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# A BILL FOR AN ACT

RELATING TO ELECTRIC UTILITIES.

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

1           SECTION 1. The legislature finds that the State's ongoing  
2 energy transition from fossil fuels to renewable energy has been  
3 driven and supported by certain key energy laws and regulatory  
4 policies that were established after years, if not decades, of  
5 continued advocacy efforts. These laws and regulatory policies  
6 include, among others, the renewable portfolio standards  
7 established in chapter 269, Hawaii Revised Statutes; the  
8 performance-based regulation framework created by the public  
9 utilities commission for electric utilities; and the  
10 encouragement and oversight of renewable power purchase  
11 agreements by the public utilities commission, which are  
12 contractual agreements entered into by electric utilities and  
13 independent power producers for, among other things, the  
14 development and production of new utility-scale renewable energy  
15 projects.

16           The legislature further finds that a bankruptcy or  
17 reorganization proceeding involving an electric utility company



1 in the State could result in the acquisition, merger, or  
2 consolidation of that electric utility company with an acquiring  
3 entity that could ultimately lead to a change in management and  
4 control. In a worst-case scenario, the acquiring entity may  
5 seek to weaken, alter, or reverse those key state energy laws,  
6 policies, frameworks, and agreements that have greatly  
7 contributed to the State's progress towards meeting its  
8 renewable energy goals, or reduce the electric utility's  
9 capacity to maintain a qualified and knowledgeable workforce  
10 with the ability to support and pursue Hawaii's renewable energy  
11 goals, as well as to ensure the safe, efficient, reliable, and  
12 continuous electric utility service to Hawaii consumers and  
13 communities.

14 Accordingly, the purpose of this Act is to:

- 15 (1) Require the public utilities commission to consider or  
16 impose certain conditions of approval on any order  
17 approving, in whole or in part, an application for the  
18 proposed acquisition, merger, or consolidation of an  
19 electric utility company by an acquiring entity; and  
20 (2) Establish a process to ensure that when an electric  
21 utility is subject to an application for a proposed



1 acquisition, merger, or consolidation by a potential  
2 acquiring entity that is an investor-owned utility and  
3 seeks approval of the application from the public  
4 utilities commission, the electric utility shall  
5 demonstrate that it solicited bids from potential  
6 acquiring entities that operate under non-investor-  
7 owned utilities ownership models; and

8 (3) Require the electric utility to submit acceptable bids  
9 from a potential acquiring entity operating under a  
10 non-investor-owned utilities ownership model  
11 concurrently with an application by a potential  
12 acquiring entity that is an investor-owned utility.

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

16 **"§269-A Acquisition, merger, or consolidation of electric**  
17 **utility companies; conditions of approval.** (a) Notwithstanding  
18 sections 269-7.5, 269-18, and 269-19, in any public utilities  
19 commission order approving, in whole or in part, an application  
20 for the proposed acquisition, merger, or consolidation of an  
21 electric utility company by an acquiring entity, the public



1 utilities commission shall consider or impose certain conditions  
2 of approval established under this section, including any other  
3 conditions it deems necessary.

4 (b) Through December 31, 2040, no acquiring entity shall  
5 propose or support any change or amendment that may have a  
6 material adverse effect on the renewable portfolio standards  
7 established under part V of chapter 269, including any change or  
8 amendment that:

9 (1) Is contrary to the purpose of the renewable portfolio  
10 standards laws;

11 (2) Reduces the renewable portfolio standards benchmark  
12 percentage requirements established for net  
13 electricity sales and generation pursuant to section  
14 269-92;

15 (3) Extends the deadline by which the electric utility  
16 company shall comply with the State's renewable  
17 portfolio standards; or

18 (4) Seeks to reduce, curb, or limit the authority of the  
19 public utilities commission to penalize an electric  
20 utility company that fails to meet the renewable



1           portfolio standards pursuant to section 269-92 or  
2           other commission order.

3           (c) The acquiring entity shall not propose or support,  
4           directly or indirectly, the termination of any existing  
5           performance-based regulation framework established for the  
6           electric utility company by the public utilities commission, or  
7           any change or amendment that may have a material adverse effect  
8           on the existing performance-based regulation framework,  
9           including any change or amendment that:

10           (1) Reduces the length of any existing or planned future  
11           multi-year rate plan to a period of less than five  
12           years;

13           (2) Uses a traditional cost-of-service rate case, unless  
14           the public utilities commission has previously issued  
15           an order directing the use of a traditional cost-of-  
16           service rate case;

17           (3) Modifies the existing annual revenue adjustment  
18           formula established for the electric utility company  
19           by the public utilities commission; or

20           (4) Modifies existing accelerated performance incentive  
21           mechanisms in a manner that is contrary to the purpose



1 of the mechanisms or reduces the net amount of  
2 renewable energy procured by the electric utility  
3 company;

4 provided that nothing in this subsection shall limit any re-  
5 opener mechanism established for the electric utility company by  
6 the public utilities commission.

