

## ACT 166

S.B. NO. 2787

A Bill for an Act Relating to Electricity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the capability and accessibility of Hawaii's electrical system must be aligned with both the State's ambitious renewable portfolio standard mandate and the various technologies that generate electricity at both the distribution and transmission levels. Localized energy generation technology has become increasingly attainable for all types of renewable energy developers and the electricity consumer over the past several years. A highly diverse set of generation resources ranging from large wind projects to simple residential photovoltaic systems are now primed to deliver electricity to consumers across the State's isolated island grids. However, in order to ensure that these types of generation resources can be integrated into the island grids, the technical, operational, and regulatory issues associated with running the electrical system must be considered and addressed in order to achieve the full potential of local renewable energy production. The implementation of formal reliability standards to govern all segments of the electric power system and to ensure fair and transparent grid access is a critical part of achieving Hawaii's lofty clean energy requirements. In addition, clear regulatory oversight of the State's grids will ensure system reliability, resiliency, and accountability.

Reliability standards are formal planning and operating procedures that govern the design and operation of an electrical grid or grids to ensure adequate system reliability by establishing real-time protocols, such as resource and demand balancing, critical infrastructure protection, and interconnection reliability. The legislature finds that electric system planning, operations, and interconnections on the mainland United States are governed by a well-coordinated effort headed by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, with help from a group of subordinate regional oversight entities. Under federal commission oversight, the corporation and the regional oversight entities collectively create and adopt national and regional reliability standards, administer related compliance and enforcement programs, and perform other additional functions as needed to ensure that all entities operating in connection to the bulk-power system follow applicable standards. Although Hawaii is not part of the bulk-power system that links the vast grid regions of North America, our local electrical system still requires a level of reliability protocols and oversight provided by a set of local standards and an accompanying enforcement system that is commensurate with the State's ambitious renewable energy mandates.

The public utilities commission continues to advance the development of local grid reliability standards and procedures via ongoing proceedings connected to Hawaii's feed-in tariff program and other interconnection-related dockets. The Hawaii reliability standards working group is developing proposed reliability standards tailored to Hawaii's electrical system. Following commission adoption of reliability standards, a dedicated body will be required to enforce and oversee compliance with the standards. However, the legislature finds the commission's efforts in this area are the result of a lack of formal, well-developed reliability standards and interconnection requirements in Hawaii that have been identified as a principal roadblock for a number of large- and small-scale clean energy projects. In addition, a number of major government and private renewable energy projects are currently slated for development in the near future, including military solar installations estimated to create hundreds of megawatts of new electricity generation on Oahu by the middle of this decade, which further necessitates the adoption of strong, formalized reliability standards and interconnection requirements. Following the creation of initial standards and requirements, a well-organized, continuing effort to enforce the adopted standards and requirements, propose new or update existing standards, and oversee grid access and operation will be required.

The purpose of this Act is to authorize the public utilities commission to perform necessary electric system reliability and grid access oversight functions, and to allow the commission to contract for the services of a Hawaii electricity reliability administrator to support the commission in carrying out those critical functions throughout the State. In addition, this Act allows for the creation of a surcharge affecting users, owners, and operators of the Hawaii electric system to be collected for the purpose of maintaining system reliability.

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

**“PART . ELECTRIC RELIABILITY**

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

“Ancillary services” means those essential grid support services provided by a facility, or other equipment to support and ensure the reliable generation, transmission, and distribution of electricity, including frequency response and regulation, inertial response, reactive power and voltage control, and operating reserves.

“Commission” means the public utilities commission.

“Electric element” means any plant, line, cable, facility, control system, equipment, or other technology used for the generation, transmission, distribution, storage, regulation, or physical control of electricity.

“Hawaii electric system” means all electric elements located within the State together with all interconnections located within the State that collectively provide for the generation, transmission, distribution, storage, regulation, or physical control of electricity over a geographic area; provided that this term shall not include any electric element operating without any interconnection to any other electric element located within the State.

“Interconnection” means the physical contact point connecting an electric element to another electric element or group of electric elements that allows for the flow and transfer of electricity between electric elements.

“Interconnection requirement” means a standard or rule, adopted by the commission under this part, concerning the performance levels, processes, practices, equipment, or facilities of any entity either having or seeking to obtain

an interconnection to the Hawaii electric system under procedures established pursuant to section 269-E to ensure the reliable operation of the Hawaii electric system.

“Reliability standard” means an electric reliability requirement or requirements, adopted by the commission under this part, to ensure the reliable design and operation of any or all portions of the Hawaii electric system, including but not limited to ancillary service requirements.

