costs over time.

17 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
18 amended by adding two new sections to be appropriately
19 designated and to read as follows:

20 "§269- Electric utility companies; limitation. (a)
21 Notwithstanding any other law to the contrary, no electric



1 utility company shall own or operate both the means of producing
2 electricity and the means of conveying, transmitting,
3 delivering, or furnishing electricity to the public.

4 (b) For purposes of this section, "electric utility
5 company" shall have the same meaning as in section 269-91.

6 (c) This section shall not apply to an electric utility
7 company exempt from federal taxes under section 501(c)(12) of
8 the Internal Revenue Code.

9 **§269- Power purchase agreements; prohibited with**
10 **affiliates.** (a) Notwithstanding any other law to the contrary,
11 any electric utility company that conveys, transmits, delivers,
12 or furnishes electricity to the public shall acquire the
13 necessary electricity through a power purchase agreement.

14 (b) No electric utility company shall enter into a power
15 purchase agreement with any affiliated interest.

16 (c) The rate payable by the electric utility company to
17 the producer for the generated electricity supplied to the
18 electric public utility shall be as agreed upon between the
19 public utility and the supplier and as approved by the public
20 utilities commission; provided that if the electric public
21 utility and the supplier fail to reach an agreement for a rate,



1 the rate shall be as prescribed by the public utilities
2 commission according to the powers and procedures provided in
3 this chapter.

4 (d) For the purposes of this section, unless the context
5 requires otherwise.

6 "Affiliated interests" means the same as defined under
7 section 269-19.5.

8 "Electric utility company" means the same as in section
9 269-91.

10 "Power purchase agreement" means an agreement between an
11 owner of any facility that produces electricity and a public
12 utility for the sale of electricity produced by the facility to
13 the public utility.

14 (e) This section shall not apply to an electric utility
15 company exempt from federal taxes under section 501(c)(12) of
16 the Internal Revenue Code."

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

20 "Public utility":



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

17 (A) An owner or operator of a private sewer company
18 or sewer facility; and

19 (B) A telecommunications carrier or
20 telecommunications common carrier; and

21 (2) Shall not include:



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



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



1 transmitting water for irrigation and other
2 purposes for public use and purpose;

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

6 (i) The services of the facility are provided
7 pursuant to a service contract between the
8 person and a state or county agency and at
9 least ten per cent of the wastewater
10 processed is used directly by the state or
11 county agency that entered into the service
12 contract;

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

18 (iii) The facility does not make sales of water to
19 residential customers;

20 (iv) The facility may distribute and sell
21 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 is not engaged, either directly
12 or indirectly, in the processing of food
13 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;



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

5 (M) Any person who:

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

9 (ii) Provides, sells, or transmits the power
10 generated from that renewable energy system
11 to an electric utility or to the customer on
12 whose property the renewable energy system
13 is located; provided that, for purposes of
14 this clause, a customer's property shall
15 include all contiguous property owned or
16 leased by the customer without regard to
17 interruptions in contiguity caused by
18 easements, public thoroughfares,
19 transportation rights-of-way, and utility
20 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 terms and conditions as the public
9 utilities commission may prescribe, as provided in sections 269-
10 16.9 and 269-20."

11 SECTION 4. Section 269-16, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§269-16 Regulation of utility rates; ratemaking**
14 **procedures.** (a) All rates, fares, charges, classifications,
15 schedules, rules, and practices made, charged, or observed by
16 any public utility or by two or more public utilities jointly
17 shall be just and reasonable and shall be filed with the public
18 utilities commission. The rates, fares, classifications,
19 charges, and rules of every public utility shall be published by
20 the public utility in such manner as the public utilities



1 commission may require, and copies shall be furnished to any
2 person on request.

3 To the extent the contested case proceedings referred to in
4 chapter 91 are required in any rate proceeding to ensure
5 fairness and to provide due process to parties that may be
6 affected by rates approved by the commission, the evidentiary
7 hearings shall be conducted expeditiously and shall be conducted
8 as a part of the ratemaking proceeding.

