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## 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 price of  
2 electricity is a financial concern to Hawaii residents.  
3 According to the U.S. Energy Information Administration, the  
4 average retail price of electricity to the end users in Hawaii  
5 is the highest in the nation at two hundred fifty-two percent  
6 more than the national average. Hawaii residents pay the highest  
7 rates for being among one of the lowest energy consumption per  
8 capita states in the nation. The legislature concludes that  
9 these electricity prices are placing an unreasonable burden on  
10 Hawaii residents and must be alleviated.

11           Retail wheeling refers to the process of selling and  
12 transmitting electric power through a third-party public utility  
13 to the end user. This mechanism introduces competition into the  
14 market by unbundling the independent power producers from the  
15 public utilities for more consumer options that will compete in  
16 the larger market, thus inducing competitive prices. While some  
17 states engage in retail wheeling, Hawaii restricts retail



1 wheeling through requiring independent power producers to sell  
2 their power to public utilities, and therefore prevents direct  
3 sales to end users. Currently, this restriction creates a  
4 public utility monopoly with limited consumer choice to contract  
5 electricity at a prudent price.

6 In public interest, the State must diversify its renewable  
7 portfolio to meet the Hawaii Clean Energy Initiative and  
8 increase its energy security. To this end, the legislature  
9 finds that retail wheeling can provide an affordable mechanism  
10 to implement and distribute renewable energy.

11 Despite previous efforts in the past fifteen years, the  
12 legislature can no longer wait for the public utilities  
13 commission to address the legislature's former intra-  
14 governmental wheeling resolution and proposes statewide retail  
15 wheeling because of the foreseen supply interruptions and oil  
16 price volatility from Hawaii's reliance on imported oil that  
17 undergirds about two-thirds of the State's energy needs.

18 In 2004, the legislature adopted Senate Concurrent  
19 Resolution No. 180 requesting the public utility commission to  
20 explore how to implement the concept of intra-governmental  
21 wheeling to facilitate government wheeling of electricity, and



1 other regulatory measures, to support the development of  
2 renewable energy systems by federal, state, and county agencies.

3 In 2007, the public utilities commission opened proceedings  
4 in response to this resolution to: (1) investigate the impacts,  
5 if any, of wheeling on the state's electric industry; (2) address  
6 interconnection matters; (3) identify the costs to utilities of  
7 implementing intra-governmental wheeling; (4) consider the  
8 financial cost and impact of intra-governmental wheeling on non-  
9 wheeling customers of a utility; (5) identify any power back-up  
10 issues; and (6) address how rates for intra-governmental  
11 wheeling would be set (Docket No. 2007-0176). But in 2008, the  
12 public commission granted the Department of Business, Economic  
13 Development, and Tourism its request to suspend the docket for  
14 one year to review the docket's necessity with the plans to  
15 acquire renewable energy under the October 20, 2008, Energy  
16 Agreement from the Hawaii Clean Energy Initiative (HCEI). In  
17 2011, the public commission reinstated the docket and decided to  
18 re-discuss it depending on the outcome of reviewing reliability  
19 standards for electric utilities (Docket No. 2011-0206). Much  
20 of the docket was completed, but there were several contingent



1 issues that needed to be addressed by specific electric  
2 utilities leaving the docket open to date.

3 The legislature finds that compliance with the Energy  
4 Agreement hindered the Docket No. 2007-0176 from advancing, and  
5 further concludes that implementing retail wheeling is the  
6 method needed to reduce electrical bills for Hawaii residents,  
7 meanwhile contributing to the feasibility and affordability of  
8 renewable energy.

9 The purpose of this Act is to allow retail wheeling in  
10 Hawaii to increase competition within Hawaii's electrical market  
11 and expand end user choice, therefore encouraging competitive  
12 electrical pricing and incentivizing the production of renewable  
13 energy and diversify Hawaii's energy base.