“User, owner, or operator of the Hawaii electric system” means any person, business, organization, or other entity who:

- (1) Owns, controls, operates, or manages plants or facilities for the generation, transmission, or furnishing of electricity; and
- (2) Provides, sells, or transmits all of that electricity, except such electricity as is used in its own internal operations or is used for its own consumption, directly to a public utility for either transmission or distribution to the public;

provided that a user, owner, or operator of the Hawaii electric system shall not be considered a public utility for the purposes of this chapter.

**§269-B Reliability standards; interconnection requirements; adoption and development; force and effect.** (a) The commission may adopt, by rule or order, reliability standards and interconnection requirements. Reliability standards and interconnection requirements adopted by the commission shall apply to any electric utility and any user, owner, or operator of the Hawaii electric system. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-G.

(b) The commission may develop reliability standards and interconnection requirements as it determines necessary or upon recommendation from any entity, including an entity contracted by the commission to serve as the Hawaii electricity reliability administrator provided for under this part, for the continuing reliable design and operation of the Hawaii electric system. Any reliability standard or interconnection requirement developed by the commission shall be adopted by the commission in accordance with subsection (a) in order to be effective. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-G.

(c) The commission shall have jurisdiction over matters concerning interconnection requirements and interconnections located in the State between electric utilities, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system or otherwise applying to connect generation or equipment providing ancillary services to, or operate generation and equipment providing ancillary services in parallel with the Hawaii electric system under processes established in accordance with section 269-E. Nothing in this subsection is intended to give the commission general supervision authority over any user, owner, or operator of the Hawaii electric system or any other person, business, or entity that is not a public utility as defined in section 269-1.

**§269-C Monitoring.** (a) The commission shall have the authority to monitor the reliability and operation of the Hawaii electric system using any data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or any person, business, or entity connecting to the Hawaii electric system, considered by the commission to be necessary for ensuring the reliable operation of the Hawaii electric system. The authority of the commission to monitor information in this section shall include the authority to request, acquire, or otherwise accumulate

real-time data on any matter the commission deems necessary to monitor the reliable design and operation of the Hawaii electric system.

(b) The commission shall have the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system under section 269-E.

(c) Any and all data, files, maps, reports, or any other information the commission requests under subsection (a) or (b) shall be produced in a timely manner. The commission may institute proceedings in accordance with section 269-15 upon a determination that any party for or on behalf of an electric utility, any other user, owner, or operator of the Hawaii electric system, or other person, business, or entity, has refused to provide or is causing unreasonable delay or expense in providing information requested under this section.

**§269-D Compliance and enforcement.** (a) The commission shall take all necessary steps, including audits, spot checks, data requests, report requests, and internal monitoring procedures, to ensure that any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system is in compliance with all adopted reliability standards and interconnection requirements, as appropriate.

(b) The commission may impose reasonable penalties on any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system acting in violation of an adopted reliability standard after notice as provided under section 269-12 and an opportunity for a proceeding under section 269-15 has been given.

(c) The commission shall adopt rules pursuant to chapter 91 for the issuance of any penalty under this section. In adopting rules, the commission may make provisions for the Hawaii electric reliability administrator to recommend penalties and enforcement to the commission.

**§269-E Grid access; procedures for interconnection; dispute resolution.** (a) Each user, owner, or operator of the Hawaii electric system, or any other person, business, or entity seeking to make an interconnection on the Hawaii electric system shall do so in accordance with procedures to be established by the commission by rule or order.

(b) The commission shall have the authority to make final determinations regarding any dispute between any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system, concerning either an existing interconnection on the Hawaii electric system or an interconnection to the Hawaii electric system created under the processes established by the commission under this section.

**§269-F Hawaii electricity reliability surcharge; authorization; cost recovery.** (a) The commission may require, by rule or order, that all utilities, persons, businesses, or entities connecting to the Hawaii electric system, or any other user, owner, or operator of any electric element that is a part of an interconnection on the Hawaii electric system shall pay a surcharge that shall be collected by Hawaii's electric utilities. The commission shall not contract or otherwise delegate the ability to create the Hawaii electricity reliability surcharge under this section to any other entity. This surcharge amount shall be known as the Hawaii electricity reliability surcharge.

(b) Amounts collected through the Hawaii electricity reliability surcharge shall be transferred in whole or in part to any entity contracted by the commission to act as the Hawaii electricity reliability administrator provided for under this part.

(c) The Hawaii electricity reliability surcharge shall be used for the purposes of ensuring the reliable operation of the Hawaii electric system and overseeing grid access on the Hawaii electric system through the activities of the Hawaii electricity reliability administrator contracted under section 269-G; provided that amounts collected under the Hawaii electricity reliability surcharge shall not be available to meet any current or past general obligations of the State.

