



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**GOV. MSG. NO. 1364**

July 3, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

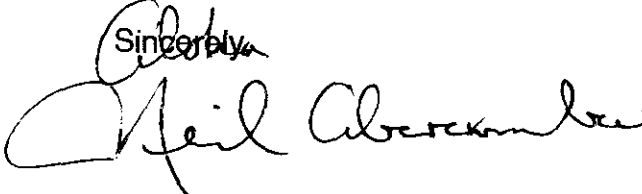
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 3, 2013, the following bill was signed into law:

SB19 SD1 HD2 CD1

RELATING TO RENEWABLE ENERGY  
**ACT 261 (13)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

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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, although addressed  
2 to a limited extent in declaratory rulings and case law, under  
3 current statute it may be interpreted that a lessor or property  
4 owner who installs a renewable energy system on property and  
5 sells the electricity generated to the lessees or tenants on the  
6 property may be defined as a public utility. The legislature  
7 further finds that any lease agreement involving the purchase by  
8 lessees or tenants of electricity generated by a renewable  
9 energy system of the lessor or property owner needs to include  
10 certain disclosures for the protection of the lessees or  
11 tenants. For example, a rate data sheet for Kauai Island  
12 Utility Cooperative and effective rate summaries for the  
13 Hawaiian Electric Companies are filed monthly with the public  
14 utilities commission, and these filings can also be found on  
15 each respective electric utility's website for the purpose of  
16 obtaining current effective rate information.

17 The purpose of this Act is to remove any ambiguity by  
18 exempting landlords and lessors who install renewable energy



1 systems on their property and provide, sell, or transmit  
2 electricity generated from those renewable energy systems to  
3 tenants or lessees on the premises, from the definition of  
4 public utility and to provide for disclosures in the lease  
5 agreement for the protection of the lessees or tenants.

6 SECTION 2. Section 269-1, Hawaii Revised Statutes, is  
7 amended by amending the definition of "public utility" to read  
8 as follows:

9 "Public utility":

10 (1) Includes every person who may own, control, operate,  
11 or manage as owner, lessee, trustee, receiver, or  
12 otherwise, whether under a franchise, charter,  
13 license, articles of association, or otherwise, any  
14 plant or equipment, or any part thereof, directly or  
15 indirectly for public use for the transportation of  
16 passengers or freight; for the conveyance or  
17 transmission of telecommunications messages; for the  
18 furnishing of facilities for the transmission of  
19 intelligence by electricity within the State or  
20 between points within the State by land, water, or  
21 air; for the production, conveyance, transmission,  
22 delivery, or furnishing of light, power, heat, cold,



1 water, gas, or oil; for the storage or warehousing of  
2 goods; or for the disposal of sewage; provided that  
3 the term shall include:

4 (A) An owner or operator of a private sewer company  
5 or sewer facility; and

6 (B) A telecommunications carrier or  
7 telecommunications common carrier; and

8 (2) Shall not include:

9 (A) An owner or operator of an aerial transportation  
10 enterprise;

11 (B) An owner or operator of a taxicab as defined in  
12 this section;

13 (C) Common carriers that transport only freight on  
14 the public highways, unless operating within  
15 localities, along routes, or between points that  
16 the public utilities commission finds to be  
17 inadequately serviced without regulation under  
18 this chapter;

19 (D) Persons engaged in the business of warehousing or  
20 storage unless the commission finds that  
21 regulation is necessary in the public interest;



