



GOV. MSG. NO. 1269

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 27, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

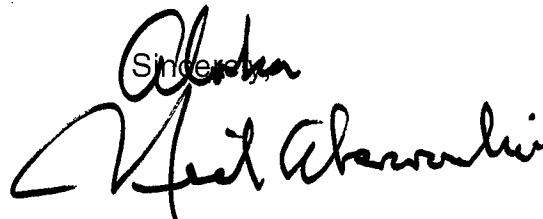
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2012, the following bill was signed into law:

SB2787 SD2 HD1 CD1

RELATING TO ELECTRICITY.
Act 166 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

JUN 27 2012

BY THE SENATE

TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 166
S.B. NO. 2787
S.D. 2
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO ELECTRICITY.

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

1 SECTION 1. The legislature finds that the capability and
2 accessibility of Hawaii's electrical system must be aligned with
3 both the State's ambitious renewable portfolio standard mandate
4 and the various technologies that generate electricity at both
5 the distribution and transmission levels. Localized energy
6 generation technology has become increasingly attainable for all
7 types of renewable energy developers and the electricity
8 consumer over the past several years. A highly diverse set of
9 generation resources ranging from large wind projects to simple
10 residential photovoltaic systems are now primed to deliver
11 electricity to consumers across the State's isolated island
12 grids. However, in order to ensure that these types of
13 generation resources can be integrated into the island grids,
14 the technical, operational, and regulatory issues associated
15 with running the electrical system must be considered and
16 addressed in order to achieve the full potential of local
17 renewable energy production. The implementation of formal
18 reliability standards to govern all segments of the electric



1 power system and to ensure fair and transparent grid access is a
2 critical part of achieving Hawaii's lofty clean energy
3 requirements. In addition, clear regulatory oversight of the
4 State's grids will ensure system reliability, resiliency, and
5 accountability.

6 Reliability standards are formal planning and operating
7 procedures that govern the design and operation of an electrical
8 grid or grids to ensure adequate system reliability by
9 establishing real-time protocols, such as resource and demand
10 balancing, critical infrastructure protection, and
11 interconnection reliability. The legislature finds that
12 electric system planning, operations, and interconnections on
13 the mainland United States are governed by a well-coordinated
14 effort headed by the Federal Energy Regulatory Commission and
15 the North American Electric Reliability Corporation, with help
16 from a group of subordinate regional oversight entities. Under
17 federal commission oversight, the corporation and the regional
18 oversight entities collectively create and adopt national and
19 regional reliability standards, administer related compliance
20 and enforcement programs, and perform other additional functions
21 as needed to ensure that all entities operating in connection to
22 the bulk-power system follow applicable standards. Although



1 Hawaii is not part of the bulk-power system that links the vast
2 grid regions of North America, our local electrical system still
3 requires a level of reliability protocols and oversight provided
4 by a set of local standards and an accompanying enforcement
5 system that is commensurate with the State's ambitious renewable
6 energy mandates.

7 The public utilities commission continues to advance the
8 development of local grid reliability standards and procedures
9 via ongoing proceedings connected to Hawaii's feed-in tariff
10 program and other interconnection-related dockets. The Hawaii
11 reliability standards working group is developing proposed
12 reliability standards tailored to Hawaii's electrical system.
13 Following commission adoption of reliability standards, a
14 dedicated body will be required to enforce and oversee
15 compliance with the standards. However, the legislature finds
16 the commission's efforts in this area are the result of a lack
17 of formal, well-developed reliability standards and
18 interconnection requirements in Hawaii that have been identified
19 as a principal roadblock for a number of large- and small-scale
20 clean energy projects. In addition, a number of major
21 government and private renewable energy projects are currently
22 slated for development in the near future, including military



1 solar installations estimated to create hundreds of megawatts of
2 new electricity generation on Oahu by the middle of this decade,
3 which further necessitates the adoption of strong, formalized
4 reliability standards and interconnection requirements.

5 Following the creation of initial standards and requirements, a
6 well-organized, continuing effort to enforce the adopted
7 standards and requirements, propose new or update existing
8 standards, and oversee grid access and operation will be
9 required.

10 The purpose of this Act is to authorize the public
11 utilities commission to perform necessary electric system
12 reliability and grid access oversight functions, and to allow
13 the commission to contract for the services of a Hawaii
14 electricity reliability administrator to support the commission
15 in carrying out those critical functions throughout the State.

