

ACT 164

S.B. NO. 1903

A Bill for an Act Relating to the Seawater Air Conditioning.

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

SECTION 1. The legislature finds that support for the development of renewable energy systems and efficient energy systems is in the State's best interest.

Seawater air conditioning is a renewable energy technology that has the potential to make a very significant contribution toward the achievement of Hawaiian Electric Company's integrated resources planning objectives and the State's renewable portfolio standard requirements within the next five years.

The legislature further finds that exemption of seawater air conditioning district cooling systems from the public utilities commission is justified because, unlike a public utility, the seawater cooling system will not be provided by a sole

operator providing an essential service for the public health, safety, and welfare. Rather, operators are likely to be a limited number of sophisticated building owners and operators doing business under long-term contracts that protect the rights of all parties.

The purpose of this Act is to exempt seawater air conditioning district cooling systems from public utilities commission regulation.

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

““Public utility” [~~includes~~]:

- (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, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term~~[:]~~ shall include:
 - ~~[(1) Shall include any]~~
 - (A) Any person insofar as that person owns or operates a private sewer company or sewer facility; and
 - ~~[(2) Shall include]~~
 - (B) Any telecommunications carrier or telecommunications common carrier;
 - ~~[(3)]~~ (2) Shall not include [~~any~~]:
 - (A) Any person insofar as that person owns or operates an aerial transportation enterprise;
 - ~~[(4) Shall not include persons]~~
 - (B) Persons owning or operating taxicabs, as defined in this section;
 - ~~[(5) Shall not include common]~~
 - (C) Common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
 - ~~[(6) Shall not include persons]~~
 - (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
 - ~~[(7) Shall not include:~~
 - (A)] (E) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; [~~and~~
 - (B)] (F) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
 - ~~[(8) Shall not include any]~~
 - (G) Any person who:

- ~~[(A)]~~ (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
- ~~[(B)]~~ (ii) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;
- ~~[(9) Shall not include a]~~
- (H) A telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9;
- ~~[(10) Shall not include any]~~
- (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 such other purposes that shall be held for public use and purpose; [and
- ~~[(11) Shall not include any]~~
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
- ~~[(A)]~~ (i) The services of the facility shall be 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 which has entered into the service contract;
- ~~[(B)]~~ (ii) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;
- ~~[(C)]~~(iii) The facility shall not make sales of water to residential customers;
- ~~[(D)]~~(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” mean treated wastewater that by design is intended or used for a beneficial purpose; and
- ~~[(E)]~~ (v) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes~~[-];~~ and
- (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.

~~[In the event]~~ If the application of this chapter is ordered by the commission in any case provided in paragraphs ~~[(5), (6), (9), and (10)], (2)(C), (2)(D), (2)(H), and (2)(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 public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the 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.

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

(Approved June 27, 2005.)