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# A BILL FOR AN ACT

RELATING TO ELECTRIC UTILITIES.

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

1       SECTION 1. The legislature finds that the State's ongoing  
2 energy transition from fossil fuels to renewable energy has been  
3 driven and supported by certain key energy laws and regulatory  
4 policies that were established after years, if not decades, of  
5 continued advocacy efforts. These laws and regulatory policies  
6 include, among others, the renewable portfolio standards  
7 established in chapter 269, Hawaii Revised Statutes; the  
8 performance-based regulation framework created by the public  
9 utilities commission for electric utilities; and the  
10 encouragement and oversight of renewable power purchase  
11 agreements by the public utilities commission, which are  
12 contractual agreements entered into by electric utilities and  
13 independent power producers for, among other things, the  
14 development and production of new utility-scale renewable energy  
15 projects.

16       The legislature further finds that a bankruptcy or  
17 reorganization proceeding involving an electric utility company



1 in the State could result in the acquisition, merger, or  
2 consolidation of that electric utility company with an acquiring  
3 entity that could ultimately lead to a change in management and  
4 control. In a worst-case scenario, the acquiring entity may  
5 seek to weaken, alter, or reverse those key state energy laws,  
6 policies, frameworks, and agreements that have greatly  
7 contributed to the State's progress toward meeting its renewable  
8 energy goals, or reduce the electric utility's capacity to  
9 maintain a qualified and knowledgeable workforce with the  
10 ability to support and pursue the State's renewable energy  
11 goals, as well as to ensure safe, efficient, reliable, and  
12 continuous electric utility service to local consumers and the  
13 community.

14 Accordingly, the purpose of this Act is to:

- 15 (1) Require the public utilities commission to consider  
16 whether approving a proposed merger or acquisition of  
17 an electric utility company would or would not further  
18 the State's renewable energy goals;
- 19 (2) Prohibit the acquiring entity of an electric utility  
20 company from terminating or attempting to renegotiate  
21 any existing and valid power purchase agreements and



1           require the acquiring entity to assume and be bound by  
2           existing collective bargaining agreements and retain  
3           all covered employees;

4           (3) Establish a process to ensure that when an electric  
5           utility is subject to an application for a proposed  
6           acquisition, merger, or consolidation by a potential  
7           acquiring entity that is an investor-owned utility and  
8           seeks approval of the application from the public  
9           utilities commission, the electric utility shall  
10          demonstrate that it solicited bids from potential  
11          acquiring entities that operate under non-investor-  
12          owned utilities ownership models; and

13          (4) Require the electric utility to submit acceptable bids  
14          from a potential acquiring entity operating under a  
15          non-investor-owned utilities ownership model  
16          concurrently with an application by a potential  
17          acquiring entity that is an investor-owned utility.

18          SECTION 2. Chapter 269, Hawaii Revised Statutes, is  
19          amended by adding two new sections to part I to be appropriately  
20          designated and to read as follows:



1        "§269-A Acquisition, merger, or consolidation of electric  
2 utility companies; conditions of approval.    (a) The public  
3 utilities commission shall consider whether approving a proposed  
4 merger or acquisition of an electric utility company by an  
5 acquiring entity would or would not further the State's  
6 renewable energy goals.

7        (b) The acquiring entity shall not terminate any existing  
8 and valid power purchase agreement between the electric utility  
9 company and an independent power producer of energy services  
10 based solely on the completion of the acquisition, merger, or  
11 consolidation; provided that nothing in this subsection shall  
12 prevent the termination of a contractual agreement as permitted  
13 by its terms, subject to approval by the public utilities  
14 commission. The acquiring entity shall not attempt to  
15 renegotiate any material provisions of any existing and valid  
16 power purchase agreement, including but not limited to the  
17 established payment rates for energy or energy storage or other  
18 commercial terms; provided that nothing in this subsection shall  
19 prevent the amending of a contractual agreement as may be  
20 permitted under its terms, subject to approval by the public  
21 utilities commission. Before the completion of the acquisition,



1 merger, or consolidation of the electric utility company, the  
2 acquiring entity shall not unduly influence the terms of any  
3 power purchase agreement that is under negotiation between the  
4 electric utility company and an independent power producer of  
5 energy services.

6 (c) The acquiring entity shall assume and be bound by the  
7 terms and conditions of any existing collective bargaining  
8 agreement in place at the time of the acquisition, merger, or  
9 consolidation, as it applies to covered employees.

