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**A BILL FOR AN ACT**

RELATING TO PUBLIC UTILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the health and  
2 welfare of the State's citizens depend in large part on their  
3 ability to access essential water and sewer services. The State  
4 public utilities commission regulates water and sewer services  
5 provided by private companies, but not those same services as  
6 provided by the counties. To better ensure that the commission  
7 has all the necessary authority to take proactive measures on  
8 behalf of customers when a regulated water or sewer utility  
9 either fails to provide adequate and reasonable service to its  
10 customers, or fails in such a way that there is serious and  
11 imminent threat to the health and welfare of its customers, the  
12 legislature believes that the commission should have the power  
13 to appoint a receiver to ensure that utility services are  
14 continued or brought back up to appropriate standards.

15           The legislature further finds that while the Hawaii public  
16 procurement code promotes fair and equitable treatment, fosters  
17 broad-based competition, and increases public confidence in the  
18 way state government spends taxpayer dollars, that process could

1 add significant delay to what in all likelihood would inherently  
2 be an urgent or sudden need for the commission to appoint a  
3 receiver for a regulated water or sewer utility. In light of  
4 the sudden or urgent circumstances leading the commission to  
5 appointment of a receiver as contemplated in this Act, the  
6 legislature finds that an exemption from the requirements of the  
7 procurement code is necessary.

8 The purpose of this Act is to provide the public utilities  
9 commission with authority to appoint a receiver to take such  
10 temporary action as is necessary to assure continued adequate  
11 water or sewer service, and to provide an exemption from the  
12 Hawaii public procurement code for the services of a receiver  
13 and any additional outside counsel, consultant, or staff  
14 resources that the receiver or commission may deem necessary  
15 under the circumstances.

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

19 **"§269- Appointment of receiver for public utilities.**

20 (a) Whenever the commission finds that a regulated private  
21 water utility or regulated private sewer utility is failing, or  
22 that there is an imminent threat of the utility failing, to

1 provide adequate and reasonable service to its customers, and  
2 that such failure is a serious and imminent threat to the  
3 health, safety, and welfare of those customers of the utility,  
4 the commission may appoint a receiver to take such temporary  
5 action as is necessary to assure continued service, or to bring  
6 the service up to appropriate regulatory standards. The  
7 commission may also appoint a receiver to take such temporary  
8 action as is necessary to assure continued service if, after  
9 notice and hearing, the commission finds that any private water  
10 or any private sewer utility regulated under this chapter is  
11 consistently failing to provide adequate and reasonable service.  
12 In carrying out its responsibilities, the receiver, and any  
13 additional outside legal counsel, consultants, or staff the  
14 commission or receiver may deem necessary under the  
15 circumstances, shall have the authority to gain access to all of  
16 the company utility assets and records, and to manage those  
17 assets in a manner that will restore or maintain an acceptable  
18 level of service to customers. The receiver shall be authorized  
19 to expend existing company utility revenues for labor and  
20 materials and to commit additional expenditures as are essential  
21 to providing an acceptable level of service, such expenditures  
22 to be funded in accordance with generally accepted ratemaking

1 practices. Any costs incurred by the commission, its staff, or  
2 the appointed receiver under this section shall be the  
3 responsibility of the utility in receivership or its ratepayers.  
4 Control of and responsibility for the utility shall remain in  
5 the receiver until the utility can, in the best interests of its  
6 customers, be returned to the original owners, transferred to  
7 new owners, or liquidated, whichever the commission may  
8 determine to be in the public interest.

9 (b) If the commission determines that the utility's  
10 action, or inaction, that caused it to be placed under the  
11 control and responsibility of a receiver under this section, was  
12 due to intentional misappropriation or wrongful diversion of the  
13 assets or income of such utility or to other wilful misconduct  
14 by any director, officer, or manager of the utility, it may  
15 require such director, officer, or manager to make restitution  
16 to the utility.

17 (c) The commission, for purposes of this section, shall be  
18 exempt from chapter 103D."

19 SECTION 3. Section 103D-102, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21 "(b) Notwithstanding subsection (a), this chapter shall  
22 not apply to contracts by governmental bodies:

- 1           (1) Solicited or entered into before July 1, 1994, unless  
2           the parties agree to its application to a contract  
3           solicited or entered into prior to July 1, 1994;
- 4           (2) To disburse funds, irrespective of their source:
- 5           (A) For grants or subsidies as those terms are  
6           defined in section 42F-101, made by the State in  
7           accordance with standards provided by law as  
8           required by article VII, section 4, of the State  
9           Constitution; or by the counties pursuant to  
10          their respective charters or ordinances;
- 11          (B) To make payments to or on behalf of public  
12          officers and employees for salaries, fringe  
13          benefits, professional fees, or reimbursements;
- 14          (C) To satisfy obligations that the State is required  
15          to pay by law, including paying fees, permanent  
16          settlements, subsidies, or other claims, making  
17          refunds, and returning funds held by the State as  
18          trustee, custodian, or bailee;
- 19          (D) For entitlement programs, including public  
20          assistance, unemployment, and workers'  
21          compensation programs, established by state or  
22          federal law;

