

---

---

# A BILL FOR AN ACT

RELATING TO RETAIL WHEELING.

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

1           SECTION 1. The legislature finds that the average retail  
2 price of electricity to the end-use customer in Hawaii is two  
3 hundred sixty-eight per cent of the national average. Further,  
4 Hawaii County electricity rates are triple the national average,  
5 causing some of the most vulnerable populations of the State to  
6 pay the absolute highest rates in the nation to keep their  
7 lights on at night. The legislature further finds that the  
8 unreasonable electricity costs are placing an unbearable burden  
9 on the residents of Hawaii that must be alleviated.

10           The legislature also finds that in general, retail wheeling  
11 refers to the process of transmitting electric power from a  
12 seller's point of generation across a third-party-owned  
13 transmission and distribution system to the seller's retail  
14 customer. While over half of the states engage in retail  
15 wheeling in some form, Hawaii restricts competition through  
16 forcing independent power producers to sell their power to a  
17 public utility and prevents direct sale to end users.



1           The legislature further finds that the State must diversify  
2 its renewable portfolio to meet certain clean energy standards  
3 under the Clean Energy Initiative and further our energy  
4 security. Additionally, creating jobs and decreasing the  
5 unemployment rate among Hawaii residents, especially in less  
6 populated areas, is in the public interest. To this end, the  
7 legislature finds that wheeling can provide competition in the  
8 energy sector, which will directly and indirectly allow for more  
9 renewable and clean energies, expand the market, and create  
10 jobs.

11           In 2004, the legislature adopted Senate Concurrent  
12 Resolution No. 180 requesting the public utility commission to  
13 explore how to implement the concept of intra-governmental  
14 wheeling to facilitate government wheeling of electricity, and  
15 other regulatory measures, to support the development of  
16 renewable energy systems by federal, state, and county agencies.

17           In 2007, the public utilities commission finally opened  
18 proceedings in response to this resolution to: (1) investigate  
19 the impacts, if any, of wheeling on the state's electric  
20 industry; (2) address interconnection matters; (3) identify the  
21 costs to utilities of implementing intra-governmental wheeling;



1 (4) consider the financial cost and impact of intra-governmental  
2 wheeling on non-wheeling customers of a utility; (5) identify  
3 any power back-up issues; and (6) address how rates for intra-  
4 governmental wheeling would be set. After eleven years of  
5 waiting for the public utilities commission to address wheeling  
6 opportunities, the legislature can no longer wait on a public  
7 utilities commission docket that has no completion in its  
8 forecast.

9 The legislature further finds that the narrow intra-  
10 governmental allowance of wheeling does not go far enough to  
11 allow Hawaii residents to benefit from the limited competition  
12 created by intra-governmental wheeling. To date, after  
13 undergoing a suspension and numerous delays, the docket remains  
14 open, to the detriment of Hawaii residents who would benefit  
15 from the lower rates wheeling would afford.

16 The purpose of this Act is to allow retail wheeling in  
17 Hawaii to increase competition within Hawaii's electrical  
18 markets, expand customer choice, provide incentives for the  
19 production of renewable energy, and diversify Hawaii's energy  
20 base.



1 SECTION 2. Chapter 269, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 **"§269- Retail wheeling; rules and procedures.** No later  
5 than July 1, 2018, the public utilities commission shall  
6 establish necessary policies, and rules pursuant to chapter 91,  
7 for the deployment of retail wheeling to enable independent  
8 power producers to sell electricity directly to end users.

9 For purposes of this section, "retail wheeling" means the  
10 distribution, over a public utility's transmission and  
11 distribution system, of power that is generated by an  
12 independent power producer and sold by the independent power  
13 producer directly to the end user."

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

17 "[PART I. PUBLIC UTILITIES, GENERALLY]

18 **§269-1 Definitions.** As used in this chapter:

19 "Public utility":

20 (1) Includes every person who may own, control, operate,  
21 or manage as owner, lessee, trustee, receiver, or



1 otherwise, whether under a franchise, charter,  
2 license, articles of association, or otherwise, any  
3 plant or equipment, or any part thereof, directly or  
4 indirectly for public use for the transportation of  
5 passengers or freight; for the conveyance or  
6 transmission of telecommunications messages; for the  
7 furnishing of facilities for the transmission of  
8 intelligence by electricity within the State or  
9 between points within the State by land, water, or  
10 air; for the production, conveyance, transmission,  
11 delivery, or furnishing of light, power, heat, cold,  
12 water, gas, or oil; for the storage or warehousing of  
13 goods; or for the disposal of sewage; provided that  
14 the term shall include:

15 (A) An owner or operator of a private sewer company  
16 or sewer facility; and

17 (B) A telecommunications carrier or  
18 telecommunications common carrier; and

19 (2) Shall not include:

20 (A) An owner or operator of an aerial transportation  
21 enterprise;



# H.B. NO. 821

- 1 (B) An owner or operator of a taxicab as defined in  
2 this section;
- 3 (C) Common carriers that transport only freight on  
4 the public highways, unless operating within  
5 localities, along routes, or between points that  
6 the public utilities commission finds to be  
7 inadequately serviced without regulation under  
8 this chapter;
- 9 (D) Persons engaged in the business of warehousing or  
10 storage unless the commission finds that  
11 regulation is necessary in the public interest;
- 12 (E) A carrier by water to the extent that the carrier  
13 enters into private contracts for towage,  
14 salvage, hauling, or carriage between points  
15 within the State; provided that the towing,  
16 salvage, hauling, or carriage is not pursuant to  
17 either an established schedule or an undertaking  
18 to perform carriage services on behalf of the  
19 public generally;
- 20 (F) A carrier by water, substantially engaged in  
21 interstate or foreign commerce, that transports



