

JAN 23 2014

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# 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 Hawaii residents  
2 should be able to participate in and enjoy the economic,  
3 environmental, and societal benefits of renewable energy.  
4 Spurred by the Hawaii clean energy initiative and increasingly  
5 affordable clean energy options, such as solar photovoltaic,  
6 localized renewable energy generation technology has become  
7 increasingly attainable for all types of consumers over the past  
8 several years.

9           While residential solar energy use statewide doubled in  
10 2012, many individuals and households are currently unable to  
11 directly participate in renewable energy because of their  
12 location, building type, access to the electric utility grid,  
13 and other impediments.

14           The community-based renewable energy program seeks to  
15 rectify this inequity by dramatically expanding the market for  
16 eligible renewable energy resources to include residential and  
17 commercial renters, residential and commercial buildings with  
18 shaded or improperly oriented roofs, and other groups who are



1 unable to access the benefits of onsite clean energy generation.  
2 The legislature finds that it is in the public interest to  
3 promote broader participation in self-generation by Hawaii  
4 residents, public agencies, and businesses through the  
5 development of community renewable energy facilities in which  
6 participants are entitled to generate electricity and receive  
7 credit for that electricity on their utility bills.

8 Community-based renewable energy creates new construction  
9 jobs, stimulates the economy, reduces emissions of greenhouse  
10 gases, promotes energy independence, and assists in meeting the  
11 State's clean energy goals. Further, community-based renewable  
12 energy enables schools, colleges, universities, local  
13 governments, businesses, and consumers to save money on their  
14 electricity bills, thereby helping to fund educational programs,  
15 social services, and new hiring.

16 It is the intent of the legislature that as the public  
17 utilities commission works to implement this Act, the commission  
18 carefully consider regulatory barriers to distributed generation  
19 projects, whether identified or not, and quickly address  
20 barriers in a manner that is conducive to the development of  
21 distributed generation projects consistent with appropriate  
22 ratepayer protections. This Act is not intended to delay or



1 limit electric utilities, regulated by the public utilities  
2 commission, from establishing and implementing community-  
3 based renewable energy programs, and this Act shall not,  
4 absent the issuance of a rule or order by the public  
5 utilities commission, regulate the terms or operation of a  
6 community-based renewable energy program owned or operated by  
7 those electric utilities.

8 The purpose of this Act is to establish the Hawaii  
9 community-based renewable energy program to make the benefits of  
10 renewable energy more accessible to a greater number of Hawaii  
11 residents.

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

15 **"PART . COMMUNITY-BASED RENEWABLE ENERGY**

16 **§269-A Definitions.** As used in this part:

17 "Benefiting account" means one or more accounts designated  
18 to receive a bill credit under section 269-B.

19 "Bill credit" means an amount of money credited each month  
20 to one or more benefiting accounts based on the percentage share  
21 of the community renewable energy facility that is assigned to



1 the account pursuant to the methodology described in section  
2 269-D.

3 "Commission" means the public utilities commission.

4 "Community renewable energy facility" means a facility for  
5 the generation of electricity, not owned or operated by an  
6 electric utility regulated by the commission, that provides  
7 community-based renewable energy and meets the following  
8 requirements:

- 9 (1) Produces renewable energy as defined in section  
10 269-91;
- 11 (2) Measures the electrical output of the facility by a  
12 production meter capable of recording electrical  
13 generation in real time;
- 14 (3) Is located within the service territory of an electric  
15 utility;
- 16 (4) Operates in parallel with the electric utility's  
17 transmission and distribution facilities;
- 18 (5) Conforms with the electric utility's interconnection  
19 requirements;
- 20 (6) Is not subject to net metering under part VI of this  
21 chapter; and



1           (7) Achieves initial commercial operation on January 1,  
2                   2015, or thereafter.

3           "Interest" means a direct or indirect ownership, lease,  
4 subscription, or financing interest in a community renewable  
5 energy facility that enables the participant to receive a bill  
6 credit for a retail account with the electric utility.

7           "Maintenance expense" means a participant's share of the  
8 cost of maintaining and operating the community renewable energy  
9 facility to be deposited into a protected trust or escrow  
10 account for the sole purposes of maintaining and operating the  
11 community renewable energy facility.

12           "Participant" means a retail customer of an electric  
13 utility who owns, leases, or subscribes to an interest in a  
14 community renewable energy facility and who has designated a  
15 retail account as a benefiting account to which the subscription  
16 shall be attributed; provided that a retail customer with  
17 multiple retail accounts may comprise multiple participants.