- 1           (E) For dues and fees of organizations of which the  
2                   State or its officers and employees are members,  
3                   including the National Association of Governors,  
4                   the National Association of State and County  
5                   Governments, and the Multi-State Tax Commission;  
6           (F) For deposit, investment, or safekeeping,  
7                   including expenses related to their deposit,  
8                   investment, or safekeeping;  
9           (G) To governmental bodies of the State;  
10          (H) As loans, under loan programs administered by a  
11                   governmental body; and  
12          (I) For contracts awarded in accordance with chapter  
13                   103F.
- 14          (3) To procure goods, services, or construction from a  
15                   governmental body other than the University of Hawaii  
16                   bookstores, from the federal government, or from  
17                   another state or its political subdivision;  
18          (4) To procure the following goods or services which are  
19                   available from multiple sources but for which  
20                   procurement by competitive means is either not  
21                   practicable or not advantageous to the State:

- 1 (A) Services of expert witnesses for potential and  
2 actual litigation of legal matters involving the  
3 State, its agencies, and its officers and  
4 employees, including administrative quasi-  
5 judicial proceedings;
- 6 (B) Works of art for museum or public display;
- 7 (C) Research and reference materials including books,  
8 maps, periodicals, and pamphlets, which are  
9 published in print, video, audio, magnetic, or  
10 electronic form;
- 11 (D) Meats and foodstuffs for the Kalaupapa  
12 settlement;
- 13 (E) Opponents for athletic contests;
- 14 (F) Utility services whose rates or prices are fixed  
15 by regulatory processes or agencies;
- 16 (G) Performances, including entertainment, speeches,  
17 and cultural and artistic presentations;
- 18 (H) Goods and services for commercial resale by the  
19 State;
- 20 (I) Services of printers, rating agencies, support  
21 facilities, fiscal and paying agents, and

- 1                   registrars for the issuance and sale of the  
2                   State's or counties' bonds;
- 3           (J) Services of attorneys employed or retained to  
4           advise, represent, or provide any other legal  
5           service to the State or any of its agencies, on  
6           matters arising under laws of another state or  
7           foreign country, or in an action brought in  
8           another state, federal, or foreign jurisdiction,  
9           when substantially all legal services are  
10          expected to be performed outside this State;
- 11          (K) Financing agreements under chapter 37D; and
- 12          (L) Any other goods or services which the policy  
13          board determines by rules or the chief  
14          procurement officer determines in writing is  
15          available from multiple sources but for which  
16          procurement by competitive means is either not  
17          practicable or not advantageous to the State;
- 18                [and]
- 19          (5) For services of a receiver appointed by the public  
20          utilities commission, along with any additional  
21          outside counsel, consultants, or staff resources that





**Report Title:**

Utilities; Receivership

**Description:**

Guarantees the operation of water and sewer services to Hawaii residents by allowing the Public Utility Commission to take necessary action and appoint receivers whenever regulated public utilities fail to provide adequate and reasonable service.

HB 1061

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance (PUC)

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES.

PURPOSE: To provide the Public Utilities Commission with the authority to appoint a receiver, for any regulated private water utility, or regulated private sewer utility, in order to take such temporary action as is necessary to assure continued adequate and reliable service to its customers; and provide exemption from the Hawaii public procurement code for the Commission's appointment of a receiver, and other outside counsel, contractors, and staff as may be deemed necessary under the circumstances.

MEANS: Add a new section to chapter 269 and amend section 103D-102(b), Hawaii Revised Statutes.

JUSTIFICATION: This bill addresses the infrequent, but serious disruption of acceptable water or sewer service to customers when its continued operation is in jeopardy or when there exists a serious and imminent threat to the health and welfare of the utility's customers.

This bill also provides for an exemption in the appointment of a receiver, and such other staff as is deemed necessary by the receiver or Commission, from the public procurement code, as the circumstances that would lead the Commission to make the appointment would inherently call for urgent or sudden Commission action necessitating exemption from code requirements.

Impact on the public: Will ensure that the public's right to reliable and affordable utility service is maintained by allowing the Public Utilities Commission to appoint a

receiver to operate the utility in every respect necessary when it is not willing or is unable to operate the utility to regulatory standards.

Impact on the department and other agencies:  
Will require the Commission to research and appoint qualified water and sewer utility receivers and possibly other personnel to operate a subject utility company.

GENERAL FUND: Unknown at this time.

OTHER FUNDS: Public Utilities Commission Special Fund.

PPBS PROGRAM  
DESIGNATION: BUF-901.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General,  
Department of Health, and Department of  
Accounting and General Services.

EFFECTIVE DATE: Upon approval.