10 (d) The acquiring entity shall retain all covered  
11 employees, and shall not induce or cause a reduction in force,  
12 or terminate a covered employee, other than for cause consistent  
13 with any applicable collective bargaining agreement.

14 (e) For the purposes of this section:

15 "Acquiring entity" means the entity that acquires all or  
16 some classes of an electric utility company's interests in an  
17 interest exchange, including but not limited to interest in any  
18 road, line, plant, system, or other real or personal property  
19 necessary for the performance of the electric utility's duties  
20 to the public or any franchise or permit, or right thereunder.



1 "Covered employee" means an individual who is employed by  
2 and is a party to a collective bargaining agreement with an  
3 electric utility company immediately before an acquisition,  
4 merger, or consolidation of the electric utility company by an  
5 acquiring entity, as approved by the public utilities  
6 commission.

7 "Electric utility company" means a public utility as  
8 defined in section 269-1, for the production of, conveyance,  
9 transmission, delivery, or furnishing of electric power.

10 **§269-B Acquisition, merger, and consolidation of electric**  
11 **utility companies; investor-owned acquiring entities;**  
12 **consideration of alternative applications.** (a) Notwithstanding  
13 sections 269-7.5, 269-18, and 269-19, if an electric utility is  
14 subject to an application for a proposed acquisition, merger, or  
15 consolidation by a potential acquiring entity that is an  
16 investor-owned utility and seeks approval of the application  
17 from the public utilities commission, the electric utility shall  
18 demonstrate that it solicited bids from potential acquiring  
19 entities that operate under non-investor-owned utility ownership  
20 models and specify whether any potential acquiring entities that  
21 operate under such an ownership model submitted bids and the



1 reasons why such bids were or were not accepted. Upon receiving  
2 an acceptable bid from a potential acquiring entity that  
3 operates under a non-investor-owned utilities ownership model,  
4 the electric utility company shall present the bid to the public  
5 utilities commission concurrently with an application by a  
6 potential acquiring entity that is an investor-owned utility.

7 (b) The public utilities commission shall, upon receiving  
8 an application for the acquisition, merger, or consolidation of  
9 an electric utility company, commence a regulatory proceeding to  
10 review the application; provided that any bids submitted  
11 concurrently pursuant to subsection (a) shall be reviewed  
12 concurrently.

13 (c) The electric utility company shall have no obligation  
14 to affirmatively state its position in support of or in  
15 opposition to any pending application.

16 (d) Notwithstanding any law or rule to the contrary, the  
17 public utilities commission shall have the power to consolidate  
18 its review of all submitted applications pursuant to this  
19 section.

20 (e) This section shall not apply to the acquisition of a  
21 not-for-profit enterprise that is not owned by shareholders.



1        (f) For the purposes of this section:  
2        "Acquiring entity" has the same meaning as in section 269-  
3        A.  
4        "Electric utility company" has the same meaning as in  
5        section 269-A.  
6        "Non-investor-owned utility ownership model" means a  
7        member-owned cooperative utility or any not-for-profit  
8        enterprise that is not owned by shareholders."

9        SECTION 3. In codifying the new sections added by  
10       section 2 of this Act, the revisor of statutes shall substitute  
11       appropriate section numbers for the letters used in designating  
12       the new sections in this Act.

13       SECTION 4. New statutory material is underscored.

14       SECTION 5. This Act shall take effect on July 1, 3000.





**Report Title:**

Public Utilities Commission; Electric Utility Companies; Acquisitions; Mergers; Consolidations; Application Review Process; Alternative Applications; Non-Investor-Owned Utilities Ownership Models; Collective Bargaining Agreements; Power Purchase Agreements

**Description:**

Requires the Public Utilities Commission to consider whether approving a proposed merger or acquisition would or would not further the State's renewable energy goals. Prohibits the acquiring entity of an electric utility company from terminating or attempting to renegotiate any existing and valid power purchase agreements and requires the acquiring entity to assume and be bound by existing collective bargaining agreements and retain all covered employees. Establishes a process to ensure that when an electric utility is subject to an application for a proposed acquisition, merger, or consolidation by a potential acquiring entity that is an investor-owned utility and seeks approval of the application from the Public Utilities Commission, the electric utility shall demonstrate that it solicited bids from potential acquiring entities that operate under a non-investor-owned utility ownership model. Requires the electric utility to submit acceptable bids from a potential acquiring entity operating under a non-investor-owned utility ownership model concurrently with an application by a potential acquiring entity that is an investor-owned utility and the Public Utilities Commission to review those applications concurrently. Effective 7/1/3000. (HD1)

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