

ACT 337

H.B. NO. 1473

A Bill for an Act Relating to Statewide Electric and Telephone Rate Increases to Assist Kauai's Electric and Telephone Ratepayers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that damages sustained during state-declared emergency situations such as natural disasters may affect different regions of the State more harshly than others. Such is the case with Hurricane Iniki, which devastated Kauai but left the rest of the Hawaiian islands relatively unharmed. To more equitably share the costs of reparations in direct response to Iniki, and in consideration of the potential for future disasters to destroy any one of the communities within the State at any time, the legislature declares that there is a compelling need for all of Hawaii's people to assist Kauai's electric and telephone utility ratepayers. Specifically, due to costs incurred by the utilities in repairing damages to their networks as a result of Hurricane Iniki, Kauai's ratepayers may be subject to significant increases in electric and telephone rates. Ratepayers pay for utility costs, and may be required to pay utility restoration costs, as part of the rates set by the public utilities commission.

Kauai Electric, the utility providing electricity to Kauai, estimates that if repair and restoration costs are collected from its ratepayers, it must assess a rate increase of approximately twenty per cent on its customers to recover projected electric utility restoration costs of approximately \$40,000,000 caused by Iniki. This twenty per cent rate increase is in addition to a fourteen per cent general rate increase granted by the public utilities commission after Iniki based on a rate case which was pending when Iniki struck Kauai.

GTE Hawaiian Tel ("Hawaiian Tel"), the utility providing telephone service to Kauai, also sustained widespread damage to its network from Iniki. The hurricane caused severe damage to Hawaiian Tel's interisland microwave antennas, severing the trunking between its central offices in many areas and destroying approximately 1,700 of its utility poles. A significant portion of the distribution network between Hawaiian Tel's central offices and its customers' premises was either destroyed or damaged.

Hawaiian Tel estimates that restoration of the intrastate portion of its services and service to its customers on Kauai will cost approximately \$50,000,000. In the absence of other relief, Hawaiian Tel would need to request increase rates applicable to Kauai ratepayers by more than two hundred per cent to recover the costs of repairing damage resulting from Iniki.

To date, most of the funds used for electrical and telephone network restoration efforts on Kauai have been provided by Kauai Electric and Hawaiian Tel. A way to mitigate the possible impact on the affected utility ratepayers is needed. A portion of the capital expenses incurred as a result of Hurricane Iniki may be reimbursable or offset by insurance payments or other sources of recovery. However, the total amount that will be expended as a result of Iniki and the net amount not recovered from outside sources will not be finally determined until early 1994, when the majority of the restoration effort is expected to be completed.

The legislature further finds that ratepayers, residents, and businesses on Kauai are suffering from extreme hardship due to personal and financial losses caused by Iniki's devastation of the island's physical environment and economy. Therefore, the ability of ratepayers on Kauai to pay for all of the costs of restoring electrical and telephone services damaged by Iniki has been severely reduced.

The purpose of this Act is to more equitably distribute utility restoration and repair costs incurred as a result of a state-declared emergency among utility service ratepayers on a statewide basis.

SECTION 2. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§239- Surcharge amounts exempt. Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross income for the acting utility for purposes of this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 3. Chapter 240, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§240- Surcharge amounts exempt. Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross receipts for the acting utility for purposes of this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 4. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§269. Statewide rate increase surcharge assessment on ratepayers in emergency situations. (a) Any utility that sustains damage to its facilities as a result of a state-declared emergency (including but not limited to disaster relief and civil defense emergencies as defined in chapters 127 and 128) and incurs costs related to the restoration and repair of its facilities which, if assessed only on the utility ratepayers of the affected utility service territory, may result in a rate increase of more than fifteen per cent for the average ratepayer in that utility service territory, may apply to the public utilities commission in accordance with this section to recover the costs provided herein through a monthly surcharge which shall be assessed on a statewide basis and shall be based on the utility's net restoration and repair costs; provided that the surcharge shall not result in an assessment of more than fifteen per cent for the average ratepayer in each of the other utility service territories and provided further that the public utilities commission shall exclude ratepayers in utility service territories with rates that may be substantially higher than other utility service territories in the State.

The public utilities commission shall have the authority to initially set, or subsequently revise, the surcharge to reflect the actual net restoration and repair costs incurred after deduction of amounts received from outside sources of recovery. Such outside sources of recovery shall include, but not be limited to, insurance proceeds, government grants, and shareholder contributions.

(b) Any utility meeting the criteria set forth in subsection (a) may file an application with the public utilities commission setting forth its estimated restoration and repair costs as well as the estimated amount or amounts that may be received from outside sources of recovery.

(c) Within ninety days after filing of the utility's application, the public utilities commission, upon notice, hearing, and a determination that the application is just, reasonable, and in the public interest, shall:

- (1) Decide the extent to which it is just, reasonable, and in the public interest for the damaged utility's ratepayers or shareholders, or both, to bear part or all of the repair and restoration costs;
- (2) Determine whether the estimated amount of any net restoration and repair costs to be borne by the ratepayers of the damaged utility would result in a rate increase of more than fifteen per cent for the average residential ratepayer in that utility's service territory;
- (3) Issue an order allowing the affected utility or another utility acting on behalf of the affected utility to implement a monthly surcharge on all ratepayers statewide for the type of service rendered by the affected utility if the public utilities commission determines pursuant to paragraph (2) that a rate increase of more than fifteen per cent would otherwise be assessed;
- (4) Exclude from any such order ratepayers in utility service territories with rates that are substantially higher than other utility service territories in the State; and
- (5) Periodically review the order to ensure that the amounts collected by, or on behalf of, the utility shall not exceed the amount determined by the public utilities commission to be the net restoration and repair costs actually incurred.

The surcharge shall be assessed over a period to be determined by the public utilities commission; provided, however, that the period shall not exceed ten years.

(d) Any outside sources of recovery, including but not limited to grants from federal or state sources, shall be used to offset any repair and restoration costs except where the use of such funds is otherwise limited by the grantor thereof.

(e) For the purposes of this section, the term "restoration and repair costs" means those costs necessary to restore facilities damaged by a state-declared emergency to a functional level substantially the same as that existing immediately before the emergency and does not include the costs of upgrades or enhancements.

(f) Any utility authorized by the public utilities commission to assess a surcharge pursuant to this section shall state separately the amount of the assessment on each affected ratepayer's monthly bill."

SECTION 5. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any such express exemption or exclusion;
- (7) The first \$1,750 received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country, provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft which are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal

services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents; [and]

- (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents[.]; and
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1993, and shall apply to any qualifying restoration and repair cost incurred on or after September 11, 1992, as a result of damage inflicted by Hurricane Iniki.

(Approved June 30, 1993.)

Note

- 1. Edited pursuant to HRS §23G-16.5.