

**ACT 240**

H.B. NO. 2089

A Bill for an Act Relating to Renewable Portfolio Standards.

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

SECTION 1. The legislature finds that Act 97, Session Laws of Hawaii 2015, amended section 269-92, Hawaii Revised Statutes, to establish a one hundred per cent renewable portfolio standard by December 31, 2045, with the intent to transition the State away from imported fuels and toward renewable local resources that provide a secure source of affordable energy.

The legislature further finds that Act 15, Session Laws of Hawaii 2018, established a zero emissions clean economy target “to sequester more atmospheric carbon and greenhouse gases than emitted within the State as quickly as practicable, but no later than 2045”. Since the enactment of these acts, the need to reduce fossil fuel emissions globally to avoid the worst impacts of climate change has become increasingly urgent. In addition, studies indicate that accelerating the adoption of renewable energy will cost less than the course laid out by the current renewable portfolio standard interim benchmarks.

The legislature further finds that prioritizing the deployment of renewable energy projects will create thousands of jobs and position Hawaii at the forefront of energy innovation and investment.

The legislature also finds that the current calculation of the renewable portfolio standard, which is based on electrical energy sales rather than on electrical energy generation, overestimates the amount of renewable energy serving Hawaii’s electric utility customers and does not accurately reflect Hawaii’s prog-

ress towards its stated energy and climate goals. Two fundamental issues that have led to this current discrepancy are:

- (1) The current renewable portfolio standard calculation inflates the reported percentage of renewable energy by excluding customer-sited, grid-connected energy generation in the denominator, which becomes material with higher levels of customer-sited, grid-connected energy generation that is non-renewable; and
- (2) The current electrical energy sales number does not include energy losses that occur between the points of electrical energy generation and the customer meter, where sales are measured.

The legislature additionally finds that failure to address these issues creates an incorrect measure of the State's progress toward the stated goals. Also, the current definition of "renewable portfolio standard" allows for the continued use of fossil fuel in significant amounts even after reaching the target for 2045. According to the Power Supply Improvement Plan prepared by Hawaiian Electric Company in 2016, the one hundred per cent renewable portfolio standard level (with the current definition, based on sales) could theoretically be reached when only seventy-nine per cent of the electricity generated in the State is renewable, with the remaining twenty-one per cent still generated by fossil fuels. Changing the renewable portfolio standard to be based on generation, rather than sales, would ensure that a one hundred per cent renewable portfolio standard is achieved as intended.

Therefore, the purpose of this Act is to:

- (1) Amend the definition of "renewable portfolio standard" to more accurately reflect the percentage of renewable electrical energy generated in the State;
- (2) Expand the events or circumstances that are beyond an electric utility company's reasonable control to include non-renewable energy generated by electric generation facilities where the electric utility does not have direct control or ownership; and
- (3) Require electric utility companies to track and annually report data and trends on customer retention and attrition to further inform the calculation of the renewable portfolio standards.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**“§269- Annual report; electric utility company.** Each electric utility company shall track and report to the public utilities commission, on an annual basis, data and trends regarding customer retention or attrition at a time and in a manner as prescribed by the commission.”

SECTION 3. Section 269-91, Hawaii Revised Statutes, is amended by amending the definition of "renewable portfolio standard" to read as follows:

**““Renewable portfolio standard” means the percentage of electrical energy [sales] generation that is represented by renewable electrical energy[-], excluding customer-sited, grid connected generation that does not produce renewable energy.”**

SECTION 4. 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) Ten per cent of its net electricity sales by December 31, 2010;
- (2) Fifteen per cent of its net electricity sales by December 31, 2015;
- (3) Thirty per cent of its net electricity sales by December 31, 2020;
- (4) Forty per cent of its net electricity [~~sales~~] generation by December 31, 2030;
- (5) Seventy per cent of its net electricity [~~sales~~] generation by December 31, 2040; and
- (6) One hundred per cent of its net electricity [~~sales~~] generation by December 31, 2045.

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

- (1) [~~Prior to~~] Before January 1, 2015, at least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source, and after December 31, 2014, the entire renewable portfolio standard shall be met by electrical generation from renewable energy sources;
- (2) Beginning January 1, 2015, electrical energy savings shall not count toward renewable energy portfolio standards;
- (3) 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
- (4) 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 input value represented by the heat input 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~~] because of reasons beyond the reasonable control of [~~an~~] the electric utility[~~]~~ company, 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~~] beyond 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) Inability to acquire sufficient renewable electrical energy to meet the renewable portfolio standard goals beyond 2030 in a manner that is beneficial to Hawaii's economy in relation to comparable fossil fuel resources;
- (11) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; ~~and~~
- (12) Non-renewable energy generated by electric generation facilities where the electric utility company otherwise does not have direct control or ownership of independent power producers, government and non-government agencies, and any persons or entities, including merchant or co-generation facilities; and
- (13) Other events and circumstances of a similar nature.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2022.

(Approved July 5, 2022.)

**Note**

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