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

17 "§269- Retail wheeling; rules and procedures. No later  
18 than July 1, 2019, the public utilities commission shall  
19 establish necessary policies, and rules pursuant to chapter 91,  
20 to implement retail wheeling.



1        For purposes of this section, "retail wheeling" means the  
 2 distribution, over a public utility's transmission and  
 3 distribution system, of power that is generated by an  
 4 independent power producer and sold by the independent power  
 5 producer directly to the end user."

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

9                                "[PART I. PUBLIC UTILITIES, GENERALLY]

10        §269-1 Definitions. As used in this chapter:

11        "Public utility":

- 12        (1) Includes every person who may own, control, operate,  
 13                or manage as owner, lessee, trustee, receiver, or  
 14                otherwise, whether under a franchise, charter,  
 15                license, articles of association, or otherwise, any  
 16                plant or equipment, or any part thereof, directly or  
 17                indirectly for public use for the transportation of  
 18                passengers or freight; for the conveyance or  
 19                transmission of telecommunications messages; for the  
 20                furnishing of facilities for the transmission of  
 21                intelligence by electricity within the State or



1           between points within the State by land, water, or  
2           air; for the production, conveyance, transmission,  
3           delivery, or furnishing of light, power, heat, cold,  
4           water, gas, or oil; for the storage or warehousing of  
5           goods; or for the disposal of sewage; provided that  
6           the term shall include:

7           (A) An owner or operator of a private sewer company  
8                 or sewer facility; and

9           (B) A telecommunications carrier or  
10                telecommunications common carrier; and

11         (2) Shall not include:

12           (A) An owner or operator of an aerial transportation  
13                enterprise;

14           (B) An owner or operator of a taxicab as defined in  
15                this section;

16           (C) Common carriers that transport only freight on  
17                the public highways, unless operating within  
18                localities, along routes, or between points that  
19                the public utilities commission finds to be  
20                inadequately serviced without regulation under  
21                this chapter;



- 1 (D) Persons engaged in the business of warehousing or  
2 storage unless the commission finds that  
3 regulation is necessary in the public interest;
- 4 (E) A carrier by water to the extent that the carrier  
5 enters into private contracts for towage,  
6 salvage, hauling, or carriage between points  
7 within the State; provided that the towing,  
8 salvage, hauling, or carriage is not pursuant to  
9 either an established schedule or an undertaking  
10 to perform carriage services on behalf of the  
11 public generally;
- 12 (F) A carrier by water, substantially engaged in  
13 interstate or foreign commerce, that transports  
14 passengers on luxury cruises between points  
15 within the State or on luxury round-trip cruises  
16 returning to the point of departure;
- 17 (G) Any user, owner, or operator of the Hawaii  
18 electric system as defined under section 269-141;
- 19 (H) A telecommunications provider only to the extent  
20 determined by the public utilities commission  
21 pursuant to section 269-16.9;



- 1 (I) Any person who controls, operates, or manages
- 2 plants or facilities developed pursuant to
- 3 chapter 167 for conveying, distributing, and
- 4 transmitting water for irrigation and other
- 5 purposes for public use and purpose;
- 6 (J) Any person who owns, controls, operates, or
- 7 manages plants or facilities for the reclamation
- 8 of wastewater; provided that:
  - 9 (i) The services of the facility are provided
  - 10 pursuant to a service contract between the
  - 11 person and a state or county agency and at
  - 12 least ten per cent of the wastewater
  - 13 processed is used directly by the state or
  - 14 county agency that entered into the service
  - 15 contract;
  - 16 (ii) The primary function of the facility is the
  - 17 processing of secondary treated wastewater
  - 18 that has been produced by a municipal
  - 19 wastewater treatment facility owned by a
  - 20 state or county agency;