- 1 (E) A carrier by water to the extent that the carrier  
2 enters into private contracts for towage,  
3 salvage, hauling, or carriage between points  
4 within the State; provided that the towing,  
5 salvage, hauling, or carriage is not pursuant to  
6 either an established schedule or an undertaking  
7 to perform carriage services on behalf of the  
8 public generally;
- 9 (F) A carrier by water, substantially engaged in  
10 interstate or foreign commerce, that transports  
11 passengers on luxury cruises between points  
12 within the State or on luxury round-trip cruises  
13 returning to the point of departure;
- 14 (G) Any user, owner, or operator of the Hawaii  
15 electric system as defined under section 269-141;
- 16 (H) A telecommunications provider only to the extent  
17 determined by the public utilities commission  
18 pursuant to section 269-16.9;
- 19 (I) Any person who controls, operates, or manages  
20 plants or facilities developed pursuant to  
21 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  
22 covered by a state or county service



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

10 (v) The facility is not engaged, either directly  
11 or indirectly, in the processing of food  
12 wastes;

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

20 (L) Any person who owns, controls, operates, or  
21 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  
5 renewable energy system that is located on a  
6 customer's property; and

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

19 (N) Any person who owns, controls, operates, or  
20 manages a renewable energy system that is located  
21 on such person's property and provides, sells, or  
22 transmits the power generated from that renewable



1           energy system to an electric utility or to  
2           lessees or tenants on the person's property where  
3           the renewable energy system is located; provided  
4           that:

5           (i) An interconnection, as defined in section  
6           269-141, is maintained with an electric  
7           public utility to preserve the lessees' or  
8           tenants' ability to be served by an electric  
9           utility;

10          (ii) Such person does not use an electric public  
11          utility's transmission or distribution lines  
12          to provide, sell, or transmit electricity to  
13          lessees or tenants;

14          (iii) At the time that the lease agreement is  
15          signed, the rate charged to the lessee or  
16          tenant for the power generated by the  
17          renewable energy system shall be no greater  
18          than the effective rate charged per kilowatt  
19          hour from the applicable electric utility  
20          schedule filed with the public utilities  
21          commission;

- 1            (iv) The rate schedule or formula shall be
- 2                            established for the duration of the lease,
- 3                            and the lease agreement entered into by the
- 4                            lessee or tenant shall reflect such rate
- 5                            schedule or formula;
  
- 6            (v) The lease agreement shall not abrogate any
- 7                            terms or conditions of applicable tariffs
- 8                            for termination of services for non-payment
- 9                            of electric utility services or rules
- 10                           regarding health, safety, and welfare;
  
- 11           (vi) The lease agreement shall disclose: (1) the
- 12                           rate schedule or formula for the duration of
- 13                           the lease agreement; (2) that, at the time
- 14                           that the lease agreement is signed, the rate
- 15                           charged to the lessee or tenant for the
- 16                           power generated by the renewable energy
- 17                           system shall be no greater than the
- 18                           effective rate charged per kilowatt hour
- 19                           from the applicable electric utility
- 20                           schedule filed with the public utilities
- 21                           commission; (3) that the lease agreement
- 22                           shall not abrogate any terms or conditions



1                   of applicable tariffs for termination of  
2                   services for non-payment of electric utility  
3                   services or rules regarding health, safety,  
4                   and welfare; and (4) whether the lease is  
5                   contingent upon the purchase of electricity  
6                   from the renewable energy system; provided  
7                   further that any disputes concerning the  
8                   requirements of this provision shall be  
9                   resolved pursuant to the provisions of the  
10                  lease agreement or chapter 521, if  
11                  applicable; and  
12                  (vii) Nothing in this section shall be construed  
13                  to permit wheeling.

14                  If the application of this chapter is ordered by the  
15                  commission in any case provided in paragraph (2) (C), (D), (H),  
16                  and (I), the business of any public utility that presents  
17                  evidence of bona fide operation on the date of the commencement  
18                  of the proceedings resulting in the order shall be presumed to  
19                  be necessary to the public convenience and necessity, but any  
20                  certificate issued under this proviso shall nevertheless be  
21                  subject to terms and conditions as the public utilities

1 commission may prescribe, as provided in sections 269-16.9 and  
2 269-20."

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

5 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 3 day of JUL, 2013



GOVERNOR OF THE STATE OF HAWAII