
A BILL FOR AN ACT

RELATING TO RETAIL WHEELING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the average retail
2 price of electricity to the end-use customer in Hawaii is 268
3 per cent of the national average. Further, Hawaii County
4 electricity rates are triple the national average, causing some
5 of the most vulnerable populations of the State to pay the
6 absolute highest rates in the nation to keep their lights on at
7 night. The legislature further finds that the unreasonable
8 electricity costs are placing an unbearable burden on the
9 residents of Hawaii that must be alleviated.

10 The legislature further finds that in general, retail
11 wheeling refers to the process of transmitting electric power
12 from a seller's point of generation across a third-party-owned
13 transmission and distribution system to the seller's retail
14 customer. While over half of the states engage in retail
15 wheeling in some form, Hawaii restricts competition through
16 forcing independent power producers to sell their power to a
17 public utility and prevents direct sale to end users.



1 The legislature further finds that the State must diversify
2 its renewable portfolio to meet certain clean energy standards
3 under the Clean Energy Initiative and further our island state
4 energy security. Additionally, creating jobs and decreasing the
5 unemployment rate among Hawaii residents, especially in less
6 populated areas, is in the public interest. To this end, the
7 legislature finds that wheeling can provide competition in the
8 energy sector, which will directly and indirectly allow for more
9 renewable and clean energies and expand the market and create
10 jobs.

11 The legislature also finds that in 2004, the legislature
12 adopted Senate Concurrent Resolution No. 180 requesting the
13 public utility commission to explore how to implement the
14 concept of intra-governmental wheeling to facilitate government
15 wheeling of electricity and other regulatory measures to support
16 the development of renewable energy systems by federal, state,
17 and county agencies. In 2007, the public utilities commission
18 finally opened proceedings in response to this resolution to:
19 (1) investigate the impacts, if any, of wheeling on the state's
20 electric industry; (2) address interconnection matters; (3)
21 identify the costs to utilities of implementing intra-



1 governmental wheeling; (4) consider the financial cost and
2 impact of intra-governmental wheeling on non-wheeling customers
3 of a utility; (5) identify any power back-up issues; and (6)
4 address how rates for intra-governmental wheeling would be set.
5 After eleven years of waiting for the public utilities
6 commission to address wheeling opportunities, the legislature
7 can no longer wait on a public utilities commission docket that
8 has no completion in its forecast.

9 The legislature further finds that the narrow intra-
10 governmental allowance of wheeling does not go far enough to
11 allow for Hawaii residents to benefit from the limited
12 competition created by intra-governmental wheeling. To date,
13 after undergoing a suspension and numerous delays, the docket
14 remains open, to the detriment of Hawaii residents who would
15 benefit from lower rates wheeling would afford.

16 The purpose of this Act is to allow retail wheeling in
17 Hawaii to increase competition within Hawaii's electrical
18 markets, expand customer choice, provide incentives for the
19 production of renewable energy, and diversify Hawaii's energy
20 base.



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

4 "§269- Retail wheeling; rules and procedures. No later
5 than July 1, 2016, the public utilities commission shall
6 establish necessary policies, and rules pursuant to chapter 91,
7 for the deployment of retail wheeling to enable independent
8 power producers to sell electricity directly to end users.

9 For purposes of this section, "retail wheeling" means the
10 distribution, over a public utility's transmission and
11 distribution system, of power that is generated by an
12 independent power producer and sold by the independent power
13 producer directly to the end user."

14 SECTION 3. Section 269-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "public utility" to read
16 as follows:

17 "[PART I. PUBLIC UTILITIES, GENERALLY]

18 §269-1 Definitions. As used in this chapter:

19 "Public utility":

- 20 (1) Includes every person who may own, control, operate,
21 or manage as owner, lessee, trustee, receiver, or



1 otherwise, whether under a franchise, charter,
 2 license, articles of association, or otherwise, any
 3 plant or equipment, or any part thereof, directly or
 4 indirectly for public use for the transportation of
 5 passengers or freight; for the conveyance or
 6 transmission of telecommunications messages; for the
 7 furnishing of facilities for the transmission of
 8 intelligence by electricity within the State or
 9 between points within the State by land, water, or
 10 air; for the production, conveyance, transmission,
 11 delivery, or furnishing of light, power, heat, cold,
 12 water, gas, or oil; for the storage or warehousing of
 13 goods; or for the disposal of sewage; provided that
 14 the term shall include:

- 15 (A) An owner or operator of a private sewer company
- 16 or sewer facility; and
- 17 (B) A telecommunications carrier or
- 18 telecommunications common carrier; and

19 (2) Shall not include:

- 20 (A) An owner or operator of an aerial transportation
- 21 enterprise;



- 1 (B) An owner or operator of a taxicab as defined in
2 this section;
- 3 (C) Common carriers that transport only freight on
4 the public highways, unless operating within
5 localities, along routes, or between points that
6 the public utilities commission finds to be
7 inadequately serviced without regulation under
8 this chapter;
- 9 (D) Persons engaged in the business of warehousing or
10 storage unless the commission finds that
11 regulation is necessary in the public interest;
- 12 (E) A carrier by water to the extent that the carrier
13 enters into private contracts for towage,
14 salvage, hauling, or carriage between points
15 within the State; provided that the towing,
16 salvage, hauling, or carriage is not pursuant to
17 either an established schedule or an undertaking
18 to perform carriage services on behalf of the
19 public generally;
- 20 (F) A carrier by water, substantially engaged in
21 interstate or foreign commerce, that transports



