
A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

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

4 "Public utility":

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



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;
- 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 subparagraph, a customer's property
15 shall include all contiguous property owned
16 or 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; [~~and~~]



1 (N) Any person who owns, controls, operates, or
2 manages a renewable energy system that is located
3 on [~~such~~] the person's property and provides,
4 sells, or transmits the power generated from that
5 renewable energy system to an electric utility or
6 to lessees or tenants on the person's property
7 where the renewable energy system is located;
8 provided that:
9 (i) An interconnection, as defined in section
10 269-141, is maintained with an electric
11 public utility to preserve the lessees' or
12 tenants' ability to be served by an electric
13 utility;
14 (ii) [~~Such~~] The person does not use an electric
15 public utility's transmission or
16 distribution lines to provide, sell, or
17 transmit electricity to lessees or tenants;
18 (iii) At the time that the lease agreement is
19 signed, the rate charged to the lessee or
20 tenant for the power generated by the
21 renewable energy system shall be no greater



1 than the effective rate charged per kilowatt
2 hour from the applicable electric utility
3 schedule filed with the public utilities
4 commission;

5 (iv) The rate schedule or formula shall be
6 established for the duration of the lease,
7 and the lease agreement entered into by the
8 lessee or tenant shall reflect such rate
9 schedule or formula;

10 (v) The lease agreement shall not abrogate any
11 terms or conditions of applicable tariffs
12 for termination of services for nonpayment
13 of electric utility services or rules
14 regarding health, safety, and welfare;

15 (vi) The lease agreement shall disclose: (1) the
16 rate schedule or formula for the duration of
17 the lease agreement; (2) that, at the time
18 that the lease agreement is signed, the rate
19 charged to the lessee or tenant for the
20 power generated by the renewable energy
21 system shall be no greater than the



1 effective rate charged per kilowatt hour
 2 from the applicable electric utility
 3 schedule filed with the public utilities
 4 commission; (3) that the lease agreement
 5 shall not abrogate any terms or conditions
 6 of applicable tariffs for termination of
 7 services for nonpayment of electric utility
 8 services or rules regarding health, safety,
 9 and welfare; and (4) whether the lease is
 10 contingent upon the purchase of electricity
 11 from the renewable energy system; provided
 12 further that any disputes concerning the
 13 requirements of this provision shall be
 14 resolved pursuant to the provisions of the
 15 lease agreement or chapter 521, if
 16 applicable; and

17 (vii) Nothing in this section shall be construed
 18 to permit wheeling[-]; and

19 (0) Any person who provides water solely to
 20 agricultural activities. For purposes of this



- 1 subparagraph, "agricultural activities" means
2 activities for which:
- 3 (i) A majority of the area of each lot of record
4 is currently engaged in agricultural
5 activities and uses, as described in section
6 205-4.5(a)(1), (2), and (3);
- 7 (ii) A schedule F was filed on a federal income
8 tax return by a taxpayer who is engaged n
9 agricultural activities and uses, as
10 described in clause (i); and
- 11 (iii) Agricultural activities are the primary
12 purpose for the holding of land as evidenced
13 by possession of a valid county agriculture
14 tax dedication status or a valid
15 agricultural conservation easement.
- 16 Qualifying agricultural activities include
17 traditional native Hawaiian agricultural
18 practices.

19 If the application of this chapter is ordered by the
20 commission in any case provided in paragraph (2)(C), (D), (H),
21 and (I), the business of any public utility that presents



1 evidence of bona fide operation on the date of the commencement
2 of the proceedings resulting in the order shall be presumed to
3 be necessary to the public convenience and necessity, but any
4 certificate issued under this proviso shall nevertheless be
5 subject to terms and conditions as the public utilities
6 commission may prescribe, as provided in sections 269-16.9 and
7 269-20."

8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Public Utility; Definition; Agricultural Activities

Description:

Amends the definition of "public utility" by excluding any person who provides water solely to agricultural activities. Defines agricultural activities. (HB1372 HD1)

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