9 (b) No rate, fare, charge, classification, schedule, rule,
10 or practice, other than one established pursuant to an automatic
11 rate adjustment clause previously approved by the commission,
12 shall be established, abandoned, modified, or departed from by
13 any public utility, except after thirty days' notice to the
14 commission as prescribed in section 269-12(b), and prior
15 approval by the commission for any increases in rates, fares, or
16 charges. The commission, in its discretion and for good cause
17 shown, may allow any rate, fare, charge, classification,
18 schedule, rule, or practice to be established, abandoned,
19 modified, or departed from upon notice less than that provided
20 for in section 269-12(b). A contested case hearing shall be
21 held in connection with any increase in rates, and the hearing



1 shall be preceded by a public hearing as prescribed in section
2 269-12(c), at which the consumers or patrons of the public
3 utility may present testimony to the commission concerning the
4 increase. The commission, upon notice to the public utility,
5 may:

6 (1) Suspend the operation of all or any part of the
7 proposed rate, fare, charge, classification, schedule,
8 rule, or practice or any proposed abandonment or
9 modification thereof or departure therefrom;

10 (2) After a hearing, by order:

11 (A) Regulate, fix, and change all such rates, fares,
12 charges, classifications, schedules, rules, and
13 practices so that the same shall be just and
14 reasonable;

15 (B) Prohibit rebates and unreasonable discrimination
16 between localities or between users or consumers
17 under substantially similar conditions;

18 (C) Regulate the manner in which the property of
19 every public utility is operated with reference
20 to the safety and accommodation of the public;



- 1 (D) Prescribe its form and method of keeping
2 accounts, books, and records, and its accounting
3 system;
- 4 (E) Regulate the return upon its public utility
5 property;
- 6 (F) Regulate the incurring of indebtedness relating
7 to its public utility business; and
- 8 (G) Regulate its financial transactions; and
- 9 (3) Do all things that are necessary and in the exercise
10 of the commission's power and jurisdiction, all of
11 which as so ordered, regulated, fixed, and changed are
12 just and reasonable, and provide a fair return on the
13 property of the utility actually used or useful for
14 public utility purposes.
- 15 (c) The commission may in its discretion, after public
16 hearing and upon showing by a public utility of probable
17 entitlement and financial need, authorize temporary increases in
18 rates, fares, and charges; provided that the commission shall
19 require by order the public utility to return, in the form of an
20 adjustment to rates, fares, or charges to be billed in the
21 future, any amounts with interest, at a rate equal to the rate



1 of return on the public utility's rate base found to be
2 reasonable by the commission, received by reason of continued
3 operation that are in excess of the rates, fares, or charges
4 finally determined to be just and reasonable by the commission.
5 Interest on any excess shall commence as of the date that any
6 rate, fare, or charge goes into effect that results in the
7 excess and shall continue to accrue on the balance of the excess
8 until returned.

9 (d) The commission shall make every effort to complete its
10 deliberations and issue its decision as expeditiously as
11 possible and before nine months from the date the public utility
12 filed its completed application; provided that in carrying out
13 this mandate, the commission shall require all parties to a
14 proceeding to comply strictly with procedural time schedules
15 that it establishes. If a decision is rendered after the nine-
16 month period, the commission shall report in writing the reasons
17 therefor to the legislature within thirty days after rendering
18 the decision.

19 Notwithstanding subsection (c), if the commission has not
20 issued its final decision on a public utility's rate application
21 within the nine-month period stated in this section, the



1 commission, within one month after the expiration of the nine-
2 month period, shall render an interim decision allowing the
3 increase in rates, fares and charges, if any, to which the
4 commission, based on the evidentiary record before it, believes
5 the public utility is probably entitled. The commission may
6 postpone its interim rate decision for thirty days if the
7 commission considers the evidentiary hearings incomplete. In
8 the event interim rates are made effective, the commission shall
9 require by order the public utility to return, in the form of an
10 adjustment to rates, fares, or charges to be billed in the
11 future, any amounts with interest, at a rate equal to the rate
12 of return on the public utility's rate base found to be
13 reasonable by the commission, received under the interim rates
14 that are in excess of the rates, fares, or charges finally
15 determined to be just and reasonable by the commission.
16 Interest on any excess shall commence as of the date that any
17 rate, fare, or charge goes into effect that results in the
18 excess and shall continue to accrue on the balance of the excess
19 until returned.