1 passengers on luxury cruises between points
2 within the State or on luxury round-trip cruises
3 returning to the point of departure;

4 (G) Any user, owner, or operator of the Hawaii
5 electric system as defined under section 269-141;

6 (H) A telecommunications provider only to the extent
7 determined by the public utilities commission
8 pursuant to section 269-16.9;

9 (I) Any person who controls, operates, or manages
10 plants or facilities developed pursuant to
11 chapter 167 for conveying, distributing, and
12 transmitting water for irrigation and other
13 purposes for public use and purpose;

14 (J) Any person who owns, controls, operates, or
15 manages plants or facilities for the reclamation
16 of wastewater; provided that:

17 (i) The services of the facility are provided
18 pursuant to a service contract between the
19 person and a state or county agency and at
20 least ten per cent of the wastewater
21 processed is used directly by the state or



1 county agency that entered into the service
2 contract;

3 (ii) The primary function of the facility is the
4 processing of secondary treated wastewater
5 that has been produced by a municipal
6 wastewater treatment facility owned by a
7 state or county agency;

8 (iii) The facility does not make sales of water to
9 residential customers;

10 (iv) The facility may distribute and sell
11 recycled or reclaimed water to entities not
12 covered by a state or county service
13 contract; provided that, in the absence of
14 regulatory oversight and direct competition,
15 the distribution and sale of recycled or
16 reclaimed water shall be voluntary and its
17 pricing fair and reasonable. For purposes
18 of this subparagraph, "recycled water" and
19 "reclaimed water" means treated wastewater
20 that by design is intended or used for a
21 beneficial purpose; and



1 (v) The facility is not engaged, either directly
2 or indirectly, in the processing of food
3 wastes;

4 (K) Any person who owns, controls, operates, or
5 manages any seawater air conditioning district
6 cooling project; provided that at least fifty per
7 cent of the energy required for the seawater air
8 conditioning district cooling system is provided
9 by a renewable energy resource, such as cold,
10 deep seawater;

11 (L) Any person who owns, controls, operates, or
12 manages plants or facilities primarily used to
13 charge or discharge a vehicle battery that
14 provides power for vehicle propulsion;

15 (M) Any person who:
16 (i) Owns, controls, operates, or manages a
17 renewable energy system that is located on a
18 customer's property; and
19 (ii) Provides, sells, or transmits the power
20 generated from that renewable energy system
21 to an electric utility or to the customer on



1 whose property the renewable energy system
2 is located; provided that, for purposes of
3 this subparagraph, a customer's property
4 shall include all contiguous property owned
5 or leased by the customer without regard to
6 interruptions in contiguity caused by
7 easements, public thoroughfares,
8 transportation rights-of-way, and utility
9 rights-of-way; and

10 (N) Any person who owns, controls, operates, or
11 manages a renewable energy system that is located
12 on such person's property and provides, sells, or
13 transmits the power generated from that renewable
14 energy system to an electric utility or to
15 lessees or tenants on the person's property where
16 the renewable energy system is located; provided
17 that:

18 (i) An interconnection, as defined in section
19 269-141, is maintained with an electric
20 public utility to preserve the lessees' or



1 tenants' ability to be served by an electric
2 utility;

3 (ii) Such person does not use an electric public
4 utility's transmission or distribution lines
5 to provide, sell, or transmit electricity to
6 lessees or tenants;

7 (iii) At the time that the lease agreement is
8 signed, the rate charged to the lessee or
9 tenant for the power generated by the
10 renewable energy system shall be no greater
11 than the effective rate charged per kilowatt
12 hour from the applicable electric utility
13 schedule filed with the public utilities
14 commission;

15 (iv) The rate schedule or formula shall be
16 established for the duration of the lease,
17 and the lease agreement entered into by the
18 lessee or tenant shall reflect such rate
19 schedule or formula;

20 (v) The lease agreement shall not abrogate any
21 terms or conditions of applicable tariffs



1 for termination of services for nonpayment
2 of electric utility services or rules
3 regarding health, safety, and welfare;
4 (vi) The lease agreement shall disclose: (1) the
5 rate schedule or formula for the duration of
6 the lease agreement; (2) that, at the time
7 that the lease agreement is signed, the rate
8 charged to the lessee or tenant for the
9 power generated by the renewable energy
10 system shall be no greater than the
11 effective rate charged per kilowatt hour
12 from the applicable electric utility
13 schedule filed with the public utilities
14 commission; (3) that the lease agreement
15 shall not abrogate any terms or conditions
16 of applicable tariffs for termination of
17 services for nonpayment of electric utility
18 services or rules regarding health, safety,
19 and welfare; and (4) whether the lease is
20 contingent upon the purchase of electricity
21 from the renewable energy system; provided



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1 further that any disputes concerning the
 2 requirements of this provision shall be
 3 resolved pursuant to the provisions of the
 4 lease agreement or chapter 521, if
 5 applicable; and

6 (vii) [~~Nothing in this section shall be construed~~
 7 ~~to permit wheeling.~~]

8 SECTION 4. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on upon approval.

11

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Report Title:

Retail Wheeling; Public Utilities

Description:

Requires the public utilities commission to establish policies and procedures related to retail wheeling to enable independent power producers to sell electricity directly to end users.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