18           "Participant organization" means any entity, other than an  
19 electric utility regulated by the commission, whose purpose is  
20 to own or operate a community renewable energy facility for the  
21 benefit of participants of that facility.



1           **§269-B Community renewable energy facilities; benefiting**  
2 **accounts; participants.** (a) A retail customer of an electric  
3 utility may acquire an interest in a community renewable energy  
4 facility for the purpose of becoming a participant and receiving  
5 a bill credit to offset all or a portion of the customer's bill  
6 for electrical service. Each participant shall designate a  
7 benefiting account to which the interest shall be attributed.

8           (b) A community renewable energy facility shall comply  
9 with all safety and performance standards under section 269-111.

10           (c) To be eligible to be designated as a benefiting  
11 account, the account shall be for service to premises located  
12 within the geographical boundaries of the service territory of  
13 the electric utility containing the community renewable energy  
14 facility.

15           (d) A participant organization may own or operate a  
16 community renewable energy facility for the benefit of  
17 participants of that facility. A community renewable energy  
18 facility may be built, owned, or operated by a third party under  
19 contract with a participant organization.

20           (e) The commission shall not regulate the prices paid for  
21 an interest in a community renewable energy facility but may  
22 enforce the required disclosures pursuant to section 269-H.



1 (f) Each electric utility shall maintain a publicly  
2 available database of existing and proposed community renewable  
3 energy facilities.

4 **§269-C Standard contract or tariff; rate structure.** (a)

5 Every electric utility shall develop a standard community-based  
6 renewable energy metering contract or tariff, for approval by  
7 the commission, providing for community-based renewable energy  
8 and shall make this contract or tariff available to  
9 participants. The commission may amend the rate structure or  
10 standard contract or tariff by rule or order. This contract or  
11 tariff shall:

12 (1) Calculate the value of the bill credit or bill owed  
13 for the benefiting account's kilowatt-hour production  
14 and consumption based on a time-of-use rate structure  
15 that reflects, at a minimum:

16 (A) The time-dependent value of the participants'  
17 energy generated and time-dependent cost of the  
18 participants' energy consumed, as such value  
19 changes based on utility demand and on the  
20 availability of energy resources; and



- 1 (B) The value of ancillary services or demand  
2 response capability provided by the community  
3 renewable energy facility and participants; or  
4 (2) Calculate the value of the bill credit or bill owed  
5 for the benefiting account's kilowatt-hour production  
6 and consumption:  
7 (A) In a manner consistent with sections 269-102 (b)  
8 and 269-105;  
9 (B) With an allowable fixed monthly charge that  
10 reflects the utility's fixed costs associated  
11 with participants' use of the utility's  
12 transmission, distribution, and other  
13 infrastructure; and  
14 (C) With a monthly credit based on the value of any  
15 ancillary services or demand response capability  
16 provided by the community renewable energy  
17 facility and participants.  
18 (b) For participants who acquire an interest in an  
19 operational or proposed community renewable energy facility  
20 prior to the date of commission approval of a contract or tariff  
21 developed by an electric utility in accordance with subsection  
22 (a):





- 1           (1) Each community-based renewable energy metering  
2                   contract or tariff shall be consistent with sections  
3                   269-102 and 269-105;
- 4           (2) The charges for all retail rate components for  
5                   participants shall be based exclusively on the  
6                   participant's net kilowatt-hour consumption over a  
7                   monthly billing period. Any new or additional demand  
8                   charge, standby charge, customer charge, minimum  
9                   monthly charge, interconnection charge, or other  
10                  charge that would increase a participant's costs  
11                  beyond those allowed by sections 269-102 and 269-105,  
12                  are contrary to the intent of this section, and shall  
13                  not form a part of community-based renewable energy  
14                  contracts or tariffs, prior to commission approval of  
15                  a standard community renewable energy metering  
16                  contract or tariff pursuant to subsection (a); and
- 17           (3) The value of the compensation owed for the benefiting  
18                   account's net monthly kilowatt-hour consumption shall  
19                   be calculated at the retail rate consistent with  
20                   sections 269-102 and 269-105.