20 The nine-month period in this subsection shall begin only
21 after a completed application has been filed with the commission



1 and a copy served on the consumer advocate. The commission
2 shall establish standards concerning the data required to be set
3 forth in the application in order for it to be deemed a
4 completed application. The consumer advocate may, within
5 twenty-one days after receipt, object to the sufficiency of any
6 application, and the commission shall hear and determine any
7 objection within twenty-one days after it is filed. If the
8 commission finds that the objections are without merit, the
9 application shall be deemed to have been completed upon original
10 filing. If the commission finds the application to be
11 incomplete, it shall require the applicant to submit an amended
12 application consistent with its findings, and the nine-month
13 period shall not commence until the amended application is
14 filed.

15 (e) In any case of two or more organizations, trades, or
16 businesses (whether or not incorporated, whether or not
17 organized in the State of Hawaii, and whether or not affiliated)
18 owned or controlled directly or indirectly by the same
19 interests, the commission may distribute, apportion, or allocate
20 gross income, deductions, credits, or allowances between or
21 among the organizations, trades, or businesses, if it determines



1 that the distribution, apportionment, or allocation is necessary
2 to adequately reflect the income of any such organizations,
3 trades, or businesses to carry out the regulatory duties imposed
4 by this section.

5 (f) Notwithstanding any law to the contrary, for public
6 utilities having annual gross revenues of less than \$2,000,000,
7 the commission may make and amend its rules and procedures to
8 provide the commission with sufficient facts necessary to
9 determine the reasonableness of the proposed rates without
10 unduly burdening the utility company and its customers. In the
11 determination of the reasonableness of the proposed rates, the
12 commission shall:

13 (1) Require the filing of a standard form application to
14 be developed by the commission. The standard form
15 application for general rate increases shall describe
16 the specific facts that shall be submitted to support
17 a determination of the reasonableness of the proposed
18 rates, and require the submission of financial
19 information in conformance with a standard chart of
20 accounts to be approved by the commission, and other



1 commission guidelines to allow expeditious review of a
2 requested general rate increase application;
3 (2) Hold a public hearing as prescribed in section
4 269-12(c) at which the consumers or patrons of the
5 public utility may present testimony to the commission
6 concerning the increase. The public hearing shall be
7 preceded by proper notice, as prescribed in section
8 269-12; and
9 (3) Make every effort to complete its deliberations and
10 issue a proposed decision and order within six months
11 from the date the public utility files a completed
12 application with the commission; provided that all
13 parties to the proceeding strictly comply with the
14 procedural schedule established by the commission and
15 no person is permitted to intervene. If a proposed
16 decision and order is rendered after the six-month
17 period, the commission shall report in writing the
18 reasons therefor to the legislature within thirty days
19 after rendering the proposed decision and order.
20 Prior to the issuance of the commission's proposed



1 decision and order, the parties shall not be entitled
2 to a contested case hearing.

3 If all parties to the proceeding accept the
4 proposed decision and order, the parties shall not be
5 entitled to a contested case hearing, and section
6 269-15.5 shall not apply. If the commission permits a
7 person to intervene, the six-month period shall not
8 apply and the commission shall make every effort to
9 complete its deliberations and issue its decision
10 within the nine-month period from the date the public
11 utility's completed application was filed, pursuant to
12 subsections (b), (c), and (d).

13 If a party does not accept the proposed decision
14 and order, either in whole or in part, that party
15 shall give notice of its objection or nonacceptance
16 within the timeframe prescribed by the commission in
17 the proposed decision and order, setting forth the
18 basis for its objection or nonacceptance; provided
19 that the proposed decision and order shall have no
20 force or effect pending the commission's final
21 decision. If notice is filed, the above six-month



1 period shall not apply and the commission shall make
2 every effort to complete its deliberations and issue
3 its decision within the nine-month period from the
4 date the public utility's completed application was
5 filed as set forth in subsection (d). Any party that
6 does not accept the proposed decision and order under
7 this paragraph shall be entitled to a contested case
8 hearing; provided that the parties to the proceeding
9 may waive the contested case hearing.

10 Public utilities subject to this subsection shall follow
11 the standard chart of accounts to be approved by the commission
12 for financial reporting purposes. The public utilities shall
13 file a certified copy of the annual financial statements in
14 addition to an updated chart of accounts used to maintain their
15 financial records with the commission and consumer advocate
16 within ninety days from the end of each calendar or fiscal year,
17 as applicable, unless this timeframe is extended by the
18 commission. The owner, officer, general partner, or authorized
19 agent of the utility shall certify that the reports were
20 prepared in accordance with the standard chart of accounts.



