

ACT 162

S.B. NO. 3185

A Bill for an Act Relating to Energy.

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

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§269-A Public benefits fund; authorization. (a) The public utilities commission, by order or rule, may redirect all or a portion of the funds collected through the current demand-side management surcharge by Hawaii’s electric utilities into a public benefits fund that may be established by the public utilities commission.

(b) If the public utilities commission establishes a public benefits fund, the surcharge shall be known as the public benefits fee. Moneys in the fund shall be ratepayer funds that shall be used to support energy-efficiency and demand-side management programs and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State.

§269-B Public benefits fund administrator; establishment. (a) If the public utilities commission establishes a public benefits fund, the public utilities commission shall appoint a fund administrator to operate and manage any programs established under section 269-A. The fund administrator shall not expend more than ten per cent of the fund in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-A.

(b) The fund administrator shall be subject to regulation by the public utilities commission, including pursuant to sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the fund administrator shall not be an electric public utility or an electric public utility affiliate.

§269-C Requirements for the public benefits fund administrator. (a) Any fund administrator appointed pursuant to section 269-B shall satisfy the qualification requirements established by the public utilities commission by rule or order. These requirements may include experience and expertise in:

- (1) Energy-efficient and renewable energy technologies and methods; and
- (2) Identifying, developing, administering, and implementing demand-side management and energy-efficiency programs.

(b) The fund administrator's duties and responsibilities shall be established by the public utilities commission by rule or order, and may include:

- (1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy-efficiency and demand-side management programs;
- (2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and demand-side management programs and services;
- (3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the State and consulting with state agency experts;
- (4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;
- (5) Promoting coordinated program delivery, including coordination with electric public utilities regarding the delivery of low-income home energy assistance, other demand-side management or energy-efficiency programs, and any utility programs;
- (6) Consideration of innovative approaches to delivering demand-side management and energy-efficiency services, including strategies to encourage third party financing and customer contributions to the cost of demand-side management and energy-efficiency services; and
- (7) Submitting, to the public utilities commission for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources.

§269-D Transitioning from utility demand-side management programs to the public benefits fund. If the public utilities commission establishes a public benefits fund pursuant to section 269-A, the public utilities commission shall:

- (1) Develop a transition plan that ensures that:
 - (A) Utility demand-side management programs are continued, to the extent practicable, until the transition date; and
 - (B) The fund administrator will be able to provide demand-side management and energy-efficiency services on the transition date;
- (2) Encourage programs that allow all retail electricity customers, including state and county agencies, regardless of the retail electricity or gas provider, to have an opportunity to participate in and benefit from a comprehensive set of cost-effective demand-side management and energy-efficiency programs and initiatives designed to overcome barriers to participation;
- (3) Encourage programs, measures, and delivery mechanisms that reasonably reflect current and projected utility integrated resource planning, market conditions, technological options, and environmental benefits;
- (4) Facilitate the delivery of these programs as rapidly as possible, taking into consideration the need for these services and cost-effective delivery mechanisms;
- (5) Consider the unique geographic location of the State and the high costs of energy in developing programs that will promote technologies to advance energy efficiency and use of renewable energy and permit the State to take advantage of activities undertaken in other states, including the opportunity for multi-state programs;

- (6) Require the fund administrator appointed by the public utilities commission under section 269-B to deliver programs in an effective, efficient, timely, and competent manner and to meet standards that are consistent with state policy and public utilities commission policy; and
- (7) Before January 2, 2008, and every three years thereafter, require verification by an independent auditor of the reported energy and capacity savings and incremental renewable energy production savings associated with the programs delivered by the fund administrator appointed by the public utilities commission to deliver energy-efficiency and demand-side management programs under section 269-A.”

SECTION 2. Section 269-16, Hawaii Revised Statutes, is amended to read as follows:

“**§269-16 Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility[;] or by two or more public utilities jointly[;] shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding [~~in order~~] to ensure fairness and to provide due process to parties [~~which~~] that may be affected by rates approved by the commission, [~~such~~] the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days’ notice to the commission as prescribed in section 269-12(b) [~~to the commission~~], and prior approval by the commission for any increases in rates, fares, or charges. The commission [~~may~~], in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and [~~such~~] the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may [~~suspend~~]:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom [~~after~~];
- (2) After a hearing, by order [~~regulate~~]:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices[;] so that the same shall be just and reasonable [~~and prohibit~~];
 - (B) Prohibit rebates and unreasonable discrimination between localities[;] or between users or consumers[;] under substantially similar conditions[; ~~regulate~~];
 - (C) Regulate the manner in which the property of every public utility is operated with reference to the safety and accommodation of the public[; ~~prescribe~~];

- (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system~~[-regulate]~~;
 - (E) Regulate the return upon its public utility property~~[-]~~;
 - (F) Regulate the incurring of indebtedness relating to its public utility business~~[-]~~; and
 - (G) Regulate its financial transactions;¹ and ~~[do]~~
- (3) Do all things ~~[in addition which]~~ that are necessary and in the exercise of ~~[such]~~ the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed ~~[shall be]~~ are just and reasonable, and ~~[such as shall]~~ provide a fair return on the property of the utility actually used or useful for public utility purposes.

