

A Bill for an Act Relating to Renewable Energy.

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

SECTION 1. The legislature finds that, although addressed to a limited extent in declaratory rulings and case law, under current statute it may be interpreted that a lessor or property owner who installs a renewable energy system on property and sells the electricity generated to the lessees or tenants on the property may be defined as a public utility. The legislature further finds that any lease agreement involving the purchase by lessees or tenants of electricity generated by a renewable energy system of the lessor or property owner needs to include certain disclosures for the protection of the lessees or tenants. For example, a rate data sheet for Kauai Island Utility Cooperative and effective rate summaries for the Hawaiian Electric Companies are filed monthly with the public utilities commission, and these filings can also be found on each respective electric utility's website for the purpose of obtaining current effective rate information.

The purpose of this Act is to remove any ambiguity by exempting landlords and lessors who install renewable energy systems on their property and provide, sell, or transmit electricity generated from those renewable energy systems to tenants or lessees on the premises, from the definition of public utility and to provide for disclosures in the lease agreement for the protection of the lessees or tenants.

SECTION 2. 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 user, owner, or operator of the Hawaii electric system as defined under section 269-141;
- (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 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[-]; and
- (N) Any person who owns, controls, operates, or manages a renewable energy system that is located on such person's property and provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to lessees or tenants on the person's property where the renewable energy system is located; provided that:
 - (i) An interconnection, as defined in section 269-141, is maintained with an electric public utility to preserve the lessees' or tenants' ability to be served by an electric utility;
 - (ii) Such person does not use an electric public utility's transmission or distribution lines to provide, sell, or transmit electricity to lessees or tenants;
 - (iii) At the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission;
 - (iv) The rate schedule or formula shall be established for the duration of the lease, and the lease agreement entered into by the lessee or tenant shall reflect such rate schedule or formula;
 - (v) The lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for non-payment of electric utility services or rules regarding health, safety, and welfare;
 - (vi) The lease agreement shall disclose: (1) the rate schedule or formula for the duration of the lease agreement; (2) that, at the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission; (3) that the lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for non-payment of electric utility services or rules regarding health, safety, and welfare; and (4) whether the lease is contingent upon the purchase of electricity from the renewable energy system; provided further that any disputes concerning the requirements of this provision shall be resolved pursuant to the provisions of the lease agreement or chapter 521, if applicable; and
 - (vii) Nothing in this section shall be construed to permit wheeling.

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

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2013.)