

ACT 368

S.B. NO. 2802

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§269- Relations with an affiliated interest; definition; contracts with affiliates filed and subject to commission action. (a) For purposes of this section “affiliated interests” with a public utility includes the following:

- (1) Every person owning or holding, directly or indirectly, ten per cent or more of the voting securities of a public utility, and every person having ownership of ten per cent or more of voting securities of a person owning ten per cent or more of the voting securities of a public utility.
- (2) Every corporation ten per cent or more of whose voting securities is owned by any person owning ten per cent or more of the voting securities of a public utility;
- (3) Every person who is an officer or director of a public utility;
- (4) Every corporation operating a public utility, or providing engineering, accounting, legal, or similar service to public utilities or common carriers by water, which has three or more officers or three or more directors in common with a public utility, and every other corporation which has directors in common with a public utility where the number of common directors is more than one-third of the total number of the utility's directors;

(b) The purpose of this section is to encourage companies providing essential utility and regulated transport service to Hawaii consumers to obtain their services, supplies, and equipment by relying, to the extent practicable, on competitive procurement practices; provided that when companies obtain their services, supplies, and equipment from affiliated interests, the contracts and agreements between the regulated entity and its affiliates must be shown by clear and convincing evidence to be in furtherance of the interests of the public.

(c) No contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or agreement for the purchase, sale, lease, furnishing or exchange of any real or personal property rights, including but not limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, made or entered into after July 1, 1988, between a public utility and any affiliated interest shall be valid or effective unless and until the contract or agreement has been received by the commission. It shall be the duty of every public utility to file with the commission a verified copy of any contract or agreement with an affiliate having a face value of at least \$300,000, or a verified summary of any unwritten contract or agreement having a face value of at least \$300,000 within forty-five days of the effective date of the contract or agreement. Each and every contract or agreement between a public utility and an affiliate for capital expenditures other than for real property or an interest therein, shall be accompanied with price quotations provided by at least two non-affiliated suppliers, providers, or purveyors, or if such price quotations cannot be obtained without substantial expense to the utility, that the public utility verify that fact by affidavit; provided that all contracts or agreements effective at the time of a general rate proceeding which were discoverable and subject to review by the commission, shall be valid and not subject to subsequent regulatory review and action by the commission; provided further, however, that notwithstanding any other provision to the contrary, there shall be no transfer of real property, or interest in real property between a public utility and an affiliate, without prior approval of the commission, after hearing, wherein the public utility must show that the transfer is in the best interest of the public utility and all of its customers.

No affirmative action is required by the commission in regards to the filing of the contract or agreement; provided however, that if the commission, in its discretion, determines that the terms and conditions of the contract or agreement to be unreasonable or otherwise contrary to the public interest, the commission shall notify the public utility of its determination, whereupon the public utility shall have the option to alter, revise, amend, or terminate the contract or agreement, or

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assume the risk that future payments for performance of the contract or agreement will be deemed unreasonable and excluded by the commission for ratemaking purposes.

(d) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or agreements with the affiliated interest unless the public utility shall establish by clear and convincing evidence the reasonableness of the payment or compensation.

(e) The commission shall have continuing supervisory control over the terms and conditions of the contracts and agreements above described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over modifications of or amendments to contracts or agreements as it has over original contracts or agreements. The fact that the public utility may have entered into contracts or agreements without submittal of documents to the commission shall not preclude disallowance or disapproval of payments made pursuant thereto, for ratemaking purposes, if upon actual experience under the contracts or agreements it appears that the payments provided for or made are or were unreasonable. Every contract or agreement shall be expressly conditioned upon the reserved power of the commission to take appropriate ratemaking actions if, and as necessary, subsequent to submittal of the contract or agreement in order to protect and promote the public interest.

(f) Whenever the commission shall discover that any public utility is giving effect to any contract or agreement without the contract or agreement having been received by the commission for review, as required by this section, the commission has authority to issue an order to the public utility to show cause why the public utility should not cease and desist from making any payments or otherwise giving any effect to the terms of the contract or agreement, and the public utility shall have the opportunity to show with clear and convincing evidence that the contract or agreement is in the best interest of the public utility and all of its customers.

(g) None of the provisions of this section shall apply to transactions with affiliated interests where the total consideration involved in a transaction is less than \$300,000 for any calendar year provided that multiple payments under any contract or agreement shall be added together for purposes of construing this provision; and provided, further, that the provisions of this section shall apply to any contract or agreement structured specifically to avoid regulation hereunder.

(h) Transactions between affiliated Hawaii based utilities shall be exempt from the provisions of this section."

SECTION 3.¹ New statutory material is underscored.²

SECTION 4.¹ This Act shall take effect upon its approval, or on July 1, 1988, whichever occurs later.

(Approved June 14, 1988.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.