21           **§269-D Calculation.** The bill credit calculation shall be  
22           made by measuring the difference between the value, calculated



1 in accordance with the applicable rate structure under section  
2 269-C, of electricity supplied to the benefiting account from  
3 the electric utility, and:

4 (1) The percentage share allocated to the benefiting  
5 account of the value, calculated in accordance with  
6 the applicable rate structure under section 269-C, of  
7 the electricity generated by the community renewable  
8 energy facility and fed back to the electric grid over  
9 a monthly billing period; and

10 (2) Any unused credits for the value, calculated in  
11 accordance with the applicable rate structure under  
12 section 269-C, of excess electricity from the  
13 percentage share allocated to the benefiting account,  
14 carried over from previous months since the last  
15 twelve-month reconciliation period, pursuant to  
16 section 269-E.

17 **§269-E Billing periods; twelve-month reconciliation.** (a)

18 Billing of a participant's benefiting account shall be on a  
19 monthly basis; provided that the last monthly bill for each  
20 twelve-month period shall reconcile for that twelve-month period  
21 the applicable monthly bill credit or bill owed with:



1           (1) The percentage share allocated to the benefiting  
2           account of the value, calculated in accordance with  
3           the applicable rate structure under section 269-C, of  
4           the electricity generated by the community renewable  
5           energy facility and fed back to the electric grid over  
6           the monthly billing period; and

7           (2) Any unused bill credits for the value, calculated in  
8           accordance with the applicable rate structure under  
9           section 269-C, of excess electricity from the  
10          percentage share allocated to the benefiting account,  
11          carried over from prior months since the last twelve-  
12          month reconciliation period.

13          (b) Bill credits for the percentage share allocated to the  
14          benefiting account of the value, calculated in accordance with  
15          the applicable rate structure under section 269-C, of excess  
16          electricity generated by the community renewable energy facility  
17          that remain unused after each twelve-month reconciliation period  
18          shall not be carried over to the next twelve-month period.

19          **§269-F Net electricity consumers.** At the end of each  
20          monthly billing period, if the value, calculated in accordance  
21          with the applicable rate structure under section 269-C, of the



1 electricity supplied to the benefiting account by the electric  
2 utility during the period exceeds:

3 (1) The percentage share allocated to the benefiting  
4 account of the value, calculated in accordance with  
5 the applicable rate structure under section 269-C, of  
6 the electricity generated by the community renewable  
7 energy facility during that same period; and

8 (2) Any unused bill credits for the value, calculated in  
9 accordance with the applicable rate structure under  
10 section 269-C, of excess electricity from the  
11 percentage share allocated to the benefiting account  
12 of the electricity, generated by the community  
13 renewable energy facility carried over from prior  
14 months since the last twelve-month reconciliation  
15 period,

16 the benefiting account shall be deemed a net electricity  
17 consumer who shall owe the electric utility compensation for the  
18 value of the benefiting account's kilowatt-hour consumption over  
19 that same period, based on a rate structure as described in  
20 section 269-C.

21 **§269-G Net electricity producers; excess electricity**  
22 **credits and credit carry-over.** (a) At the end of each monthly



1 billing period, if the percentage share allocated to the  
2 benefiting account of the value, calculated in accordance with  
3 the applicable rate structure under section 269-C, of the  
4 electricity generated by the community renewable energy facility  
5 during the month exceeds the value, calculated in accordance  
6 with the applicable rate structure under section 269-C, of  
7 electricity supplied to the benefiting account by the electric  
8 utility during that same period, the benefiting account shall be  
9 deemed a net electricity producer and shall retain a credit for  
10 the value of such electricity production, provided that:

11 (1) The percentage share allocated to the benefiting  
12 account of the electricity generated by the community  
13 renewable energy facility in excess, if any, in each  
14 monthly billing period shall be carried over to the  
15 next month as a monetary value, calculated in  
16 accordance with the applicable rate structure under  
17 section 269-C, to the credit of the benefiting  
18 account, which bill credit may accumulate and be used  
19 to offset the compensation owed the electric utility  
20 for the benefiting account's electricity service for  
21 succeeding months within each twelve-month period; and



1           (2) The electric utility shall reconcile the value,  
2           calculated in accordance with the applicable rate  
3           structure under section 269-C, of the benefiting  
4           account's consumption and the percentage share  
5           allocated to the benefiting account of the value,  
6           calculated in accordance with the applicable rate  
7           structure under section 269-C, of the electricity  
8           generated by the community renewable energy facility  
9           for each twelve-month period as set forth in section  
10          269-E.