16 In addition, this Act allows for the creation of a surcharge
17 affecting users, owners, and operators of the Hawaii electric
18 system to be collected for the purpose of maintaining system
19 reliability.

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



1 "PART . ELECTRIC RELIABILITY

2 §269-A Definitions. As used in this part:

3 "Ancillary services" means those essential grid support
4 services provided by a facility, or other equipment to support
5 and ensure the reliable generation, transmission, and
6 distribution of electricity, including frequency response and
7 regulation, inertial response, reactive power and voltage
8 control, and operating reserves.

9 "Commission" means the public utilities commission.

10 "Electric element" means any plant, line, cable, facility,
11 control system, equipment, or other technology used for the
12 generation, transmission, distribution, storage, regulation, or
13 physical control of electricity.

14 "Hawaii electric system" means all electric elements
15 located within the State together with all interconnections
16 located within the State that collectively provide for the
17 generation, transmission, distribution, storage, regulation, or
18 physical control of electricity over a geographic area; provided
19 that this term shall not include any electric element operating
20 without any interconnection to any other electric element
21 located within the State.



1 "Interconnection" means the physical contact point
2 connecting an electric element to another electric element or
3 group of electric elements that allows for the flow and transfer
4 of electricity between electric elements.

5 "Interconnection requirement" means a standard or rule,
6 adopted by the commission under this part, concerning the
7 performance levels, processes, practices, equipment, or
8 facilities of any entity either having or seeking to obtain an
9 interconnection to the Hawaii electric system under procedures
10 established pursuant to section 269-E to ensure the reliable
11 operation of the Hawaii electric system.

12 "Reliability standard" means an electric reliability
13 requirement or requirements, adopted by the commission under
14 this part, to ensure the reliable design and operation of any or
15 all portions of the Hawaii electric system, including but not
16 limited to ancillary service requirements.

17 "User, owner, or operator of the Hawaii electric system"
18 means any person, business, organization, or other entity who:

19 (1) Owns, controls, operates, or manages plants or
20 facilities for the generation, transmission, or
21 furnishing of electricity; and



1 (2) Provides, sells, or transmits all of that electricity,
2 except such electricity as is used in its own internal
3 operations or is used for its own consumption,
4 directly to a public utility for either transmission
5 or distribution to the public;
6 provided that a user, owner, or operator of the Hawaii electric
7 system shall not be considered a public utility for the purposes
8 of this chapter.

9 **§269-B Reliability standards; interconnection**
10 **requirements; adoption and development; force and effect. (a)**
11 The commission may adopt, by rule or order, reliability
12 standards and interconnection requirements. Reliability
13 standards and interconnection requirements adopted by the
14 commission shall apply to any electric utility and any user,
15 owner, or operator of the Hawaii electric system. The
16 commission shall not contract for the performance of the
17 functions under this subsection to any other entity as provided
18 under section 269-G.
19 (b) The commission may develop reliability standards and
20 interconnection requirements as it determines necessary or upon
21 recommendation from any entity, including an entity contracted
22 by the commission to serve as the Hawaii electricity reliability



1 administrator provided for under this part, for the continuing
2 reliable design and operation of the Hawaii electric system.
3 Any reliability standard or interconnection requirement
4 developed by the commission shall be adopted by the commission
5 in accordance with subsection (a) in order to be effective. The
6 commission shall not contract for the performance of the
7 functions under this subsection to any other entity as provided
8 under section 269-G.

9 (c) The commission shall have jurisdiction over matters
10 concerning interconnection requirements and interconnections
11 located in the State between electric utilities, any user,
12 owner, or operator of the Hawaii electric system, or any other
13 person, business, or entity connecting to the Hawaii electric
14 system or otherwise applying to connect generation or equipment
15 providing ancillary services to, or operate generation and
16 equipment providing ancillary services in parallel with the
17 Hawaii electric system under processes established in accordance
18 with section 269-E. Nothing in this subsection is intended to
19 give the commission general supervision authority over any user,
20 owner, or operator of the Hawaii electric system or any other
21 person, business, or entity that is not a public utility as
22 defined in section 269-1.