(c) The commission may in its discretion ~~[and]~~, after public hearing~~[-]~~ and upon showing by a public utility of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall require by order ~~[require]~~ the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts~~[-]~~ with interest, at a rate equal to the rate of return on ~~[such]~~ the public utility's rate base found to be reasonable by the commission, received by reason of ~~[such]~~ continued operation ~~[which]~~ that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any ~~[such]~~ excess shall commence as of the date that any rate, fare, or charge goes into effect ~~[which]~~ that results in ~~[any such]~~ the excess and shall continue to accrue on the balance of ~~[any such]~~ the excess until returned.

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules ~~[which]~~ that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing ~~[report]~~ the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission ~~[shall]~~, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order ~~[require]~~ the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts~~[-]~~ with interest, at a rate equal to the rate of return on ~~[such]~~ the public utility's rate base found to be reasonable by the commission, received under ~~[such]~~ the interim rates ~~[which]~~ that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any ~~[such]~~ excess shall commence as of the date that any rate, fare, or charge goes into effect ~~[which]~~ that results in ~~[any such]~~ the excess and shall continue to accrue on the balance of ~~[any such]~~ the excess until returned.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The consumer advocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any ~~[such]~~ objection within twenty-one days after ~~[the same]~~ it is filed. If the commis-

sion finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

(e) In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State of Hawaii, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commission may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is necessary ~~[in order]~~ to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.

(f) Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures ~~[which will]~~ to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

- (1) Require the filing of a standard form application to be developed by the commission. The standard form application for general rate increases shall describe the specific facts that ~~[must]~~ shall be submitted to support a determination of the reasonableness of the proposed rates, and require the submission of financial information in conformance with a standard chart of accounts to be approved by the commission, and other commission guidelines to allow expeditious review of a requested general rate increase application;
- (2) Hold a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The public hearing shall be preceded by proper notice, as prescribed in section 269-12; and
- (3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission~~[;]~~; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing.

If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed, pursuant to subsections (b), (c), and (d).

If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall

have no force or effect pending the commission's final decision. If notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provided that the parties to the proceeding may waive the contested case hearing.

Public utilities subject to this subsection shall follow the standard chart of accounts to be approved by the commission for financial reporting purposes. The public utilities shall file a certified copy of the annual financial statements in addition to an updated chart of accounts used to maintain their financial records with the commission and consumer advocate within ninety days from the end of each calendar or fiscal year, as applicable, unless this timeframe is extended by the commission. The owner, officer, general partner, or authorized agent of the utility shall certify that the reports were prepared in accordance with the standard chart of accounts.

(g) Any automatic fuel rate adjustment clause requested by a public utility in an application filed with the commission shall be designed, as determined in the commission's discretion, to:

- (1) Fairly share the risk of fuel cost changes between the public utility and its customers;
- (2) Provide the public utility with sufficient incentive to reasonably manage or lower its fuel costs and encourage greater use of renewable energy;
- (3) Allow the public utility to mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise reasonably be mitigated through other commercially available means, such as through fuel hedging contracts;
- (4) Preserve, to the extent reasonably possible, the public utility's financial integrity; and
- (5) Minimize, to the extent reasonably possible, the public utility's need to apply for frequent applications for general rate increases to account for the changes to its fuel costs."

SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

In the exercise of its authority to determine the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be more than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy.

The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the

commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.’’

SECTION 4. Section 269-91, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

“‘‘Biofuels’’ means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

‘‘Renewable electrical energy’’ means:

- (1) Electrical energy generated using renewable energy as the source;
- (2) Electrical energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating, seawater air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; or
 (C)² Electrical energy savings brought about by the use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.’’

2. By amending the definitions of ‘‘cost effective’’, ‘‘renewable energy’’, and ‘‘renewable portfolio standard’’ and ‘‘renewable portfolio standard’’² to read:

‘‘‘‘Cost-effective’’ means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs[-] consistent with the methodology set by the public utilities commission in accordance with section 269-27.2.