# H.B. NO. 821

- 1 passengers on luxury cruises between points
- 2 within the State or on luxury round-trip cruises
- 3 returning to the point of departure;
- 4 (G) Any user, owner, or operator of the Hawaii
- 5 electric system as defined under section 269-141;
- 6 (H) A telecommunications provider only to the extent
- 7 determined by the public utilities commission
- 8 pursuant to section 269-16.9;
- 9 (I) Any person who controls, operates, or manages
- 10 plants or facilities developed pursuant to
- 11 chapter 167 for conveying, distributing, and
- 12 transmitting water for irrigation and other
- 13 purposes for public use and purpose;
- 14 (J) Any person who owns, controls, operates, or
- 15 manages plants or facilities for the reclamation
- 16 of wastewater; provided that:
- 17 (i) The services of the facility are provided
- 18 pursuant to a service contract between the
- 19 person and a state or county agency and at
- 20 least ten per cent of the wastewater
- 21 processed is used directly by the state or



# H.B. NO. 821

1 county agency that entered into the service  
2 contract;

3 (ii) The primary function of the facility is the  
4 processing of secondary treated wastewater  
5 that has been produced by a municipal  
6 wastewater treatment facility owned by a  
7 state or county agency;

8 (iii) The facility does not make sales of water to  
9 residential customers;

10 (iv) The facility may distribute and sell  
11 recycled or reclaimed water to entities not  
12 covered by a state or county service  
13 contract; provided that, in the absence of  
14 regulatory oversight and direct competition,  
15 the distribution and sale of recycled or  
16 reclaimed water shall be voluntary and its  
17 pricing fair and reasonable. For purposes  
18 of this subparagraph, "recycled water" and  
19 "reclaimed water" means treated wastewater  
20 that by design is intended or used for a  
21 beneficial purpose; and





- 1 (v) The facility is not engaged, either directly  
2 or indirectly, in the processing of food  
3 wastes;
- 4 (K) Any person who owns, controls, operates, or  
5 manages any seawater air conditioning district  
6 cooling project; provided that at least fifty per  
7 cent of the energy required for the seawater air  
8 conditioning district cooling system is provided  
9 by a renewable energy resource, such as cold,  
10 deep seawater;
- 11 (L) Any person who owns, controls, operates, or  
12 manages plants or facilities primarily used to  
13 charge or discharge a vehicle battery that  
14 provides power for vehicle propulsion;
- 15 (M) Any person who:
  - 16 (i) Owns, controls, operates, or manages a  
17 renewable energy system that is located on a  
18 customer's property; and
  - 19 (ii) Provides, sells, or transmits the power  
20 generated from that renewable energy system  
21 to an electric utility or to the customer on



1           whose property the renewable energy system  
2           is located; provided that, for purposes of  
3           this subparagraph, a customer's property  
4           shall include all contiguous property owned  
5           or leased by the customer without regard to  
6           interruptions in contiguity caused by  
7           easements, public thoroughfares,  
8           transportation rights-of-way, and utility  
9           rights-of-way; and

10           (N) Any person who owns, controls, operates, or  
11           manages a renewable energy system that is located  
12           on such person's property and provides, sells, or  
13           transmits the power generated from that renewable  
14           energy system to an electric utility or to  
15           lessees or tenants on the person's property where  
16           the renewable energy system is located; provided  
17           that:

18           (i) An interconnection, as defined in section  
19           269-141, is maintained with an electric  
20           public utility to preserve the lessees' or



# H.B. NO. 821

- 1 tenants' ability to be served by an electric
- 2 utility;
- 3 (ii) Such person does not use an electric public
- 4 utility's transmission or distribution lines
- 5 to provide, sell, or transmit electricity to
- 6 lessees or tenants;
- 7 (iii) At the time that the lease agreement is
- 8 signed, the rate charged to the lessee or
- 9 tenant for the power generated by the
- 10 renewable energy system shall be no greater
- 11 than the effective rate charged per kilowatt
- 12 hour from the applicable electric utility
- 13 schedule filed with the public utilities
- 14 commission;
- 15 (iv) The rate schedule or formula shall be
- 16 established for the duration of the lease,
- 17 and the lease agreement entered into by the
- 18 lessee or tenant shall reflect such rate
- 19 schedule or formula;
- 20 (v) The lease agreement shall not abrogate any
- 21 terms or conditions of applicable tariffs



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



# H.B. NO. 821

1 further that any disputes concerning the  
 2 requirements of this provision shall be  
 3 resolved pursuant to the provisions of the  
 4 lease agreement or chapter 521, if  
 5 applicable; and

6 ~~[(vii) Nothing in this section shall be construed~~  
 7 ~~to permit wheeling.]~~

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

10 SECTION 5. This Act shall take effect on upon approval.

11  
 INTRODUCED BY: *Pat Mcintosh*

JAN 23 2017



# H.B. NO. 821

**Report Title:**

Retail Wheeling; Public Utilities

**Description:**

Requires the public utilities commission to establish policies and procedures related to retail wheeling to enable independent power producers to sell electricity directly to end users.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