1 §269-C Monitoring. (a) The commission shall have the
2 authority to monitor the reliability and operation of the Hawaii
3 electric system using any data, files, maps, reports, or any
4 other information concerning any electric utility, any user,
5 owner, or operator of the Hawaii electric system, or any person,
6 business, or entity connecting to the Hawaii electric system,
7 considered by the commission to be necessary for ensuring the
8 reliable operation of the Hawaii electric system. The authority
9 of the commission to monitor information in this section shall
10 include the authority to request, acquire, or otherwise
11 accumulate real-time data on any matter the commission deems
12 necessary to monitor the reliable design and operation of the
13 Hawaii electric system.

14 (b) The commission shall have the authority to monitor and
15 compel the production of data, files, maps, reports, or any
16 other information concerning any electric utility, any user,
17 owner, or operator of the Hawaii electric system, or other
18 person, business, or entity, considered by the commission to be
19 necessary for exercising jurisdiction over interconnection to
20 the Hawaii electric system, or for administering the process for
21 interconnection to the Hawaii electric system under section
22 269-E.



1 (c) Any and all data, files, maps, reports, or any other
2 information the commission requests under subsection (a) or (b)
3 shall be produced in a timely manner. The commission may
4 institute proceedings in accordance with section 269-15 upon a
5 determination that any party for or on behalf of an electric
6 utility, any other user, owner, or operator of the Hawaii
7 electric system, or other person, business, or entity, has
8 refused to provide or is causing unreasonable delay or expense
9 in providing information requested under this section.

10 §269-D Compliance and enforcement. (a) The commission
11 shall take all necessary steps, including audits, spot checks,
12 data requests, report requests, and internal monitoring
13 procedures, to ensure that any electric utility, any user,
14 owner, or operator of the Hawaii electric system, or any other
15 person, business, or entity connecting to the Hawaii electric
16 system is in compliance with all adopted reliability standards
17 and interconnection requirements, as appropriate.

18 (b) The commission may impose reasonable penalties on any
19 user, owner, or operator of the Hawaii electric system, or any
20 other person, business, or entity connecting to the Hawaii
21 electric system acting in violation of an adopted reliability
22 standard after notice as provided under section 269-12 and an



1 opportunity for a proceeding under section 269-15 has been
2 given.

3 (c) The commission shall adopt rules pursuant to chapter
4 91 for the issuance of any penalty under this section. In
5 adopting rules, the commission may make provisions for the
6 Hawaii electric reliability administrator to recommend penalties
7 and enforcement to the commission.

8 §269-E Grid access; procedures for interconnection;
9 dispute resolution. (a) Each user, owner, or operator of the
10 Hawaii electric system, or any other person, business, or entity
11 seeking to make an interconnection on the Hawaii electric system
12 shall do so in accordance with procedures to be established by
13 the commission by rule or order.

14 (b) The commission shall have the authority to make final
15 determinations regarding any dispute between any user, owner, or
16 operator of the Hawaii electric system, or any other person,
17 business, or entity connecting to the Hawaii electric system,
18 concerning either an existing interconnection on the Hawaii
19 electric system or an interconnection to the Hawaii electric
20 system created under the processes established by the commission
21 under this section.



1 §269-F Hawaii electricity reliability surcharge;
2 authorization; cost recovery. (a) The commission may require,
3 by rule or order, that all utilities, persons, businesses, or
4 entities connecting to the Hawaii electric system, or any other
5 user, owner, or operator of any electric element that is a part
6 of an interconnection on the Hawaii electric system shall pay a
7 surcharge that shall be collected by Hawaii's electric
8 utilities. The commission shall not contract or otherwise
9 delegate the ability to create the Hawaii electricity
10 reliability surcharge under this section to any other entity.
11 This surcharge amount shall be known as the Hawaii electricity
12 reliability surcharge.

13 (b) Amounts collected through the Hawaii electricity
14 reliability surcharge shall be transferred in whole or in part
15 to any entity contracted by the commission to act as the Hawaii
16 electricity reliability administrator provided for under this
17 part.

18 (c) The Hawaii electricity reliability surcharge shall be
19 used for the purposes of ensuring the reliable operation of the
20 Hawaii electric system and overseeing grid access on the Hawaii
21 electric system through the activities of the Hawaii electricity
22 reliability administrator contracted under section 269-G;



1 provided that amounts collected under the Hawaii electricity
2 reliability surcharge shall not be available to meet any current
3 or past general obligations of the State.

