

ACT 157

H.B. NO. 1787

A Bill for an Act Relating to Energy Resources.

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

SECTION 1. Section 196-11, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Commissioning” means a quality-oriented process, which takes place during design and construction, for achieving, verifying, and documenting that the performance of facilities, systems, and assemblies meets defined objectives and criteria with regards to energy conservation design strategies and the energy performance of buildings.

“Retro-commissioning” means a quality-oriented process, which takes place after systems have been placed in operation, for achieving, verifying, and documenting that the performance of facilities, systems, and assemblies perform as closely as possible to defined performance criteria, with regards to energy conservation design strategies and the energy performance of buildings.”¹

SECTION 2. Section 196-11, Hawaii Revised Statutes, is amended by amending the definition of “energy-savings performance contract” to read as follows:

“[“Energy-savings] [“Energy performance contract” [means an agreement for the provision of energy services and equipment, including building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the cost savings, lease payments, or specified revenues including utility rebates and any other available incentives, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.] shall have the same meaning as in section 36-41(d), and shall additionally include commissioning and retro-commissioning.”

SECTION 3. Section 196-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an [energy-savings] energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy-efficiency services or the design, installation, operation, and maintenance of energy equipment. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation, and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency shall select the most qualified proposal or proposals and may base its determination on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the over-

- all benefits to the agency, or other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an [energy-savings] energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
 - (4) The term of any [energy-savings] energy performance contract entered into pursuant to this section shall not exceed [fifteen] twenty years;
 - (5) Any [energy-savings] energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract; and
 - (6) Any [energy-savings] energy performance contract shall provide that total payments shall not exceed total savings.”

SECTION 4. Section 196-22, Hawaii Revised Statutes, is amended to read as follows:

“**§196-22 State energy projects.** State energy projects may be implemented under this chapter with the approval of the comptroller and the director of finance~~[- Notwithstanding section 36-41 or 196-21, the comptroller or the senior agency official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section 36-41 or 196-21 and chapter 103, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature.]~~ or their designees. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements so that economic benefits and existing energy incentives may be used and maximized, and financing and other costs to agencies may be minimized. The specific terms of [energy-savings] energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the [senior agency official.] comptroller.”

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

SECTION 6. This Act shall take effect upon its approval.

(Approved June 8, 2007.)

Note

1. Definitions should be underscored.