

JAN 17 2014

A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES BENEATH THE SURFACE OF THE LAND.

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

1 SECTION 1. The legislature finds that geothermal energy is
2 a precious natural resource found below the surface of the land
3 and has become a source of electricity generation. Section 269-
4 27.1, Hawaii Revised Statutes, requires that the rate payable by
5 a public utility to the producer of geothermal steam or
6 electricity generated from geothermal steam be established by
7 agreement between the public utility and the supplier.

8 In these cases, the supplier may overstate prices in the
9 negotiations if the supplier has an expectation of being
10 curtailed by the electric utility without compensation for the
11 curtailment.

12 The purpose of this Act is require that the terms of such
13 an agreement prohibit an electric utility from curtailing or
14 interrupting a producer of geothermal electricity for certain
15 periods of time.

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



1 "[\+]§269-27.1[\+]" **Establishment of geothermal energy rates.**

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

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

15 (c) Any agreement for the purchase of electricity
16 generated from geothermal energy by an electric utility from a
17 producer of geothermal electricity shall contain provisions that
18 state that the electric utility shall not be entitled to curtail
19 or interrupt a producer of geothermal electricity for more than
20 a maximum number of hours per calendar year, as agreed upon by
21 the producer of geothermal electricity and the electric utility,
22 and that in the event the electric utility curtails or



1 interrupts the producer of geothermal electricity in excess of
2 the maximum number of hours agreed upon, the producer of
3 geothermal electricity shall be entitled to receive payment for
4 a prescribed percentage of the design capacity multiplied by the
5 number of hours of curtailment or interruption from a prescribed
6 time period each day, in excess of the maximum number of hours
7 per calendar year agreed upon, multiplied by the applicable
8 energy payment rate, except in an emergency situation that
9 imminently threatens the electrical grid or due to a natural or
10 manmade disaster."

11 SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is
12 amended to read as follows:

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

21 (b) The public utilities commission may direct public
22 utilities that supply electricity to the public to arrange for



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

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

20 The commission's determination of the just and reasonable
21 rate shall be accomplished by establishing a methodology that
22 removes or significantly reduces any linkage between the price



1 of fossil fuels and the rate for the nonfossil fuel generated
2 electricity to potentially enable utility customers to share in
3 the benefits of fuel cost savings resulting from the use of
4 nonfossil fuel generated electricity. As the commission deems
5 appropriate, the just and reasonable rate for nonfossil fuel
6 generated electricity supplied to the public utility by the
7 producer may include mechanisms for reasonable and appropriate
8 incremental adjustments, such as adjustments linked to consumer
9 price indices for inflation or other acceptable adjustment
10 mechanisms.

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



1 payments for firm capacity and related revenue taxes to be
2 charged to the consumers of the electricity are found by the
3 commission to be:

4 (1) Just and reasonable;

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

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

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

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

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

17 (e) Any agreement for the purchase of electricity
18 generated from nonfossil fuel sources by an electric utility
19 from a producer of electricity from nonfossil fuel sources shall
20 contain provisions that state that the utility shall not be
21 entitled to curtail or interrupt a producer of electricity from
22 nonfossil fuel sources for more than a maximum number of hours



1 per calendar year, as agreed upon by the producer of electricity
 2 from nonfossil fuel sources and the electric utility, and that
 3 in the event the electric utility curtails or interrupts the
 4 producer of electricity from nonfossil fuel sources in excess of
 5 the maximum number agreed upon, the producer of electricity from
 6 nonfossil fuel sources shall be entitled to receive payment for
 7 a prescribed percentage of the nonfossil fuel source electricity
 8 generating facility design capacity multiplied by the number of
 9 hours of curtailment or interruption from a prescribed time
 10 period each day, in excess of the maximum number of hours per
 11 calendar year agreed upon, multiplied by the applicable energy
 12 payment rate, except in an emergency situation that imminently
 13 threatens the electrical grid or due to a natural or manmade
 14 disaster."

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

17 SECTION 5. This Act shall take effect on July 1, 2014.

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INTRODUCED BY:

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S.B. NO. 2662

Report Title:

Public Utilities; Geothermal Energy; Nonfossil Fuel Electricity;
Curtailement

Description:

Requires agreements to purchase geothermal and nonfossil fuel generated electricity to contain provisions that provide independent power producers with compensation for excessive curtailement.

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