11          (b) The benefiting account shall not be owed any  
12          compensation other than credits as provided in this section  
13          unless the electric utility enters into a purchase agreement  
14          with the benefiting account for those excess kilowatt-hours.

15          **§269-H Participant organization obligations.** (a) A  
16          participant organization shall provide to the electric utility  
17          information on the identity of the benefiting accounts that will  
18          receive a bill credit pursuant to this part not less than thirty  
19          days prior to the billing cycle for which the participant's  
20          account will receives a bill credit.

21          (b) Prior to the sale of any interest in a community  
22          renewable energy facility, the participant organization shall



1 provide a disclosure to the potential participant that, at a  
2 minimum, includes all of the following:

3 (1) A good faith estimate of the annual kilowatt-hours to  
4 be delivered by the community renewable energy  
5 facility based on the size of the interest and the  
6 term of that interest;

7 (2) A plain language explanation of the form and term of  
8 participation and the disposition of the participant's  
9 portion after the term;

10 (3) A plain language explanation of the terms under which  
11 the bill credits will be calculated;

12 (4) A plain language explanation of the contract  
13 provisions regulating the disposition or transfer of  
14 the interest and the mechanism for a participant to  
15 change the designation of a benefiting account;

16 (5) A plain language explanation of the costs and benefits  
17 to the potential participant based on current usage  
18 and the applicable tariff, for the term of the  
19 proposed contract; and

20 (6) A good faith estimate of the maintenance expenses.

21 (c) Upon providing the electric utility with a minimum of  
22 thirty days' notice, the participant organization may change,



1 add, or remove a benefiting account not more than once per month  
2 per benefiting account. If the owner of a benefiting account  
3 transfers service to a new address or benefiting account, the  
4 electric utility shall transfer any bill credits remaining from  
5 the previous account to the new account.

6 (d) A participant organization shall be responsible for  
7 providing to the electric utility company a monthly statement of  
8 the percentage shares to be used to determine the bill credit to  
9 each benefiting account and the associated maintenance expenses  
10 to be deducted. The maintenance expenses shall be monetized at  
11 the customer rate class. If there has been no change in the  
12 allocations from the previous submission or in the method of  
13 calculating the facility rate of participants, the participant  
14 organization shall not be required to submit a new statement.

15 (e) The participant organization shall provide real-time  
16 meter data to the electric utility and shall make the data  
17 available to a participant upon request. A participant  
18 organization shall be responsible for all costs of metering and  
19 shall retain production data for a period of thirty-six months.

20 (f) The participant organization shall provide no less  
21 than one hundred twenty days' notice to the electric utility and





1 the commission prior to the date the community renewable energy  
2 facility becomes operational.

3 (g) The participant organization or its designee shall be  
4 responsible for maintaining and operating the facility and shall  
5 establish and maintain a protected trust or escrow account for  
6 the sole purpose of maintaining the facility. The participant  
7 organization shall collect maintenance expenses directly from  
8 its participants or through a power purchase agreement as  
9 approved by the commission to be deposited into the protected  
10 trust or escrow account for the maintenance and operations of  
11 the facility.

12 (i) The participant organization shall be responsible for  
13 providing an operations and maintenance plan to the electric  
14 utility and to the commission that details the renewable energy  
15 facility's sources and uses of operations and maintenance funds  
16 for the term of the facility."

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

20 "Public utility":

21 (1) Includes every person who may own, control, operate,  
22 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  
22 passengers on luxury cruises between points



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

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

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

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

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

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



- 1           (ii) The primary function of the facility is the  
2           processing of secondary treated wastewater  
3           that has been produced by a municipal  
4           wastewater treatment facility owned by a  
5           state or county agency;
- 6           (iii) The facility does not make sales of water to  
7           residential customers;
- 8           (iv) The facility may distribute and sell  
9           recycled or reclaimed water to entities not  
10          covered by a state or county service  
11          contract; provided that, in the absence of  
12          regulatory oversight and direct competition,  
13          the distribution and sale of recycled or  
14          reclaimed water shall be voluntary and its  
15          pricing fair and reasonable. For purposes  
16          of this subparagraph, "recycled water" and  
17          "reclaimed water" means treated wastewater  
18          that by design is intended or used for a  
19          beneficial purpose; and
- 20          (v) The facility is not engaged, either directly  
21          or indirectly, in the processing of food  
22          wastes;



