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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1           SECTION 1. The legislature finds that Hawaii utility  
2 ratepayers have been forced to pay escalating prices for  
3 electricity under regulatory policies that financially  
4 incentivize the investor-owned utility monopoly to increase  
5 consumer costs. Under these conditions, in a competitive  
6 market, new companies would emerge to better serve customers  
7 with cheaper rates.

8           Over the last decade, energy efficiency, conservation, and  
9 increasingly cheaper solar panels have contributed to declining  
10 electricity consumption in Hawaii despite a growing population.  
11 While electricity sales have fallen nearly twelve per cent from  
12 one thousand twelve gigawatt-hours in 2006 to eight hundred  
13 ninety-eight gigawatt hours in 2014, investor-owned utility  
14 profits have escalated more than eighty-four per cent from  
15 \$75,000,000 to over \$138,000,000 annually, raising public anger  
16 reflected in news stories.



1           The growing contradiction between the investor-owned  
2 utility's shrinking electricity sales and soaring profits has  
3 left many customers wondering where their money is going. The  
4 exception to this profit escalation is the non-profit Kauai  
5 Island Utility Cooperative, which has been able to manage  
6 utility operations over the last decade with far fewer, and  
7 substantially less, base rate increases than each of the  
8 Hawaiian Electric Industries' electric utility companies. The  
9 public utilities commission has stated that investor-owned  
10 utility rates have skyrocketed in part because the Hawaiian  
11 Electric Industries' electric utility companies do not, by any  
12 discernible indications, appear to feel financially compelled to  
13 implement corresponding decreases in utility expenses to the  
14 extent that would occur with declining net revenues.

15           The legislature further finds that even when consumers  
16 attempt to save money by decreasing energy consumption, a policy  
17 known as decoupling forces ratepayers to pay for the value of  
18 electricity not consumed, among other things. A 2014  
19 investigation by Honolulu Civil Beat found leaked documents from  
20 the public utilities commission revealing that Oahu residents  
21 are paying about an extra \$95 per year, Maui residents are



1 paying about an extra \$57 per year, Hawaii Island residents are  
2 paying about an extra \$26 more per year, and Molokai and Lanai  
3 residents are paying about an extra \$38 per year because of  
4 decoupling policies.

5 The legislature finds that current policies also allow  
6 investor-owned utilities to profit from new infrastructure  
7 spending while passing these costs to ratepayers. This serves  
8 as an incentive to increase infrastructure spending to boost  
9 profits, which further inflates ratepayer bills. The Wall  
10 Street Journal found that "the more [utilities] spend, the more  
11 profits they earn," and called it "a regulatory system that  
12 turns corporate accounting on its head." Achieving the State's  
13 one hundred per cent renewable portfolio standard requires grid  
14 upgrades and investment. However, this necessity should not be  
15 a blank check for utilities to justify massive new spending.  
16 Regulatory policies must change to ensure utilities maximize  
17 public benefit, reduce ratepayer risk, and meet Hawaii's energy  
18 goals at the lowest cost to consumers.

19 While reviewing these policies, the public utilities  
20 commission found that it is difficult to ascertain whether the  
21 Hawaiian Electric Industries' electric utility companies'



1 increasing capital investments are strategic investments or  
2 simply a series of unrelated capital projects that effectively  
3 expand utility rate base and increase profits while appearing to  
4 provide little or limited long-term customer value. With  
5 investor-owned utilities passing on nearly all infrastructure  
6 costs to ratepayers, the public utilities commission stated that  
7 as risk is currently allocated, there does not appear to be an  
8 effective incentive for the Hawaiian Electric Industries'  
9 electric utility companies to control certain costs, including  
10 baseline project costs.

11 On November 4, 2015, the public utilities commission, for a  
12 second time, rejected the investor-owned utilities' plans for  
13 future infrastructure spending because the commission is  
14 concerned that the implicit deal in the Hawaiian Electric  
15 Industries' electric utility companies' preferred plans appears  
16 to favor the financial interests of the companies while  
17 providing less prominent and less certain benefits for  
18 customers. The commission explained that the Hawaiian Electric  
19 Industries' electric utility companies appear to have included  
20 resources with higher costs and uncertain feasibility at the



1 expense of other lower-cost renewable sources that could be  
2 developed sooner and with lower development risk.

