
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1 SECTION 1. The legislature finds that, although addressed
2 to a limited extent in declaratory rulings and case law, under
3 current statute it may be interpreted that a lessor or property
4 owner who installs a renewable energy system on property and
5 sells the electricity generated to the lessees or tenants on the
6 property may be defined as a public utility. The legislature
7 further finds that any lease agreement involving the purchase by
8 lessees or tenants of electricity generated by a renewable
9 energy system of the lessor or property owner needs to include
10 certain disclosures for the protection of the lessees or
11 tenants. For example, a rate data sheet for Kauai Island
12 Utility Cooperative and effective rate summaries for the
13 Hawaiian Electric Companies are filed monthly with the public
14 utilities commission, and these filings can also be found on
15 each respective electric utility's website for the purpose of
16 obtaining current effective rate information.

17 The purpose of this Act is to remove any ambiguity by
18 exempting landlords and lessors who install renewable energy



1 systems on their property and provide, sell, or transmit
2 electricity generated from those renewable energy systems to
3 tenants or lessees on the premises, from the definition of
4 public utility and to provide for disclosures in the lease
5 agreement for the protection of the lessees or tenants.

6 SECTION 2. Section 269-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "public utility" to read
8 as follows:

9 ""Public utility":

10 (1) Includes every person who may own, control, operate,
11 or manage as owner, lessee, trustee, receiver, or
12 otherwise, whether under a franchise, charter,
13 license, articles of association, or otherwise, any
14 plant or equipment, or any part thereof, directly or
15 indirectly for public use for the transportation of
16 passengers or freight; for the conveyance or
17 transmission of telecommunications messages; for the
18 furnishing of facilities for the transmission of
19 intelligence by electricity within the State or
20 between points within the State by land, water, or
21 air; for the production, conveyance, transmission,
22 delivery, or furnishing of light, power, heat, cold,



1 water, gas, or oil; for the storage or warehousing of
2 goods; or for the disposal of sewage; provided that
3 the term shall include:

4 (A) An owner or operator of a private sewer company
5 or sewer facility; and

6 (B) A telecommunications carrier or
7 telecommunications common carrier; and

8 (2) Shall not include:

9 (A) An owner or operator of an aerial transportation
10 enterprise;

11 (B) An owner or operator of a taxicab as defined in
12 this section;

13 (C) Common carriers that transport only freight on
14 the public highways, unless operating within
15 localities, along routes, or between points that
16 the public utilities commission finds to be
17 inadequately serviced without regulation under
18 this chapter;

19 (D) Persons engaged in the business of warehousing or
20 storage unless the commission finds that
21 regulation is necessary in the public interest;



- 1 (E) A carrier by water to the extent that the carrier
2 enters into private contracts for towage,
3 salvage, hauling, or carriage between points
4 within the State; provided that the towing,
5 salvage, hauling, or carriage is not pursuant to
6 either an established schedule or an undertaking
7 to perform carriage services on behalf of the
8 public generally;
- 9 (F) A carrier by water, substantially engaged in
10 interstate or foreign commerce, that transports
11 passengers on luxury cruises between points
12 within the State or on luxury round-trip cruises
13 returning to the point of departure;
- 14 (G) Any user, owner, or operator of the Hawaii
15 electric system as defined under section 269-141;
- 16 (H) A telecommunications provider only to the extent
17 determined by the public utilities commission
18 pursuant to section 269-16.9;
- 19 (I) Any person who controls, operates, or manages
20 plants or facilities developed pursuant to
21 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 subparagraph, a customer's property
13 shall include all contiguous property owned
14 or leased by the customer without regard to
15 interruptions in contiguity caused by
16 easements, public thoroughfares,
17 transportation rights-of-way, and utility
18 rights-of-way~~[-]~~; and
19 (N) Any person who owns, controls, operates, or
20 manages a renewable energy system that is located
21 on such person's property and provides, sells, or
22 transmits the power generated from that renewable



1 energy system to an electric utility or to
2 lessees or tenants on the person's property where
3 the renewable energy system is located; provided
4 that:

5 (i) An interconnection, as defined in section
6 269-141, is maintained with an electric
7 public utility to preserve the lessees' or
8 tenants' ability to be served by an electric
9 utility;

10 (ii) Such person does not use an electric public
11 utility's transmission or distribution lines
12 to provide, sell, or transmit electricity to
13 lessees or tenants;

14 (iii) At the time that the lease agreement is
15 signed, the rate charged to the lessee or
16 tenant for the power generated by the
17 renewable energy system shall be no greater
18 than the effective rate charged per kilowatt
19 hour from the applicable electric utility
20 schedule filed with the public utilities
21 commission;

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



1 of applicable tariffs for termination of
2 services for non-payment of electric utility
3 services or rules regarding health, safety,
4 and welfare; and (4) whether the lease is
5 contingent upon the purchase of electricity
6 from the renewable energy system; provided
7 further that any disputes concerning the
8 requirements of this provision shall be
9 resolved pursuant to the provisions of the
10 lease agreement or chapter 521, if
11 applicable; and
12 (vii) Nothing in this section shall be construed
13 to permit wheeling.

14 If the application of this chapter is ordered by the
15 commission in any case provided in paragraph (2) (C), (D), (H),
16 and (I), the business of any public utility that presents
17 evidence of bona fide operation on the date of the commencement
18 of the proceedings resulting in the order shall be presumed to
19 be necessary to the public convenience and necessity, but any
20 certificate issued under this proviso shall nevertheless be
21 subject to terms and conditions as the public utilities



1 commission may prescribe, as provided in sections 269-16.9 and
2 269-20."

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

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



Report Title:

Renewable Energy; Landlords; Lessors; Public Utility

Description:

Exempts landlords and lessors who install renewable energy systems on their property and provide, sell, or transmit electricity generated from those renewable energy systems to tenants or lessees on the premises from the definition of public utility, under certain conditions. (CD1)

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