

JAN 22 2016

A BILL FOR AN ACT

RELATING TO ELECTRIC UTILITIES.

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

1 SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-1.5 General powers and limitation of the counties.
4 Subject to general law, each county shall have the following
5 powers and shall be subject to the following liabilities and
6 limitations:

7 (1) Each county shall have the power to frame and adopt a
8 charter for its own self-government that shall
9 establish the county executive, administrative, and
10 legislative structure and organization, including but
11 not limited to the method of appointment or election
12 of officials, their duties, responsibilities, and
13 compensation, and the terms of their office;

14 (2) Each county shall have the power to provide for and
15 regulate the marking and lighting of all buildings and
16 other structures that may be obstructions or hazards
17 to aerial navigation, so far as may be necessary or



1 proper for the protection and safeguarding of life,
2 health, and property;

3 (3) Each county shall have the power to enforce all claims
4 on behalf of the county and approve all lawful claims
5 against the county, but shall be prohibited from
6 entering into, granting, or making in any manner any
7 contract, authorization, allowance payment, or
8 liability contrary to the provisions of any county
9 charter or general law;

10 (4) Each county shall have the power to make contracts and
11 to do all things necessary and proper to carry into
12 execution all powers vested in the county or any
13 county officer;

14 (5) Each county shall have the power to:

15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;

18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing



1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;

4 (C) Construct, acquire by gift, purchase, or by the
5 exercise of eminent domain, reconstruct, improve,
6 better, extend, and maintain projects or
7 undertakings for the control of and protection
8 against floods and flood waters, including the
9 power to drain and rehabilitate lands already
10 flooded;

11 (D) Enact zoning ordinances providing that lands
12 deemed subject to seasonable, periodic, or
13 occasional flooding shall not be used for
14 residence or other purposes in a manner as to
15 endanger the health or safety of the occupants
16 thereof, as required by the Federal Flood
17 Insurance Act of 1956 (chapter 1025, Public Law
18 1016); and

19 (E) Establish and charge user fees to create and
20 maintain any stormwater management system or
21 infrastructure;



1 (6) Each county shall have the power to exercise the power
2 of condemnation by eminent domain when it is in the
3 public interest to do so[+], including for the purpose
4 of acquiring any property necessary to operate an
5 electric utility for the production, conveyance,
6 transmission, delivery, or furnishing of electric
7 power;

8 (7) Each county shall have the power to exercise
9 regulatory powers over business activity as are
10 assigned to them by chapter 445 or other general law;

11 (8) Each county shall have the power to fix the fees and
12 charges for all official services not otherwise
13 provided for;

14 (9) Each county shall have the power to provide by
15 ordinance assessments for the improvement or
16 maintenance of districts within the county;

17 (10) Except as otherwise provided, no county shall have the
18 power to give or loan credit to, or in aid of, any
19 person or corporation, directly or indirectly, except
20 for a public purpose;



1 (11) Where not within the jurisdiction of the public
2 utilities commission, each county shall have the power
3 to regulate by ordinance the operation of motor
4 vehicle common carriers transporting passengers within
5 the county and adopt and amend rules the county deems
6 necessary for the public convenience and necessity;

7 (12) Each county shall have the power to enact and enforce
8 ordinances necessary to prevent or summarily remove
9 public nuisances and to compel the clearing or removal
10 of any public nuisance, refuse, and uncultivated
11 undergrowth from streets, sidewalks, public places,
12 and unoccupied lots. In connection with these powers,
13 each county may impose and enforce liens upon the
14 property for the cost to the county of removing and
15 completing the necessary work where the property
16 owners fail, after reasonable notice, to comply with
17 the ordinances. The authority provided by this
18 paragraph shall not be self-executing, but shall
19 become fully effective within a county only upon the
20 enactment or adoption by the county of appropriate and
21 particular laws, ordinances, or rules defining "public



1 nuisances" with respect to each county's respective
2 circumstances. The counties shall provide the
3 property owner with the opportunity to contest the
4 summary action and to recover the owner's property;

5 (13) Each county shall have the power to enact ordinances
6 deemed necessary to protect health, life, and
7 property, and to preserve the order and security of
8 the county and its inhabitants on any subject or
9 matter not inconsistent with, or tending to defeat,
10 the intent of any state statute where the statute does
11 not disclose an express or implied intent that the
12 statute shall be exclusive or uniform throughout the
13 State;

14 (14) Each county shall have the power to:

15 (A) Make and enforce within the limits of the county
16 all necessary ordinances covering all:

- 17 (i) Local police matters;
18 (ii) Matters of sanitation;
19 (iii) Matters of inspection of buildings;



(iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and

(v) Matters of the collection and disposition of rubbish and garbage;