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

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

12          (M) Any person who:  
13               (i) Owns, controls, operates, or manages a  
14               renewable energy system that is located on a  
15               customer's property; and  
16               (ii) Provides, sells, or transmits the power  
17               generated from that renewable energy system  
18               to an electric utility or to the customer on  
19               whose property the renewable energy system  
20               is located; provided that, for purposes of  
21               this subparagraph, a customer's property  
22               shall include all contiguous property owned



1 or leased by the customer without regard to  
2 interruptions in contiguity caused by  
3 easements, public thoroughfares,  
4 transportation rights-of-way, and utility  
5 rights-of-way; [and]

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

14 (i) An interconnection, as defined in section  
15 269-141, is maintained with an electric  
16 public utility to preserve the lessees' or  
17 tenants' ability to be served by an electric  
18 utility;

19 (ii) Such person does not use an electric public  
20 utility's transmission or distribution lines  
21 to provide, sell, or transmit electricity to  
22 lessees or tenants;







1 charged to the lessee or tenant for the  
2 power generated by the renewable energy  
3 system shall be no greater than the  
4 effective rate charged per kilowatt hour  
5 from the applicable electric utility  
6 schedule filed with the public utilities  
7 commission; (3) that the lease agreement  
8 shall not abrogate any terms or conditions  
9 of applicable tariffs for termination of  
10 services for nonpayment of electric utility  
11 services or rules regarding health, safety,  
12 and welfare; and (4) whether the lease is  
13 contingent upon the purchase of electricity  
14 from the renewable energy system; provided  
15 further that any disputes concerning the  
16 requirements of this provision shall be  
17 resolved pursuant to the provisions of the  
18 lease agreement or chapter 521, if  
19 applicable; and

20 (vii) Nothing in this section shall be construed  
21 to permit wheeling[-]; and



1           (0) A person engaged directly or indirectly in  
 2           developing, producing, delivering, participating  
 3           in, or selling interests in a community renewable  
 4           energy facility pursuant to this chapter.

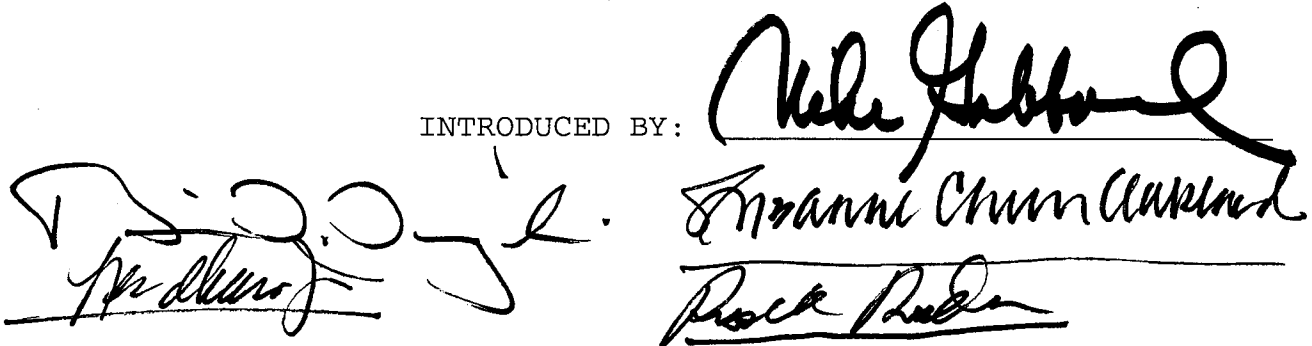
5           If the application of this chapter is ordered by the  
 6           commission in any case provided in paragraph (2)(C), (D), (H),  
 7           and (I), the business of any public utility that presents  
 8           evidence of bona fide operation on the date of the commencement  
 9           of the proceedings resulting in the order shall be presumed to  
 10          be necessary to the public convenience and necessity, but any  
 11          certificate issued under this proviso shall nevertheless be  
 12          subject to terms and conditions as the public utilities  
 13          commission may prescribe, as provided in sections 269-16.9 and  
 14          269-20."

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

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

18

INTRODUCED BY:





S.B. NO. 2934

*Arvid J. Jorg*



# S.B. NO. 2934

**Report Title:**

Community-based Renewable Energy Program

**Description:**

Establishes the Hawaii community-based renewable energy program to make the benefits of renewable energy more accessible to a greater number of Hawaii residents.

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

