

ACT 209

S.B. NO. 3180

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Act 130, Session Laws of Hawaii 1992, as amended by Act 29, Session Laws of Hawaii 1993, is amended by amending Section 3 to read as follows:

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

“§269- **Emergency rate action; interruption of fuel supply.** (a) The rate payable by a public utility for energy purchased from a nonfossil fuel producer may temporarily exceed the rate approved or prescribed by the public utilities commission pursuant to section 269-27.2(c) or pursuant to rules adopted by the commission under [such] that section if the commission, upon application by the utility or the nonfossil fuel producer, approves [such] the higher rate and finds that the nonfossil fuel producer has demonstrated that:

- (1) The nonfossil fuel producer had agreed to supply or has supplied energy to the utility at the rate approved or prescribed by the commission based on the generation of such energy from a combination of nonfossil fuel sources and heavy fuel oil;
- (2) Heavy fuel oil is and will probably continue to be unavailable to the nonfossil fuel producer;
- (3) The nonfossil fuel producer has the ability to substitute a higher cost alternative fuel for the unavailable heavy fuel oil, and the payment of a rate in excess of the rate approved or prescribed by the commission is reasonably necessary:
 - (A) For the nonfossil fuel producer to continue to supply the energy to the public utility that was previously generated from heavy fuel oil; and
 - (B) For the public utility to provide a reliable supply of electricity to its customers;
- (4) The excess of the payment rate for such energy over and above the approved or prescribed rate is based solely on the higher cost of the alternative fuel used by the nonfossil fuel producer and is limited to the portion of the higher fuel cost that is not recovered by the nonfossil fuel producer through an increase in the utility's avoided energy cost and a resulting increase in the approved or prescribed rate;
- (5) The nonfossil fuel producer's production of electrical energy and use of existing nonfossil fuel sources, such as bagasse, for the generation of that energy will, at a minimum, continue at normal levels. Other Hawaii grown biomass may be used only to supplement and not to substitute for the existing nonfossil fuel sources. However, other Hawaii grown sources of biomass produced as a by-product by the producers of other agricultural crops may substitute for the existing nonfossil fuel sources; provided that the normal level of usage of the existing nonfossil fuel sources is reduced as a result of reduced yield due to growing conditions or reduced cultivated acreage due to agricultural or business practices or the existing nonfossil fuel sources being put to another economic use[; and]. This paragraph shall not apply to a nonfossil fuel producer of energy if the existing nonfossil fuel source is not available, and the nonfossil fuel producer continues to use other sources of nonfossil fuel and continues to generate electricity for sale to the utility under an existing agreement approved by the public utilities commission; and
- (6) The use of an alternative fuel by the nonfossil fuel producer is in the overall best interest of the general public, including consideration of

the environmental effects resulting from the use of a type of fuel other than heavy fuel oil.

(b) The higher rate that may be paid under subsection (a) shall be applicable only to the percentage of the energy that is normally produced by the nonfossil fuel producer and supplied to the public utility from heavy fuel oil, and shall be applicable only until the commission determines that heavy fuel oil is no longer unavailable to the nonfossil fuel producer, or until the commission determines that any of the other findings required by subsection (a) are no longer applicable. The higher rate that may be paid under subsection (a) shall include the excess alternative fuel costs allowable under this section from the date the nonfossil fuel producer commences generating energy supplied to the public utility using the higher cost alternative fuel; provided that the nonfossil fuel producer has provided written notice to the public utility, consumer advocate, and the commission prior to its switch to an alternate fuel and an application is filed with the commission not later than 30 days after the switch is made requesting approval of the higher rate. However, the higher rate shall not be payable until approved by the commission.

(c) As a condition to the applicability of subsection (a) to a nonfossil fuel producer, the nonfossil fuel producer shall provide such information to the commission, the consumer advocate, and the affected public utility as the commission deems necessary for the implementation of subsections (a) and (b).

(d) Any higher rate payable by the public utility under subsection (a) and related revenue taxes shall be passed on to the public utility's ratepayers through an automatic rate adjustment clause. At the commission's discretion, the higher rate payable by the public utility under subsection (a) and related revenue taxes may be passed on to ratepayers statewide through an automatic rate adjustment clause; provided that no such statewide increase shall be imposed unless the commission finds that:

- (1) The higher rate is estimated to result in an increase of more than fifteen per cent for the ratepayers of the affected utility; and
- (2) Such a statewide increase is otherwise appropriate and in the public interest.

A statewide increase may be imposed only upon the ratepayers of the affected utility and the ratepayers of other public utilities whose rates are lower than the rates of the affected public utility.

(e) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible.”

SECTION 2. Act 130, Session Laws of Hawaii 1992, as amended by Act 29, Session Laws of Hawaii 1993, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that subsection (b) of section 3 shall allow for retroactive effect to the extent provided in the subsection; provided further that section 1 of this Act shall be repealed effective June 30, 1996 and sections 2 and 3 of this Act shall be repealed effective June 30, [1994.] 1995. Applications seeking relief pursuant to section 3 of this Act shall be approved only where the amount in excess of the approved or prescribed rate will be either paid during the period of time section 3 is in effect, or assessed as a result of electricity purchased during the period of time section 3 is in effect.”

SECTION 3. The public utilities commission shall confer with utility

companies, the consumer advocate, nonfossil fuel energy producers, and other interested parties to determine the effects of amending Act 130 on: (a) electricity prices to consumers on each affected island; (b) the reliability of the electric systems on each island; (c) the contractual rights and obligations of the nonfossil fuel producers and the utility company on each affected island; (d) the cost of production of energy by each nonfossil fuel producer that has an existing agreement approved by the public utilities commission, where that producer uses sources of nonfossil fuel that differ from that contemplated in the agreement; (e) the state policy to support the development and use of alternate energy sources; (f) whether the liability cap in section 1 of Act 130 should be extended, repealed, or remain unamended to serve the best interest of the people of the State of Hawaii from an energy supply and consumer interest perspective; and (g) other relevant factors. The public utilities commission shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the 1995 regular session.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 21, 1994.)