3 Finally, the public utilities commission concluded that the  
4 Hawaiian Electric Industries' electric utility companies'  
5 prominent claim that the power supply improvement plan would  
6 result in twenty per cent residential bill reductions is a  
7 selectively limited and potentially misleading characterization  
8 of the supporting analyses. Closer examination indicates that  
9 the power supply improvement plan costs and rates would increase  
10 for Hawaiian Electric Company, and would not decrease  
11 substantially for the Maui Electric Company and the Hawaii  
12 Electric Light Company.

13 The legislature finds that investor-owned utilities in  
14 Hawaii and around the nation have operated on largely the same  
15 business model for over a century. However, that is rapidly  
16 changing with the growth of alternative renewable energy  
17 technology, spurring a paradigm shift in new competition and  
18 energy economics. To satisfy shareholder expectations,  
19 investor-owned utilities have been forced to make up for lost  
20 revenue as a result of declining electricity sales by boosting  
21 profits through increasing infrastructure spending and other



1 current policies that can needlessly inflate ratepayer costs.  
2 The public utilities commission has stated that the Hawaiian  
3 Electric Industries' electric utility companies appear not to be  
4 moving toward the sustainable business model necessary to  
5 address technological advancements and increasing customer  
6 expectations, and that to date, the utility displays  
7 insufficient urgency in addressing this rapidly changing  
8 business environment.

9 The legislature finds that it has an obligation to place  
10 the interests of the people first. Maximizing public benefit  
11 likely means a transition to utility models that place the  
12 interests of the people first. However, until a utility model  
13 transformation takes place, it is imperative to align investor-  
14 owned utility regulatory policies with customers' interests and  
15 the State's public policy goals before billions of dollars in  
16 additional costs are added to ratepayer electric bills.

17 The legislature finds the responsibility of aligning  
18 investor-owned utility regulatory policies with customers'  
19 interests and the State's public policy goals is not limited to  
20 the public utilities commission, but more broadly rests with the  
21 State and county governments that represent the public interest.



1 The regulatory framework under which utilities operate and the  
2 scope of regulation by the public utilities commission are  
3 established by the legislature, which holds the exclusive  
4 authority to issue, amend, or revoke franchise rights which  
5 permit utilities to operate in the State.

6 The purpose of this Act is to protect ratepayers from  
7 potentially unnecessary additional costs by requiring that  
8 electric utility rates are considered just and reasonable only  
9 if the rates are derived from an earnings impact mechanism  
10 developed by the public utilities commission.

11 SECTION 2. 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 used and useful for public  
14 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) Rates made or charged by an electric utility or by two  
2 or more electric utilities jointly shall be considered just and  
3 reasonable under this section only if the rate is derived from  
4 an earnings impact mechanism developed by the commission that  
5 directly ties the utility's revenues to the achievement of the  
6 following performance-based metrics and conditions:

7        (1) Renewable portfolio standards in compliance with  
8        section 269-92;

9        (2) Ratepayer cost reduction;

10       (3) Reliability and safety;

11       (4) Satisfactory levels of customer service;

12       (5) Information access, including but not limited to  
13 public access to electric system planning data and  
14 aggregated customer energy usage data;

15       (6) The interconnection of distributed energy resources to  
16 meet public demand; and

17       (7) Procurement of power generation from non-utility owned  
18 resources in place of existing, planned, and new  
19 utility-owned resources and power generating  
20 facilities."

21       SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval;  
2 provided that the public utilities commission may delay the  
3 implementation of the requirements of this Act until no later  
4 than January 1, 2020.  
5

INTRODUCED BY:



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JAN 27 2016



# H.B. NO. 2649

**Report Title:**

PUC; Electric Utilities; Rates

**Description:**

Provides that electric utility rates or rate changes shall only be considered just and reasonable if the rate is derived from an earnings impact mechanism that directly ties the utility's revenues to the achievement of certain performances-based metrics and conditions. Effective upon approval, but allows PUC to delay implementation until no later than 1/1/2020.

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