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# A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1           SECTION 1. The public utilities commission issued Order  
2 No. 32695, at the initiation of the Hawaiian Electric Company,  
3 Inc., and NextEra, Inc., merger proceeding (Docket No. 2015-  
4 0022), which states: "Since HRS §269-19 does not contain  
5 specific criteria or standards for the commission to consider in  
6 the transfer or assignment of a franchise, the commission  
7 historically, in its review of applications for the sale of  
8 public utility assets and the transfers of certificates of  
9 public convenience and necessity (CPCN) and franchises, pursuant  
10 to HRS §269-19, has utilized the same standards of review found  
11 at HRS §269-7.5 for guidance, to wit, that the applicant is  
12 "fit, willing, and able properly to 'perform the service  
13 proposed.'"

14           The consumer advocate noted that other mergers of major  
15 utilities have reached settlement agreements stipulating that a  
16 "substantial net benefit" exists for the merger.



1           The purpose of this Act is to adopt "substantial net  
2 benefit" as the standard for a transfer or assignment of a  
3 franchise for public utilities.

4           SECTION 2. Section 269-19, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§269-19 Merger and consolidation of public utilities.**

7           (a) Except as provided in subsection (b), no public utility  
8 shall sell, lease, assign, mortgage, or otherwise dispose of or  
9 encumber the whole or any part of its road, line, plant, system,  
10 or other property necessary or useful in the performance of its  
11 duties to the public, or any franchise or permit, or any right  
12 thereunder, nor by any means, directly or indirectly, merge or  
13 consolidate with any other public utility without first having  
14 secured from the public utilities commission an order  
15 authorizing it so to do. Every such sale, lease, assignment,  
16 mortgage, disposition, encumbrance, merger, or consolidation,  
17 made other than in accordance with the order of the commission  
18 shall be void.

19           (b) A public utility, under circumstances that it deems  
20 exigent and in its judgment require a response that rapidly  
21 restores one of its customers to normal, or near normal,



1 operating status in order to prevent serious disruption of  
2 essential public services, or avoid serious risk to public  
3 safety, or to mitigate severe economic losses to that customer,  
4 may transfer, assign, or otherwise dispose of its property  
5 without prior approval from the public utilities commission as  
6 required in subsection (a); provided that in so doing:

- 7 (1) The public utility does not unduly hinder or degrade  
8 the public utility's operation with respect to its  
9 services or other customers;
- 10 (2) The public utility is duly compensated for its  
11 property; and
- 12 (3) The public utility reports in detail to the public  
13 utilities commission within thirty days of any such  
14 action unless otherwise approved by the public  
15 utilities commission for good cause shown.

16 For purposes of this subsection, "property" does not  
17 include real property.

18 (c) The specific standard for the public utilities  
19 commission to consider in the transfer or assignment of a  
20 franchise shall be substantial net benefit. The public



1 utilities commission may establish reasonable criteria for  
2 specific mergers.

3 (d) In determining whether there is a substantial net  
4 benefit, the public utilities commission shall consider whether:

5 (1) The proposed transaction is in the public interest;  
6 including whether:

7 (A) Approval of the proposed transaction would be in  
8 the best interests of the State's economy and the  
9 communities served by the public utility;

10 (B) The proposed transaction, if approved, provides  
11 significant, quantifiable benefits to the public  
12 utility's ratepayers in both the short and long  
13 term beyond those proposed by the public utility  
14 in recent regulatory filing;

15 (C) The proposed transaction will impact the ability  
16 of the public utility company's employees to  
17 provide safe, adequate, and reliable service at  
18 reasonable cost;

19 (D) The proposed financing and corporate  
20 restructuring proposed in the application is  
21 reasonable;



- 1           (E) Adequate safeguards exist to prevent cross  
2           subsidization of any proposed affiliates and to  
3           ensure the public utility commission's ability to  
4           audit the books and records of the public  
5           utility, including affiliate transactions;
- 6           (F) Adequate safeguards exist to protect the public  
7           utility's ratepayers from any business and  
8           financial risks associated with the operations of  
9           the transferee or assignee;
- 10          (G) The proposed transaction, if approved, will  
11          enhance or detrimentally impact the State's clean  
12          energy goals; and
- 13          (H) The proposed transaction, if approved, would  
14          potentially diminish competition in Hawaii's  
15          various energy markets and, if so, what  
16          regulatory safeguards are required to mitigate  
17          such adverse impacts;
- 18          (2) The applicants are fit, willing, and able to properly  
19          provide safe, adequate, reliable electric service at  
20          the lowest reasonable cost in both the short and the



1 long term; including whether the proposed transaction,  
2 if approved, will:

3 (A) Result in more affordable electric rates for the  
4 public utility's ratepayers;

5 (B) Result in an improvement in service and  
6 reliability for the ratepayers of the public  
7 utility;

8 (C) Improve the public utility's management and  
9 performance; and

10 (D) Improve the financial soundness of the public  
11 utility;

12 (3) The proposed transaction, if approved, would diminish,  
13 in any way, the public utilities commission's current  
14 regulatory authority over a public utility,  
15 particularly, if the ultimate control of the public  
16 utility will reside outside of the State;

17 (4) The financial size of the transferor or assignor  
18 relative to the transferee or assignee would result in  
19 a diminution of regulatory control by the public  
20 utilities commission;



- 1       (5) The transferee or assignee has been subject to  
2       compliance or enforcement orders issued by any  
3       regulatory agency or court; and  
4       (6) Any conditions are necessary to ensure that the  
5       proposed transaction is not detrimental to the  
6       interests of the public utility's ratepayers or the  
7       State and to avoid any adverse consequences and, if  
8       so, what conditions are necessary."

9       SECTION 3. New statutory material is underscored.

10       SECTION 4. This Act shall take effect on January 1, 2017.



**Report Title:**

Public Utilities Commission; Merger

**Description:**

Establishes "substantial net benefit" as the Public Utilities Commission's standard for a transfer or assignment of a franchise. (HB2567 HD1 PROPOSED)

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