‘‘Renewable energy’’ means [electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, wave energy, biomass, including municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels derived from renewable energy, or fuel cells where the fuel is derived from renewable sources. Where biofuels, hydrogen, or fuel cell fuels are produced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy. Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to produce renewable electricity in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels. ‘‘Renewable energy’’ also means electrical energy savings brought about by the use of solar and heat pump water heating, seawater air-conditioning district cooling systems, solar air-conditioning and ice storage, quantifiable energy conservation measures, use of rejected heat from co-generation and combined heat and power systems excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies, and central station power projects] energy generated or produced utilizing the following sources:

- (1) Wind;
- (2) The sun;

- (3) Falling water;
- (4) Biogas, including landfill and sewage-based digester gas;
- (5) Geothermal;
- (6) Ocean water, currents and waves;
- (7) Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste;
- (8) Biofuels; and
- (9) Hydrogen produced from renewable energy sources.

“Renewable portfolio standard” means the percentage of electrical energy sales that is represented by renewable electrical energy.”

SECTION 5. Section 269-92, Hawaii Revised Statutes, is amended to read as follows:

“§269-92 Renewable portfolio standards. (a) Each electric utility company that sells electricity for consumption in the State shall establish a renewable portfolio standard of:

- ~~(1) Seven per cent of its net electricity sales by December 31, 2003;~~
- ~~(2) Eight per cent of its net electricity sales by December 31, 2005;~~
- ~~(3) (1) Ten per cent of its net electricity sales by December 31, 2010;~~
- ~~(4) (2) Fifteen per cent of its net electricity sales by December 31, 2015;~~
and
- ~~(5) (3) Twenty per cent of its net electricity sales by December 31, 2020.~~

~~[The public utilities commission shall determine if an electric utility company is unable to meet the renewable portfolio standards in a cost-effective manner, or as a result of circumstances beyond its control which could not have been reasonably anticipated or ameliorated. If this determination is made, the electric utility company shall be relieved of responsibility for meeting the renewable portfolio standard for the period of time that it is unable to meet the standard.]~~

(b) The public utilities commission may establish standards for each utility that prescribe what portion of the renewable portfolio standards shall be met by specific types of renewable electrical energy resources; provided that:

- (1) At least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source;
- (2) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and
- (3) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels.

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

(d) Events or circumstances that are outside of an electric utility company’s reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

- (1) Weather-related damage;
- (2) Natural disasters;

- (3) Mechanical or resource failure;
- (4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;
- (5) Labor strikes or lockouts;
- (6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility company;
- (7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
- (8) Inability to obtain permits or land use approvals for renewable electrical energy projects;
- (9) Inability to acquire sufficient cost-effective renewable electrical energy;
- (10) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
- (11) Other events and circumstances of a similar nature.”

SECTION 6. Section 269-95, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§269-95~~ **Renewable portfolio standards study.** The public utilities commission shall:

- (1) By December 31, ~~[2006,]~~ 2007, develop and implement a utility ratemaking structure, which may include ~~[but is not limited to]~~ performance-based ratemaking, to provide incentives that encourage Hawaii’s electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner~~[,]~~ or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the utility ~~[which]~~ that could not have been reasonably anticipated or ameliorated;
- (2) Gather, review, and analyze empirical data to determine the extent to which any proposed utility ratemaking structure would impact electric utility companies’ profit margins~~[,]~~ and to ensure that ~~[these profit margins do not decrease as a result of the implementation of the proposed ratemaking structure;]~~ the electric utility companies’ opportunity to earn a fair rate of return is not diminished;
- (3) Using funds from the public utilities special fund, contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, environmental groups, and other similar institutions with the required expertise. These studies shall include findings and recommendations regarding:
 - (A) The capability of Hawaii’s electric utility companies to achieve renewable portfolio standards in a cost-effective manner~~[,]~~ and shall assess factors such as the impact on consumer rates, utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies, permitting approvals, ~~[impacts]~~ effects on the economy, balance of trade, culture, community, environment, land and water, climate

change policies, demographics, and other factors deemed appropriate by the commission; and

- (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;
- (4) Revise the standards based on the best information available at the time if the results of the studies conflict with the renewable portfolio standards established by section 269-92; and
- (5) Report its findings and revisions to the renewable portfolio standards, based on its own studies and those contracted under paragraph (3), to the legislature no later than twenty days before the convening of the regular session of 2009, and every five years thereafter.’’

SECTION 7. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 9. This Act shall take effect upon its approval.

(Approved June 2, 2006.)

Notes

- 1. Semicolon should be underscored.
- 2. So in original.
- 3. Edited pursuant to HRS §23G-16.5.