7 (d) The acquiring entity shall not terminate any existing  
8 and valid power purchase agreement between the electric utility  
9 company and an independent power producer of energy services  
10 based solely on the completion of the acquisition, merger, or  
11 consolidation; provided that nothing in this subsection shall  
12 prevent the termination of a contractual agreement as permitted  
13 by its terms, subject to approval from the public utilities  
14 commission. The acquiring entity shall not attempt to  
15 renegotiate any material provisions of any existing and valid  
16 power purchase agreement, including but not limited to the  
17 established payment rates for energy or energy storage or other  
18 commercial terms; provided that nothing in this subsection shall  
19 prevent the amending of a contractual agreement as may be  
20 permitted under its terms, subject to approval by the public  
21 utilities commission. Before the completion of the acquisition,



1 merger, or consolidation of the electric utility company, the  
2 acquiring entity shall not unduly influence the terms of any  
3 power purchase agreement that is under negotiation between the  
4 electric utility company and an independent power producer of  
5 energy services.

6 (e) The acquiring entity shall assume and be bound by the  
7 terms and conditions of any existing collective bargaining  
8 agreement in place at the time of the acquisition, merger, or  
9 consolidation, as it applies to covered employees.

10 (f) The acquiring entity shall retain all covered  
11 employees and shall not induce or cause a reduction in force, or  
12 terminate a covered employee, other than for cause consistent  
13 with any applicable collective bargaining agreement.

14 (g) As used in this section:

15 "Acquiring entity" means the entity that acquires all or  
16 some classes of an electric utility company's interests in an  
17 interest exchange, including but not limited to interest in any  
18 road, line, plant, system, or other real or personal property  
19 necessary for the performance of the electric utility's duties  
20 to the public or any franchise or permit, or right thereunder.



1        "Covered employee" means an individual who is employed by  
2 and party to a collective bargaining agreement with an electric  
3 utility company immediately prior to an acquisition, merger, or  
4 consolidation approved by the public utilities commission, of  
5 such electric utility company by an acquiring entity.

6        "Electric utility company" means a public utility as  
7 defined in section 269-1, for the production of, conveyance,  
8 transmission, delivery, or furnishing of electric power.

9        **§269-B Acquisition, merger, and consolidation of electric**  
10 **utility companies; investor-owned acquiring entities;**  
11 **consideration of alternative applications.** (a) Notwithstanding  
12 sections 269-7.5, 269-18, and 269-19, if an electric utility is  
13 subject to an application for a proposed acquisition, merger, or  
14 consolidation by a potential acquiring entity that is an  
15 investor-owned utility and seeks approval of the application  
16 from the public utilities commission, the electric utility shall  
17 demonstrate that it solicited bids from potential acquiring  
18 entities that operate under non-investor-owned utility ownership  
19 models and specify whether any potential acquiring entities that  
20 operate under such an ownership model submitted bids and the  
21 reasons why such bids were or were not accepted. Upon receiving



1 an acceptable bid from a potential acquiring entity that  
2 operates under a non-investor-owned utilities ownership model,  
3 the electric utility company shall present the bid to the public  
4 utilities commission concurrently with an application by a  
5 potential acquiring entity that is an investor-owned utility.

6 (b) The public utilities commission shall, upon receiving  
7 an application for the acquisition, merger, or consolidation of  
8 an electric utility company, commence a regulatory proceeding to  
9 review the application; provided that any bids submitted  
10 concurrently pursuant to subsection (a) shall be reviewed  
11 concurrently.

12 (c) The electric utility company shall have no obligation  
13 to affirmatively state its position in support of or in  
14 opposition to any pending application.

15 (d) Notwithstanding any law or rule to the contrary, the  
16 public utilities commission shall have the power to consolidate  
17 its review of all submitted applications pursuant to this  
18 section.

19 (e) This section shall not apply to the acquisition of a  
20 not-for-profit enterprise that is not owned by shareholders.

21 (f) For the purposes of this section:



1 "Acquiring entity" has the same meaning as in section 269-

2 A.

3 "Electric utility company" means a public utility as  
4 defined in section 269-1, for the production of, conveyance,  
5 transmission, delivery, or furnishing of electric power.

6 "Non-investor-owned utility ownership model" means a  
7 member-owned cooperative utility or any not-for-profit  
8 enterprise that is not owned by shareholders."

9 SECTION 3. In codifying the new sections added by section  
10 2 of this Act, the revisor of statutes shall substitute  
11 appropriate section numbers for the letters used in designating  
12 the new sections in this Act.

13 SECTION 4. If any provision of this Act, or the  
14 application thereof to any person or circumstance, is held  
15 invalid, the invalidity does not affect other provisions or  
16 applications of the Act that can be given effect without the  
17 invalid provision or application, and to this end the provisions  
18 of this Act are severable.

19 SECTION 5. New statutory material is underscored.



**1** SECTION 6. This Act shall take effect on July 1, 3000.



**Report Title:**

Public Utilities Commission; Electric Utility Companies; Acquisitions; Mergers; Consolidations; Conditions of Approval; Application Review Process; Alternative Applications; Non-Investor-Owned Utilities

**Description:**

Requires the Public Utilities Commission to impose certain conditions of approval on any order approving, in whole or in part, an application for the proposed acquisition, merger, or consolidation of an electric utility company by an acquiring entity. Establishes a process to ensure that when an electric utility is subject to an application for a proposed acquisition, merger, or consolidation by a potential acquiring entity that is an investor-owned utility and seeks approval of the application from the Public Utilities Commission, the electric utility shall demonstrate that it solicited bids from potential acquiring entities that operate under a non-investor-owned utility ownership model. Requires the electric utility to submit acceptable bids from a potential acquiring entity operating under a non-investor-owned utility ownership model concurrently with an application by a potential acquiring entity that is an investor-owned utility. Effective 7/1/3000. (HD1)

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