4 (d) The commission may allow an electric utility to
5 recover appropriate and reasonable costs under the Hawaii
6 electricity reliability surcharge for any interconnection to the
7 Hawaii electric system, including interconnection studies and
8 other analysis associated with studying the impact or necessary
9 infrastructure and operational requirements needed to reliably
10 interconnect a generator, as well as from electric utility
11 customers through a surcharge or assessment subject to review
12 and approval by the commission under section 269-16.

13 (e) Nothing in this section shall create or be construed
14 to cause amounts collected through the Hawaii electricity
15 reliability surcharge to be considered state or public moneys
16 subject to appropriation by the legislature or be required to be
17 deposited into the state treasury.

18 **§269-G Hawaii electricity reliability administrator;**
19 **contracting.** (a) The commission may contract for the
20 performance of its functions under this part with a person,
21 business, or organization, except for a public utility as
22 defined under this chapter, that will serve as the Hawaii



1 electricity reliability administrator provided for under this
2 part; provided that the commission shall not contract for the
3 performance of its functions under sections 269-B(a) and (b) and
4 269-F.

5 (b) Any entity contracted by the commission to serve as
6 the Hawaii electricity reliability administrator under this
7 section shall be selected by the commission in accordance with
8 state law, including chapter 103D. The Hawaii electricity
9 reliability administrator, if so enabled by the commission
10 through mutual agreement under the laws of the State of Hawaii,
11 shall hold the powers and rights delegated by the commission
12 under this part for the term of the executed contract; provided
13 that the commission shall retain full authority over the Hawaii
14 electricity reliability administrator and the exclusive
15 authority to carry out functions and responsibilities enumerated
16 under sections 269-B(a) and (b) and 269-F.

17 §269-H Hawaii electricity reliability administrator;
18 qualifications. Any entity contracted by the commission to
19 serve as the Hawaii electricity reliability administrator shall:

20 (1) Satisfy the qualification requirements established by
21 the commission by rule or order;



1 (2) Maintain reasonable and necessary staffing with
2 appropriate skills and expertise to offer prudent and
3 reasonable recommendations on the development of
4 reliability standards and interconnection requirements
5 adopted by the commission under this part, including
6 the technical skills required to properly monitor
7 operations of the Hawaii electric system using
8 information provided under section 269-C; and

9 (3). Maintain reasonable and necessary staffing with an
10 appropriate level of independence to fairly and
11 impartially review matters concerning interconnection
12 to the Hawaii electric system under section 269-E,
13 including independence of the entity from any electric
14 utility, any user, owner, or operator of the Hawaii
15 electric system, or any other person, business, or
16 entity connecting to the Hawaii electric system.

17 **§269-I Funding; reporting.** (a) The Hawaii electricity
18 reliability administrator shall use funds collected through the
19 Hawaii electricity reliability surcharge provided for under
20 section 269-F to carry out its operations, including
21 administrative, technological, or other related requirements for



1 effectively ensuring the reliability of the Hawaii electric
2 system.

3 (b) The Hawaii electricity reliability administrator shall
4 report to the commission each year on the date of agreement
5 under section 269-G following the original contracting between
6 the Hawaii electricity reliability administrator and the
7 commission on the status of its operations, financial position,
8 and a projected operational budget for the fiscal year following
9 the date of the report.

10 (c) The Hawaii electricity reliability administrator shall
11 be subject to regulation by the commission under any provision
12 applicable to a public utility in sections 269-7, 269-8,
13 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and
14 269-28. Notwithstanding any other provision of law to the
15 contrary, the Hawaii electricity reliability administrator shall
16 not be an electric public utility or an electric public utility
17 affiliate."

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

21 ""Public utility":



- 1 (1) Includes every person who may own, control, operate,
2 or manage as owner, lessee, trustee, receiver, or
3 otherwise, whether under a franchise, charter,
4 license, articles of association, or otherwise, any
5 plant or equipment, or any part thereof, directly or
6 indirectly for public use for the transportation of
7 passengers or freight; for the conveyance or
8 transmission of telecommunications messages; for the
9 furnishing of facilities for the transmission of
10 intelligence by electricity within the State or
11 between points within the State by land, water, or
12 air; for the production, conveyance, transmission,
13 delivery, or furnishing of light, power, heat, cold,
14 water, gas, or oil; for the storage or warehousing of
15 goods; or for the disposal of sewage; provided that
16 the term shall include:
- 17 (A) An owner or operator of a private sewer company
18 or sewer facility; and
- 19 (B) A telecommunications carrier or
20 telecommunications common carrier; and
- 21 (2) Shall not include:



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



- 1 (F) A carrier by water, substantially engaged in
- 2 interstate or foreign commerce, that transports
- 3 passengers on luxury cruises between points
- 4 within the State or on luxury round-trip cruises
- 5 returning to the point of departure;
- 6 (G) ~~[Any person who:~~
- 7 ~~(i) Controls, operates, or manages plants or~~
- 8 ~~facilities for the production, transmission,~~
- 9 ~~or furnishing of power primarily or entirely~~
- 10 ~~from nonfossil fuel sources; and~~
- 11 ~~(ii) Provides, sells, or transmits all of that~~
- 12 ~~power, except as is used in its own internal~~
- 13 ~~operations, directly to a public utility for~~
- 14 ~~transmission to the public;] Any user,~~
- 15 owner, or operator of the Hawaii electric
- 16 system as defined under section 269-A;
- 17 (H) A telecommunications provider only to the extent
- 18 determined by the public utilities commission
- 19 pursuant to section 269-16.9;
- 20 (I) Any person who controls, operates, or manages
- 21 plants or facilities developed pursuant to
- 22 chapter 167 for conveying, distributing, and



1 transmitting water for irrigation and other
2 purposes for public use and purpose;

3 (J) Any person who owns, controls, operates, or
4 manages plants or facilities for the reclamation
5 of wastewater; provided that:

6 (i) The services of the facility are provided
7 pursuant to a service contract between the
8 person and a state or county agency and at
9 least ten per cent of the wastewater
10 processed is used directly by the state or
11 county agency that entered into the service
12 contract;

13 (ii) The primary function of the facility is the
14 processing of secondary treated wastewater
15 that has been produced by a municipal
16 wastewater treatment facility owned by a
17 state or county agency;

18 (iii) The facility does not make sales of water to
19 residential customers;

20 (iv) The facility may distribute and sell
21 recycled or reclaimed water to entities not
22 covered by a state or county service



1 contract; provided that, in the absence of
2 regulatory oversight and direct competition,
3 the distribution and sale of recycled or
4 reclaimed water shall be voluntary and its
5 pricing fair and reasonable. For purposes
6 of this subparagraph, "recycled water" and
7 "reclaimed water" means treated wastewater
8 that by design is intended or used for a
9 beneficial purpose; and

10 (v) The facility is not engaged, either directly
11 or indirectly, in the processing of food
12 wastes;

13 (K) Any person who owns, controls, operates, or
14 manages any seawater air conditioning district
15 cooling project; provided that at least fifty per
16 cent of the energy required for the seawater air
17 conditioning district cooling system is provided
18 by a renewable energy resource, such as cold,
19 deep seawater;

20 (L) Any person who owns, controls, operates, or
21 manages plants or facilities primarily used to



1 charge or discharge a vehicle battery that
2 provides power for vehicle propulsion; and

3 (M) Any person who:

4 (i) Owns, controls, operates, or manages a
5 renewable energy system that is located on a
6 customer's property; and

7 (ii) Provides, sells, or transmits the power
8 generated from that renewable energy system
9 to an electric utility or to the customer on
10 whose property the renewable energy system
11 is located; provided that, for purposes of
12 this ~~[clause,]~~ subparagraph, a customer's
13 property shall include all contiguous
14 property owned or leased by the customer
15 without regard to interruptions in
16 contiguity caused by easements, public
17 thoroughfares, transportation rights-of-way,
18 and utility rights-of-way.

19 If the application of this chapter is ordered by the
20 commission in any case provided in ~~[paragraphs]~~ paragraph
21 ~~(2) (C), [(2) (D), (2) (H), and (2) (I)],~~ (D), (H), and (I), the
22 business of any public utility that presents evidence of bona



1 fide operation on the date of the commencement of the
 2 proceedings resulting in the order shall be presumed to be
 3 necessary to the public convenience and necessity, but any
 4 certificate issued under this proviso shall nevertheless be
 5 subject to terms and conditions as the public utilities
 6 commission may prescribe, as provided in sections 269-16.9 and
 7 269-20."

8 SECTION 4. In codifying the new part and sections added to
 9 chapter 269, Hawaii Revised Statutes, by section 2 of this Act,
 10 the revisor of statutes shall substitute appropriate section
 11 numbers for the letters used in designating and referring to the
 12 new sections in this Act.

13 SECTION 5. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2012.

APPROVED this 27 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII