

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO CURTAILMENT.

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

1           SECTION 1. The legislature finds that independent power  
2 producers may overstate their prices if they have an expectation  
3 of being curtailed by the electric utility without compensation  
4 for the curtailment. The purpose of this Act is to provide  
5 independent power producers with compensation for excessive  
6 curtailment, thereby reducing the need to overstate prices for  
7 electricity generation.

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

10           "~~§~~269-27.1~~§~~ **Establishment of geothermal energy rates.**

11 (a) The rate payable by a public utility to the producer of  
12 geothermal steam or electricity generated from geothermal steam  
13 shall be established by agreement between the public utility and  
14 the supplier, subject to approval by the public utilities  
15 commission; provided that if the public utility and the supplier  
16 fail to reach an agreement for such rate, or if the agreed upon  
17 rate is disapproved by the commission, the public utilities  
18 commission shall establish a just and reasonable rate for the



1 geothermal steam or electricity generated from geothermal steam  
2 supplied to the public utility by the producer.

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

6 (c) Any agreement for the purchase of electricity  
7 generated from geothermal energy by an electric utility company  
8 from a producer of geothermal electricity shall contain  
9 provisions that state that the electric utility company shall  
10 not be entitled to curtail or interrupt a producer of geothermal  
11 electricity for more than a maximum number of hours per calendar  
12 year, as agreed upon by the producer of geothermal electricity  
13 and the electric utility company, and that in the event the  
14 electric utility company curtails or interrupts the producer of  
15 geothermal electricity in excess of the maximum number of hours  
16 agreed upon, the producer of geothermal electricity shall be  
17 entitled to receive payment for a prescribed percentage of the  
18 design capacity multiplied by the number of hours of curtailment  
19 or interruption from a prescribed time period each day, in  
20 excess of the maximum number of hours per calendar year agreed  
21 upon, multiplied by the applicable energy payment rate, except



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

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

5 "§269-27.2 Utilization of electricity generated from  
6 nonfossil fuels. (a) The public utilities commission shall  
7 investigate and determine the extent to which electricity  
8 generated from nonfossil fuel sources is available to public  
9 utilities that supply electricity to the public, which  
10 electricity is in excess of that utilized or otherwise needed by  
11 the producers for their internal uses and which the producers  
12 are willing to make available to the electric public utilities.

13 (b) The public utilities commission may direct public  
14 utilities that supply electricity to the public to arrange for  
15 the acquisition of and to acquire electricity generated from  
16 nonfossil fuel sources as is available from and the producers  
17 are willing and able to make available to the public utilities,  
18 and to employ and dispatch the nonfossil fuel generated  
19 electricity in a manner consistent with the availability thereof  
20 to maximize the reduction in consumption of fossil fuels in the  
21 generation of electricity to be provided to the public. To  
22 assist the energy resources coordinator in effectuating the



1 purposes of chapter 201N, the public utilities commission may  
2 develop reasonable guidelines and timetables for the creation  
3 and implementation of power purchase agreements.

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

12 The commission's determination of the just and reasonable  
13 rate shall be accomplished by establishing a methodology that  
14 removes or significantly reduces any linkage between the price  
15 of fossil fuels and the rate for the nonfossil fuel generated  
16 electricity to potentially enable utility customers to share in  
17 the benefits of fuel cost savings resulting from the use of  
18 nonfossil fuel generated electricity. As the commission deems  
19 appropriate, the just and reasonable rate for nonfossil fuel  
20 generated electricity supplied to the public utility by the  
21 producer may include mechanisms for reasonable and appropriate  
22 incremental adjustments, such as adjustments linked to consumer



1 price indices for inflation or other acceptable adjustment  
2 mechanisms.

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

- 18 (1) Just and reasonable;
- 19 (2) Not unduly prejudicial to the customers of the public  
20 utility;
- 21 (3) Promotional of Hawaii's long-term objective of energy  
22 self-sufficiency;



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

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

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

9           (e) Any agreement for the purchase of electricity  
10 generated from nonfossil fuel sources by an electric company  
11 from a producer of electricity from nonfossil fuel sources shall  
12 contain provisions that state that the utility shall not be  
13 entitled to curtail or interrupt a producer of electricity from  
14 nonfossil fuel sources for more than a maximum number of hours  
15 per calendar year, as agreed upon by the producer of electricity  
16 from nonfossil fuel sources and the electric utility company,  
17 and that in the event the electric utility company curtails or  
18 interrupts the producer of electricity from nonfossil fuel  
19 sources in excess of the maximum number agreed upon, the  
20 producer of electricity from nonfossil fuel sources shall be  
21 entitled to receive payment for a prescribed percentage of the  
22 nonfossil fuel source electricity generating facility design



1 capacity multiplied by the number of hours of curtailment or  
 2 interruption from a prescribed time period each day, in excess  
 3 of the maximum number of hours per calendar year agreed upon,  
 4 multiplied by the applicable energy payment rate, except in an  
 5 emergency situation that imminently threatens the electrical  
 6 grid or due to a natural or manmade disaster."

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

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

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INTRODUCED BY:

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# S.B. NO. 612

**Report Title:**

Public Utilities; Geothermal Energy; Nonfossil Fuel Electricity; Curtailment

**Description:**

Amends sections 269-27.1 and 269-27.2, HRS, to require agreements to purchase geothermal and nonfossil fuel generated electricity to contain provisions that provide independent power producers with compensation for excessive curtailment.

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