

ACT 57

S.B. NO. 1045

A Bill for an Act Relating to Electric Cooperatives.

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

SECTION 1. Electric cooperatives are fundamentally distinct from traditional electric utilities in terms of both governance and organizational pur-

pose. The typical investor-owned utility is primarily driven by the incentive to increase shareholder profitability, with virtually no influence on policy or operations coming from the electricity customer. An electric cooperative, on the other hand, is a customer-owned organization operating on a not-for-profit basis under the governance of a board of directors democratically elected by the very same customers who receive the cooperative's services and who act in their role as owners and members of the cooperative. Whereas a natural tension exists between an investor-owned utility's profit motive and the interest of its customers, the nature of electric cooperatives provides multiple safeguards that ensure that the everyday user receiving electricity services has a say in determining whether that cooperative functions in the interests of both the organization and the individual consumers. Given these key distinctions between investor-owned utilities and electric cooperatives, the legislature finds that the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs should at all times recognize these differences and consider the degree and extent to which the State's utilities regulation laws - those laws that typically balance the tension between an investor-owned utility's profit motive and the interest of the customer - should be applied to electric cooperatives. Further, the legislature finds that the public utilities commission should have the flexibility and discretion to determine the applicability of existing regulatory requirements to electric cooperatives in furtherance of the public interest. However, the legislature provides that this Act is not intended to exempt electric cooperatives from statutory statewide clean energy policy mandates, such as the State's renewable portfolio standards and energy efficiency portfolio standards.

The purpose of this Act is to specifically require the public utilities commission and the division of consumer advocacy to consider the ownership structure and interests of electric cooperatives and to authorize the public utilities commission to waive or exempt electric cooperatives from the provisions of chapter 269, Hawaii Revised Statutes, and other regulatory requirements, to the extent set forth in this Act.

SECTION 2. Section 269-31, Hawaii Revised Statutes, is amended to read as follows:

"§269-31 Application of this chapter. (a) This chapter shall not apply to commerce with foreign nations, or commerce with the several states of the United States, except insofar as the same may be permitted under the Constitution and laws of the United States; nor shall it apply to public utilities owned and operated by the State, or any county, or other political subdivision.

(b) Notwithstanding any provision of this chapter or any franchise, charter, law, decision, order, or rule to the contrary, the public utilities commission, sua sponte or upon the application of an electric cooperative, may waive or exempt an electric cooperative from any or all requirements of this chapter or any applicable franchise, charter, decision, order, rule, or other law upon a determination or demonstration that such requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest. Notwithstanding the above, the public utilities commission and the consumer advocate shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative. To the extent any other provision of this chapter or any franchise, charter, law, decision, order, or rule is contrary to or otherwise conflicts with this section in any manner, the provisions of this section shall govern and apply.

(c) For purposes of this chapter, an “electric cooperative” is a cooperative association or entity that is:

- (1) Owned by its members;
- (2) Formed pursuant to chapter 421 C;
- (3) Operated on a not-for-profit basis;
- (4) Authorized pursuant to a legislatively granted franchise or other legislative authority to manufacture, sell, furnish, and supply electric light, electric current, or electric power to its members or a designated service area; and
- (5) Governed by a board of directors who are members of the electric cooperative and who are democratically elected by members of the electric cooperative pursuant to applicable bylaws.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2013.)