- 1                   (iii) The facility does not make sales of water to
- 2                               residential customers;
- 3                   (iv) The facility may distribute and sell
- 4                               recycled or reclaimed water to entities not
- 5                               covered by a state or county service
- 6                               contract; provided that, in the absence of
- 7                               regulatory oversight and direct competition,
- 8                               the distribution and sale of recycled or
- 9                               reclaimed water shall be voluntary and its
- 10                              pricing fair and reasonable. For purposes
- 11                             of this subparagraph, "recycled water" and
- 12                             "reclaimed water" means treated wastewater
- 13                             that by design is intended or used for a
- 14                             beneficial purpose; and
- 15                   (v) The facility is not engaged, either directly
- 16                               or indirectly, in the processing of food
- 17                               wastes;
- 18                   (K) Any person who owns, controls, operates, or
- 19                               manages any seawater air conditioning district
- 20                             cooling project; provided that at least fifty per
- 21                             cent of the energy required for the seawater air



1 conditioning district cooling system is provided  
2 by a renewable energy resource, such as cold,  
3 deep seawater;

4 (L) Any person who owns, controls, operates, or  
5 manages plants or facilities primarily used to  
6 charge or discharge a vehicle battery that  
7 provides power for vehicle propulsion;

8 (M) Any person who:  
9 (i) Owns, controls, operates, or manages a  
10 renewable energy system that is located on a  
11 customer's property; and

12 (ii) Provides, sells, or transmits the power  
13 generated from that renewable energy system  
14 to an electric utility or to the customer on  
15 whose property the renewable energy system  
16 is located; provided that, for purposes of  
17 this subparagraph, a customer's property  
18 shall include all contiguous property owned  
19 or leased by the customer without regard to  
20 interruptions in contiguity caused by  
21 easements, public thoroughfares,



1 transportation rights-of-way, and utility  
2 rights-of-way; and  
3 (N) Any person who owns, controls, operates, or  
4 manages a renewable energy system that is located  
5 on such person's property and provides, sells, or  
6 transmits the power generated from that renewable  
7 energy system to an electric utility or to  
8 lessees or tenants on the person's property where  
9 the renewable energy system is located; provided  
10 that:  
11 (i) An interconnection, as defined in section  
12 269-141, is maintained with an electric  
13 public utility to preserve the lessees' or  
14 tenants' ability to be served by an electric  
15 utility;  
16 (ii) Such person does not use an electric public  
17 utility's transmission or distribution lines  
18 to provide, sell, or transmit electricity to  
19 lessees or tenants;  
20 (iii) At the time that the lease agreement is  
21 signed, the rate charged to the lessee or

1                   tenant for the power generated by the  
2                   renewable energy system shall be no greater  
3                   than the effective rate charged per kilowatt  
4                   hour from the applicable electric utility  
5                   schedule filed with the public utilities  
6                   commission;

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

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

17                  (vi) The lease agreement shall disclose: (1) the  
18                  rate schedule or formula for the duration of  
19                  the lease agreement; (2) that, at the time  
20                  that the lease agreement is signed, the rate  
21                  charged to the lessee or tenant for the



1 power generated by the renewable energy  
2 system shall be no greater than the  
3 effective rate charged per kilowatt hour  
4 from the applicable electric utility  
5 schedule filed with the public utilities  
6 commission; (3) that the lease agreement  
7 shall not abrogate any terms or conditions  
8 of applicable tariffs for termination of  
9 services for nonpayment of electric utility  
10 services or rules regarding health, safety,  
11 and welfare; and (4) whether the lease is  
12 contingent upon the purchase of electricity  
13 from the renewable energy system; provided  
14 further that any disputes concerning the  
15 requirements of this provision shall be  
16 resolved pursuant to the provisions of the  
17 lease agreement or chapter 521, if  
18 applicable. [~~and~~]  
19 [~~(vii) Nothing in this section shall be construed~~  
20 ~~to permit wheeling.~~]



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: RL McINTOSH

JAN 23 2019



# H.B. NO. 1159

**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.*