(B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part XVII of chapter 346, for all matters under this paragraph;

(C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and

(D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;



1 (15) Each county shall have the power to provide public
2 pounds; to regulate the impounding of stray animals
3 and fowl, and their disposition; and to provide for
4 the appointment, powers, duties, and fees of animal
5 control officers;

6 (16) Each county shall have the power to purchase and
7 otherwise acquire, lease, and hold real and personal
8 property within the defined boundaries of the county
9 and to dispose of the real and personal property as
10 the interests of the inhabitants of the county may
11 require, except that:

12 (A) Any property held for school purposes may not be
13 disposed of without the consent of the
14 superintendent of education;

15 (B) No property bordering the ocean shall be sold or
16 otherwise disposed of; and

17 (C) All proceeds from the sale of park lands shall be
18 expended only for the acquisition of property for
19 park or recreational purposes;

20 (17) Each county shall have the power to provide by charter
21 for the prosecution of all offenses and to prosecute



1 for offenses against the laws of the State under the
2 authority of the attorney general of the State;

3 (18) Each county shall have the power to make
4 appropriations in amounts deemed appropriate from any
5 moneys in the treasury, for the purpose of:

6 (A) Community promotion and public celebrations;

7 (B) The entertainment of distinguished persons as may
8 from time to time visit the county;

9 (C) The entertainment of other distinguished persons,
10 as well as, public officials when deemed to be in
11 the best interest of the community; and

12 (D) The rendering of civic tribute to individuals
13 who, by virtue of their accomplishments and
14 community service, merit civic commendations,
15 recognition, or remembrance;

16 (19) Each county shall have the power to:

17 (A) Construct, purchase, take on lease, lease,
18 sublease, or in any other manner acquire, manage,
19 maintain, or dispose of buildings for county
20 purposes, sewers, sewer systems, pumping
21 stations, waterworks, including reservoirs,



1 wells, pipelines, and other conduits for
2 distributing water to the public, lighting
3 plants, and apparatus and appliances for lighting
4 streets and public buildings, all buildings,
5 lines, and other property required to operate an
6 electric utility for the production, conveyance,
7 transmission, delivery, or furnishing of electric
8 power, and manage, regulate, and control the
9 same;

10 (B) Regulate and control the location and quality of
11 all appliances necessary to the furnishing of
12 water, heat, light, power, telephone, and
13 telecommunications service to the county;

14 (C) Acquire, regulate, and control any and all
15 appliances for the sprinkling and cleaning of the
16 streets and the public ways, and for flushing the
17 sewers; and

18 (D) Open, close, construct, or maintain county
19 highways or charge toll on county highways;
20 provided that all revenues received from a toll



1 charge shall be used for the construction or
2 maintenance of county highways;

3 (20) Each county shall have the power to regulate the
4 renting, subletting, and rental conditions of property
5 for places of abode by ordinance;

6 (21) Unless otherwise provided by law, each county shall
7 have the power to establish by ordinance the order of
8 succession of county officials in the event of a
9 military or civil disaster;

10 (22) Each county shall have the power to sue and be sued in
11 its corporate name;

12 (23) Each county shall have the power to establish and
13 maintain waterworks and sewer works; to collect rates
14 for water supplied to consumers and for the use of
15 sewers; to install water meters whenever deemed
16 expedient; provided that owners of premises having
17 vested water rights under existing laws appurtenant to
18 the premises shall not be charged for the installation
19 or use of the water meters on the premises; to take
20 over from the State existing waterworks systems,
21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,
2 and to enlarge, develop, and improve the same;

3 (24) (A) Each county may impose civil fines, in addition
4 to criminal penalties, for any violation of
5 county ordinances or rules after reasonable
6 notice and requests to correct or cease the
7 violation have been made upon the violator. Any
8 administratively imposed civil fine shall not be
9 collected until after an opportunity for a
10 hearing under chapter 91. Any appeal shall be
11 filed within thirty days from the date of the
12 final written decision. These proceedings shall
13 not be a prerequisite for any civil fine or
14 injunctive relief ordered by the circuit court;

15 (B) Each county by ordinance may provide for the
16 addition of any unpaid civil fines, ordered by
17 any court of competent jurisdiction, to any
18 taxes, fees, or charges, with the exception of
19 fees or charges for water for residential use and
20 sewer charges, collected by the county. Each
21 county by ordinance may also provide for the