(d) The commission may allow an electric utility to recover appropriate and reasonable costs under the Hawaii electricity reliability surcharge for any interconnection to the Hawaii electric system, including interconnection studies and other analysis associated with studying the impact or necessary infrastructure and operational requirements needed to reliably interconnect a generator, as well as from electric utility customers through a surcharge or assessment subject to review and approval by the commission under section 269-16.

(e) Nothing in this section shall create or be construed to cause amounts collected through the Hawaii electricity reliability surcharge to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury.

**§269-G Hawaii electricity reliability administrator; contracting.** (a) The commission may contract for the performance of its functions under this part with a person, business, or organization, except for a public utility as defined under this chapter, that will serve as the Hawaii electricity reliability administrator provided for under this part; provided that the commission shall not contract for the performance of its functions under sections 269-B(a) and (b) and 269-F.

(b) Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator under this section shall be selected by the commission in accordance with state law, including chapter 103D. The Hawaii electricity reliability administrator, if so enabled by the commission through mutual agreement under the laws of the State of Hawaii, shall hold the powers and rights delegated by the commission under this part for the term of the executed contract; provided that the commission shall retain full authority over the Hawaii electricity reliability administrator and the exclusive authority to carry out functions and responsibilities enumerated under sections 269-B(a) and (b) and 269-F.

**§269-H Hawaii electricity reliability administrator; qualifications.** Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator shall:

- (1) Satisfy the qualification requirements established by the commission by rule or order;
- (2) Maintain reasonable and necessary staffing with appropriate skills and expertise to offer prudent and reasonable recommendations on the development of reliability standards and interconnection requirements adopted by the commission under this part, including the technical skills required to properly monitor operations of the Hawaii electric system using information provided under section 269-C; and
- (3) Maintain reasonable and necessary staffing with an appropriate level of independence to fairly and impartially review matters con-

cerning interconnection to the Hawaii electric system under section 269-E, including independence of the entity from any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system.

**§269-I Funding; reporting.** (a) The Hawaii electricity reliability administrator shall use funds collected through the Hawaii electricity reliability surcharge provided for under section 269-F to carry out its operations, including administrative, technological, or other related requirements for effectively ensuring the reliability of the Hawaii electric system.

(b) The Hawaii electricity reliability administrator shall report to the commission each year on the date of agreement under section 269-G following the original contracting between the Hawaii electricity reliability administrator and the commission on the status of its operations, financial position, and a projected operational budget for the fiscal year following the date of the report.

(c) The Hawaii electricity reliability administrator shall be subject to regulation by the commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28. Notwithstanding any other provision of law to the contrary, the Hawaii electricity reliability administrator shall not be an electric public utility or an electric public utility affiliate.”

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

““Public utility”:

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use for the transportation of passengers or freight; for the conveyance or transmission of telecommunications messages; for the furnishing of facilities for the transmission of intelligence by electricity within the State or between points within the State by land, water, or air; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil; for the storage or warehousing of goods; or for the disposal of sewage; provided that the term shall include:
  - (A) An owner or operator of a private sewer company or sewer facility; and
  - (B) A telecommunications carrier or telecommunications common carrier; and
- (2) Shall not include:
  - (A) An owner or operator of an aerial transportation enterprise;
  - (B) An owner or operator of a taxicab as defined in this section;
  - (C) Common carriers that transport only freight on the public highways, unless operating within localities, along routes, or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
  - (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation is necessary in the public interest;
  - (E) A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between

- points within the State; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) A carrier by water, substantially engaged in interstate or foreign commerce, that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
  - (G) Any person who:
    - (i) ~~Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and~~
    - (ii) ~~Provides, sells, or transmits all of that power, except as is used in its own internal operations, directly to a public utility for transmission to the public;] Any user, owner, or operator of the Hawaii electric system as defined under section 269-A;~~
  - (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9;
  - (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and other purposes for public use and purpose;
  - (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
    - (i) The services of the facility are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the state or county agency that entered into the service contract;
    - (ii) The primary function of the facility is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility owned by a state or county agency;
    - (iii) The facility does not make sales of water to residential customers;
    - (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose; and
    - (v) The facility is not engaged, either directly or indirectly, in the processing of food wastes;
  - (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater;

- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion; and
- (M) Any person who:
  - (i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and
  - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this ~~clause,~~ subparagraph, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way.

If the application of this chapter is ordered by the commission in any case provided in ~~[paragraphs] paragraph (2)(C), [(2)(D); (2)(H), and (2)(I);] (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 4. In codifying the new part and sections added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 27, 2012.)