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THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

MONDAY, FEBRUARY 9, 2009
2:00 P.M.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS TO THE HONORABLE REPRESENTATIVES HERKES AND KARAMATSU,
CHAIRS, AND MEMBERS OF THE COMMITTEES

HOUSE BILL NO. 1061 RELATING TO PUBLIC UTILITIES.

DESCRIPTION:

This measure provides the Hawaii Public Utilities Commission ("Commission") with authority to appoint a receiver to take temporary action necessary to assure continued adequate water or sewer service, and to provide an exemption from the state public procurement code for the services of a receiver.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports the measure.

COMMENTS:

The authority provided by the measure to the Commission is necessary to provide the Commission with an additional tool that may be utilized when the health, safety, and welfare of consumers of water and wastewater services are in jeopardy. A number of other state commissions have been provided with similar receivership

authority, suggesting that this has proven an effective means of providing consumer protection.

In addition, the exemption from the state procurement code is essential. While the state procurement code provides safeguards and transparency for ensuring that state funds are appropriately spent, the rigors of the code's requirements likely would delay the Commission's or the receiver's actions when exigent circumstances are present and speed is required.

We question whether receivership should be the only authority granted to the Commission for resolving events involving serious and imminent threat of harm to consumers. For example, if the utility encounters a sudden event that places it in financial instability or if the financial instability goes undetected or is not disclosed, there are no funds available to operate the utility, other than the revenues collected by the utility. Therefore, granting the Commission the authority to establish a reserve or the authority to require bonds of the utilities to provide some emergency operating funds would be prudent.

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND
COMMITTEE ON JUDICIARY
FEBRUARY 9, 2009**

MEASURE: H.B.1061
TITLE: Relating to Public Utilities.

Chairs Herkes and Karamatsu, and Members of the Committees:

DESCRIPTION:

This bill proposes to add a new section to chapter 269 and amend section 103D-102(b), Hawaii Revised Statutes ("HRS") to provide the Public Utilities Commission ("Commission") with authority to appoint a receiver for any regulated private water or sewer utility in order to take such temporary action as is necessary to assure continued adequate and reliable service to its customers, and provides an exemption from chapter 103D, HRS, the Public Procurement Code ("Code") in the contracting of the receiver.

POSITION:

The Commission strongly supports this Administration bill and offers the following comments.

COMMENTS:

- **Currently, chapter 269, ("HRS"), gives the Commission general supervisory power over all public utilities, including private water and sewer utilities that serve the public.**
 - Specifically, every public utility, as defined in section 269-1, HRS, must in writing apply for and obtain from the Commission a certificate of public convenience and necessity ("CPCN") pursuant to section 269-7.5, HRS, prior to commencing its operations. The application for CPCN must include, among other required information, statements of the type of service to be performed, geographical scope of the operation, and a statement of financial ability to render the proposed service.

- If the applicant meets all requirements of the Commission and is found to be fit, willing, and able to properly perform the proposed service and conform to the terms, conditions and rules of the Commission, and the service is, or will be, required by the present or future public convenience and necessity, the application is issued.
- The Commission, after notice and hearing, may suspend, amend, or revoke any certificate in part or in whole, if the utility is found to be in willful violation of any provisions of chapter 269, HRS, or any rule or order of the Commission, or with any term, condition, or limitation of the CPCN.
- However, there is no express authority for the Commission to act on behalf of a regulated water or sewer utility's customers if the utility is in an urgent, serious and imminent threat of ceasing to operate or to operate on a substandard, or unacceptable level.
- It is in these unusual cases that there should be provision for the Commission to appoint a receiver to operate the regulated utility in every aspect necessary when the utility or its owners are not willing or unable to operate the utility.
- Additionally, as the circumstances that would require the Commission to appoint a receiver for a regulated water or sewer utility would inherently be urgent and/or sudden and calling for the Commission's quick response to act for the protection of ratepayers, an exemption from chapter 103D, HRS, the State Procurement Code, in order that the Commission could take all timely and appropriate action.

Thank you for the opportunity to testify.