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# A BILL FOR AN ACT

RELATING TO PUBLIC UTILITY INFRASTRUCTURE.

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

1           SECTION 1. Hawaii's electric ratepayers face continuing  
2 rate increases due in large part to high costs for crude oil and  
3 revenue decoupling, which allows electric utilities to seek rate  
4 increases to compensate for declining revenues resulting from  
5 energy efficiency and distributed generation, and potential  
6 future costs related to grid modernization and power supply  
7 improvement. To provide relief to electric and other utility  
8 ratepayers, the State must aggressively explore new policies,  
9 such as cost recovery and revenue generating mechanisms, to  
10 ensure that ratepayers receive the maximum benefit from utility-  
11 owned and ratepayer-funded assets.

12           In other jurisdictions, public utilities have successfully  
13 benefitted their utility ratepayers through the leasing of  
14 unused ratepayer-funded infrastructure. For example, the  
15 California Public Utilities Commission (CPUC) has approved  
16 numerous agreements between utilities and government and  
17 commercial entities to lease temporarily available, utility-



1 owned underground cable and conduit space, above-ground cable  
2 space on poles, facilities and rights-of-way, and optical  
3 fibers. In authorizing a lease of certain unused (or dark)  
4 optical fibers by Southern California Edison (SCE), the primary  
5 electric company for much of Southern California, the CPUC noted  
6 that the proposed lease is an example of SCE's ongoing effort to  
7 pursue opportunities to generate additional revenues from the  
8 commercial use of SCE's temporarily available capacity, while  
9 also ensuring that ratepayers receive substantial benefits  
10 without risk. Review of approved SCE leases clearly shows that  
11 a utility's unused infrastructure can be leveraged for the  
12 substantial benefit of ratepayers. For example, a lease of two  
13 fibers to the County of Los Angeles approved in 2010 generated  
14 revenues of \$674,280 over its initial five-year term; a 5-year  
15 lease of fibers approved in 2016 had a net present value of  
16 \$1,157,817; and a lease of fibers after an amendment approved in  
17 2017 had a total lease value of \$2,387,197.

18 In approving a lease for conduit space, the CPUC reasoned  
19 that the agreement benefited the telecommunication utilities who  
20 are seeking to build their fiber optic network, had economic and  
21 environmental benefits, and that the public interest was served



1 when utility property is used for other productive purposes  
2 without interfering with the utility's operation or affecting  
3 service to utility customers.

4 Similarly, the leasing of unused utilities infrastructure  
5 to extend Hawaii's fiber optic network can provide significant  
6 economic benefits for ratepayers, reduce environmental impacts  
7 of broadband infrastructure deployment, and promote a broadband  
8 deployment best practice of shared infrastructure to reduce  
9 impacts and cost. The use of existing unused fiber could  
10 significantly speed the expansion of broadband networks by  
11 allowing broadband providers to avoid much of the time consuming  
12 and costly pole attachment, pole make-ready, and excavation  
13 costs and processes required for new fiber installations. Such  
14 a policy would thus promote the State's goals to increase  
15 broadband penetration, improve available service speeds, and  
16 foster competition to increase broadband access in the State at  
17 affordable prices.

18 Under Act 37, Session Laws of Hawaii 2013, the legislature  
19 directed the public utilities commission to consider whether  
20 implementation of certain named policies would be in the public



1 interest by, among other things, inducing and accelerating  
2 utility cost recovery efforts.

3 The purpose of this Act is to require the public utilities  
4 commission to determine whether the implementation of an  
5 additional cost recovery and revenue generating mechanism of  
6 leasing unused fiber, conduit, and other infrastructure is in  
7 the public interest and to include information on incentives and  
8 cost recovery mechanisms in the commission's annual report.

9 SECTION 2. Section 269-5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§269-5 Annual report and register of orders. The public  
12 utilities commission shall prepare and present to the governor  
13 in the month of January in each year a report respecting its  
14 actions during the preceding fiscal year. This report shall  
15 include summary information and analytical, comparative, and  
16 trend data concerning major regulatory issues acted upon and  
17 pending before the commission; cases processed by the  
18 commission, including their dispositions; utility company  
19 operations, capital improvements, and rates; utility company  
20 performance in terms of efficiency and quality of services  
21 rendered; financing orders issued, adjustments made to the



1 public benefits fee, and repayments or credits provided to  
2 electric utility customers pursuant to part X or chapter 196,  
3 part IV; a summary of power purchase agreements, including  
4 pricing, in effect during the fiscal year; environmental matters  
5 having a significant impact upon public utilities; actions of  
6 the federal government affecting the regulation of public  
7 utilities in Hawaii; long and short-range plans and objectives  
8 of the commission; a summary of economic incentives, cost  
9 recovery and income generating mechanisms considered, and the  
10 fiscal impacts where implemented; together with the commission's  
11 recommendations respecting legislation and other matters  
12 requiring executive and legislative consideration. Copies of  
13 the annual reports shall be furnished by the governor to the  
14 legislature. In addition, the commission shall establish and  
15 maintain a register of all its orders and decisions, which shall  
16 be open and readily available for public inspection, and no  
17 order or decision of the commission shall take effect until it  
18 is filed and recorded in this register."

19 SECTION 3. Section 269-6, Hawaii Revised Statutes, is  
20 amended by amending subsection (d) to read as follows:



1           "(d) The public utilities commission, in carrying out its  
2 responsibilities under this chapter, shall consider whether the  
3 implementation of one or more of the following economic  
4 incentives or cost recovery mechanisms would be in the public  
5 interest:

6           (1) The establishment of a shared cost savings incentive  
7 mechanism designed to induce a public utility to  
8 reduce energy costs and operating costs and accelerate  
9 the implementation of energy cost reduction practices;

10          (2) The establishment of a renewable energy curtailment  
11 mitigation incentive mechanism to encourage public  
12 utilities to implement curtailment mitigation  
13 practices when lower cost renewable energy is  
14 available but not utilized through the sharing of  
15 energy cost savings between the public utility,  
16 ratepayer, and affected renewable energy projects;

17          (3) The establishment of a stranded cost recovery  
18 mechanism to encourage the accelerated retirement of  
19 an electric utility fossil fuel electric generation  
20 plant by allowing an electric utility to recover the



1 stranded costs created by early retirement of a fossil  
2 generation plant; [and]

3 (4) The establishment of differentiated authorized rates  
4 of return on common equity to encourage increased  
5 utility investments in transmission and distribution  
6 infrastructure, discourage an electric utility  
7 investment in fossil fuel electric generation plants  
8 to incentivize grid modernization, and disincentivize  
9 fossil generation, respectively[-]; and

10 (5) The establishment of an infrastructure maximization  
11 cost recovery and revenue generating mechanism to  
12 encourage public utilities to lease unused or  
13 temporarily available infrastructure in a manner that  
14 is compatible with utility operations and  
15 substantially benefits the ratepayer."

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: ~~AC. Pichler~~  
Rosalyn H. Baker



# S.B. NO. 1469

**Report Title:**

Public Utilities Commission; Utility Infrastructure; Dark Fiber; Conduit; Broadband

**Description:**

Requires the public utilities commission to determine whether the implementation of a cost recovery and income generating mechanism of leasing unused fiber, conduit, and other infrastructure is in the public interest. Requires the public utilities commission to report on economic incentives, cost recovery mechanisms considered, and the financial impacts where implemented.

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