1 addition of any unpaid administratively imposed
2 civil fines, which remain due after all judicial
3 review rights under section 91-14 are exhausted,
4 to any taxes, fees, or charges, with the
5 exception of water for residential use and sewer
6 charges, collected by the county. The ordinance
7 shall specify the administrative procedures for
8 the addition of the unpaid civil fines to the
9 eligible taxes, fees, or charges and may require
10 hearings or other proceedings. After addition of
11 the unpaid civil fines to the taxes, fees, or
12 charges, the unpaid civil fines shall not become
13 a part of any taxes, fees, or charges. The
14 county by ordinance may condition the issuance or
15 renewal of a license, approval, or permit for
16 which a fee or charge is assessed, except for
17 water for residential use and sewer charges, on
18 payment of the unpaid civil fines. Upon
19 recordation of a notice of unpaid civil fines in
20 the bureau of conveyances, the amount of the
21 civil fines, including any increase in the amount



1 of the fine which the county may assess, shall
2 constitute a lien upon all real property or
3 rights to real property belonging to any person
4 liable for the unpaid civil fines. The lien in
5 favor of the county shall be subordinate to any
6 lien in favor of any person recorded or
7 registered prior to the recordation of the notice
8 of unpaid civil fines and senior to any lien
9 recorded or registered after the recordation of
10 the notice. The lien shall continue until the
11 unpaid civil fines are paid in full or until a
12 certificate of release or partial release of the
13 lien, prepared by the county at the owner's
14 expense, is recorded. The notice of unpaid civil
15 fines shall state the amount of the fine as of
16 the date of the notice and maximum permissible
17 daily increase of the fine. The county shall not
18 be required to include a social security number,
19 state general excise taxpayer identification
20 number, or federal employer identification number
21 on the notice. Recordation of the notice in the



bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

(C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property



1 owned, managed, or maintained by the county shall
2 be jointly and severally liable with the minor
3 for any civil fines imposed hereunder. Any such
4 fine may be administratively imposed after an
5 opportunity for a hearing under chapter 91, but
6 such a proceeding shall not be a prerequisite for
7 any civil fine ordered by any court. As used in
8 this subparagraph, "graffiti" means any
9 unauthorized drawing, inscription, figure, or
10 mark of any type intentionally created by paint,
11 ink, chalk, dye, or similar substances;

12 (D) At the completion of an appeal in which the
13 county's enforcement action is affirmed and upon
14 correction of the violation if requested by the
15 violator, the case shall be reviewed by the
16 county agency that imposed the civil fines to
17 determine the appropriateness of the amount of
18 the civil fines that accrued while the appeal
19 proceedings were pending. In its review of the
20 amount of the accrued fines, the county agency
21 may consider:



- (i) The nature and egregiousness of the violation;
- (ii) The duration of the violation;
- (iii) The number of recurring and other similar violations;
- (iv) Any effort taken by the violator to correct the violation;
- (v) The degree of involvement in causing or continuing the violation;
- (vi) Reasons for any delay in the completion of the appeal; and
- (vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;

- (E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the



1 initial civil fine and any accrued daily civil
2 fine, shall immediately become due and
3 collectible following reasonable notice to the
4 violation. If no review of the accrued civil fine
5 is requested, the amount of the civil fine, not
6 to exceed the total accrual of civil fine prior
7 to correcting the violation, shall immediately
8 become due and collectible following reasonable
9 notice to the violator, at the completion of all
10 appeal proceedings;

11 (F) If no county agency exists to conduct appeal
12 proceedings for a particular civil fine action
13 taken by the county, then one shall be
14 established by ordinance before the county shall
15 impose the civil fine;

16 (25) Any law to the contrary notwithstanding, any county
17 mayor, by executive order, may exempt donors, provider
18 agencies, homeless facilities, and any other program
19 for the homeless under part XVII of chapter 346 from
20 real property taxes, water and sewer development fees,
21 rates collected for water supplied to consumers and



1 for use of sewers, and any other county taxes,
2 charges, or fees; provided that any county may enact
3 ordinances to regulate and grant the exemptions
4 granted by this paragraph;

5 (26) Any county may establish a captive insurance company
6 pursuant to article 19, chapter 431; and

7 (27) Each county shall have the power to enact and enforce
8 ordinances regulating towing operations."

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

12 "Public utility":

13 (1) Includes every person who may own, control, operate,
14 or manage as owner, lessee, trustee, receiver, or
15 otherwise, whether under a franchise, charter,
16 license, articles of association, or otherwise, any
17 plant or equipment, or any part thereof, directly or
18 indirectly for public use for the transportation of
19 passengers or freight; for the conveyance or
20 transmission of telecommunications messages; for the
21 furnishing of facilities for the transmission of



1 intelligence by electricity within the State or
2 between points within the State by land, water, or
3 air; for the production, conveyance, transmission,
4 delivery, or furnishing of light, power, heat, cold,
5 water, gas, or oil; for the storage or warehousing of
6 goods; or for the disposal of sewage; provided that
7 the term shall include:

8 (A) An owner or operator of a private sewer company
9 or sewer facility; and

10 (B) A telecommunications carrier or
11 telecommunications common carrier; and

12 (2) Shall not include:

13 (A) An owner or operator of an aerial transportation
14 enterprise;

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

17 (C) Common carriers that transport only freight on
18 the public highways, unless operating within
19 localities, along routes, or between points that
20 the public utilities commission finds to be



1 inadequately serviced without regulation under
2 this chapter;

3 (D) Persons engaged in the business of warehousing or
4 storage unless the commission finds that
5 regulation is necessary in the public interest;

6 (E) A carrier by water to the extent that the carrier
7 enters into private contracts for towage,
8 salvage, hauling, or carriage between points
9 within the State; provided that the towing,
10 salvage, hauling, or carriage is not pursuant to
11 either an established schedule or an undertaking
12 to perform carriage services on behalf of the
13 public generally;

14 (F) A carrier by water, substantially engaged in
15 interstate or foreign commerce, that transports
16 passengers on luxury cruises between points
17 within the State or on luxury round-trip cruises
18 returning to the point of departure;

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



1 (H) A telecommunications provider only to the extent
2 determined by the public utilities commission
3 pursuant to section 269-16.9;

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

9 (J) Any person who owns, controls, operates, or
10 manages plants or facilities for the reclamation
11 of wastewater; provided that:

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

19 (ii) The primary function of the facility is the
20 processing of secondary treated wastewater
21 that has been produced by a municipal



1 wastewater treatment facility owned by a
2 state or county agency;

3 (iii) The facility does not make sales of water to
4 residential customers;

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

17 (v) The facility is not engaged, either directly
18 or indirectly, in the processing of food
19 wastes;

20 (K) Any person who owns, controls, operates, or
21 manages any seawater air conditioning district



1 cooling project; provided that at least fifty per
2 cent of the energy required for the seawater air
3 conditioning district cooling system is provided
4 by a renewable energy resource, such as cold,
5 deep seawater;

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

10 (M) Any person who:

11 (i) Owns, controls, operates, or manages a
12 renewable energy system that is located on a
13 customer's property; and

14 (ii) Provides, sells, or transmits the power
15 generated from that renewable energy system
16 to an electric utility or to the customer on
17 whose property the renewable energy system
18 is located; provided that, for purposes of
19 this subparagraph, a customer's property
20 shall include all contiguous property owned
21 or leased by the customer without regard to



1 interruptions in contiguity caused by
2 easements, public thoroughfares,
3 transportation rights-of-way, and utility
4 rights-of-way; [and]

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

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

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



1 (iii) At the time that the lease agreement is
2 signed, the rate charged to the lessee or
3 tenant for the power generated by the
4 renewable energy system shall be no greater
5 than the effective rate charged per kilowatt
6 hour from the applicable electric utility
7 schedule filed with the public utilities
8 commission;

9 (iv) The rate schedule or formula shall be
10 established for the duration of the lease,
11 and the lease agreement entered into by the
12 lessee or tenant shall reflect such rate
13 schedule or formula;

14 (v) The lease agreement shall not abrogate any
15 terms or conditions of applicable tariffs
16 for termination of services for nonpayment
17 of electric utility services or rules
18 regarding health, safety, and welfare;

19 (vi) The lease agreement shall disclose: (1) the
20 rate schedule or formula for the duration of
21 the lease agreement; (2) that, at the time



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



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

(O) Any electric utility owned and operated by a
county.

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

SECTION 3. Section 269-19, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) Except as provided in subsection (b), no public
utility shall sell, lease, assign, mortgage, or otherwise
dispose of or encumber the whole or any part of its road, line,
plant, system, or other property necessary or useful in the
performance of its duties to the public, or any franchise or



1 permit, or any right thereunder, nor by any means, directly or
2 indirectly, merge or consolidate with any other public utility
3 without first having secured from the public utilities
4 commission an order authorizing it so to do. Every such sale,
5 lease, assignment, mortgage, disposition, encumbrance, merger,
6 or consolidation, made other than in accordance with the order
7 of the commission shall be void[-], except that a county may
8 acquire the property of an electric public utility by eminent
9 domain or other means allowed by law."

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

12 SECTION 5. This Act shall take effect upon its approval.
13

INTRODUCED BY:

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B



S.B. NO. 2297

Report Title:

Electric Utilities; Counties; Powers and Limitations

Description:

Gives counties the power to manage property required to operate electric utilities and to acquire property necessary to operate electric utilities through eminent domain or other means allowed by law. Excludes electric utilities owned and operated by a county from the definition of "public utility" and regulation by the PUC.

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