1 (g) Any automatic fuel rate adjustment clause requested by
2 a public utility in an application filed with the commission
3 shall be designed, as determined in the commission's discretion,
4 to:

5 (1) Fairly share the risk of fuel cost changes between the
6 public utility and its customers;

7 (2) Provide the public utility with sufficient incentive
8 to reasonably manage or lower its fuel costs and
9 encourage greater use of renewable energy;

10 (3) Allow the public utility to mitigate the risk of
11 sudden or frequent fuel cost changes that cannot
12 otherwise reasonably be mitigated through other
13 commercially available means, such as through fuel
14 hedging contracts;

15 (4) Preserve, to the extent reasonably possible, the
16 public utility's financial integrity; and

17 (5) Minimize, to the extent reasonably possible, the
18 public utility's need to apply for frequent
19 applications for general rate increases to account for
20 the changes to its fuel costs.



1 (h) For the purposes of ratemaking, the commission shall
2 treat any two or more electric utility companies held by the
3 same financial holding company as a single entity and approve
4 just and reasonable statewide rates to be charged to all
5 electricity ratepayers of the electric utility companies held by
6 the same financial holding company without regard to location of
7 the ratepayer. The commission shall ensure that the rates do
8 not diminish any electric utility company's opportunity to earn
9 a fair rate of return. The rates shall be based upon the
10 following:

- 11 (1) A fixed monthly connection service charge;
- 12 (2) A variable monthly electricity transmission and
13 distribution rate;
- 14 (3) A variable monthly electricity consumption rate; and
- 15 (4) Other fees, taxes, and charges as approved by the
16 commission.

17 For the purposes of this subsection:

18 "Electric utility company" means the same as defined in
19 section 269-91.

20 "Financial holding company" means the same as defined in
21 section 241-1."



1 SECTION 5. Section 269-27.2, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) The public utilities commission shall investigate and
4 determine the extent to which electricity generated from
5 nonfossil fuel sources is available to public utilities that
6 supply electricity to the public, which electricity is in excess
7 of that utilized or otherwise needed by the producers for their
8 internal uses and which the producers are willing to make
9 available to the electric public utilities. The commission, in
10 conjunction with any electric public utility, shall place a
11 priority on the development of firm and distributable
12 geothermal-based electricity to replace existing fossil fuel-
13 based power generation facilities.

14 (b) The public utilities commission [~~may~~] shall direct
15 public utilities, except a public utility exempt from federal
16 taxes under section 501(c)(12) of the Internal Revenue Code,
17 that supply electricity to the public to arrange for the
18 acquisition of and to acquire the lowest cost, electrical grid-
19 safe electricity generated from nonfossil fuel sources as is
20 available from and the producers are willing and able to make
21 available to the public utilities[7] prior to acquiring



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

10 SECTION 6. Section 269-91, Hawaii Revised Statutes, is
11 amended by amending the definition of "electric utility company"
12 to read as follows:

13 "Electric utility company" means a public utility as
14 defined under section 269-1, for the [~~production~~] conveyance,
15 transmission, delivery, or furnishing of power."

16 SECTION 7. This Act shall not be applied so as to impair
17 any contract existing as of the effective date of this Act in a
18 manner violative of either the Hawaii Constitution or Article I,
19 section 10, of the United States Constitution.

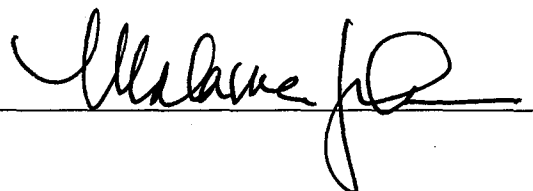
20 SECTION 8. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 2982

1 SECTION 9. This Act shall take effect on January 1, 2015;
2 provided that sections 2, 3, and 6 of this Act shall take effect
3 on January 1, 2025.

4

INTRODUCED BY: 



S.B. NO. 2982

Report Title:

Electric Public Utilities; Operations; Rates; Energy Sources

Description:

Limits the operations of any electric public utility. Requires acquisition of electricity by a power purchase agreement with an unaffiliated entity. Requires utility to purchase lowest cost nonfossil fuel generated electricity prior to purchasing fossil fuel generated electricity. Requires PUC to establish a statewide electricity rate. Exempts IRC section 501(c)(12) utilities. Prioritizes geothermal as a replacement for fossil fuel. Effective 1/01/15.

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