

STAND. COM. REP. NO.

831

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1061  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1061, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES,"

begs leave to report as follows:

The purpose of this bill is to ensure reliable public utility services by authorizing the Public Utilities Commission (PUC) to appoint a receiver to take necessary temporary action to assure continued water or sewer service in certain situations where the PUC finds that a regulated private water or sewer utility is failing or in imminent threat of failing to provide adequate and reasonable service to customers.

PUC testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1061, H.D. 1, and recommends that it pass Third Reading.

HB1061 HD1 HSCR FIN HMS 2009-2664



Respectfully submitted on  
behalf of the members of the  
Committee on Finance,

  
MARCUS R. OSHIRO, Chair





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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 purpose of this Act is to provide the public utilities  
16 commission with authority to appoint a receiver to take such



1 temporary action as is necessary to assure continued adequate  
2 water or sewer service.

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

6 "§269- Appointment of receiver for public utilities.

7 (a) Whenever the commission finds that a regulated private  
8 water utility or regulated private sewer utility is failing, or  
9 that there is an imminent threat of the utility failing, to  
10 provide adequate and reasonable service to its customers, and  
11 that such failure is a serious and imminent threat to the  
12 health, safety, and welfare of those customers of the utility,  
13 the commission may appoint a receiver to take such temporary  
14 action as is necessary to assure continued service, or to bring  
15 the service up to appropriate regulatory standards. The  
16 commission may also appoint a receiver to take such temporary  
17 action as is necessary to assure continued service if, after  
18 notice and hearing, the commission finds that any private water  
19 or any private sewer utility regulated under this chapter is  
20 consistently failing to provide adequate and reasonable service.

21 In carrying out its responsibilities, the receiver, and any  
22 additional outside legal counsel, consultants, or staff the

1 commission or receiver may deem necessary under the  
2 circumstances, shall have the authority to gain access to all of  
3 the company utility assets and records, and to manage those  
4 assets in a manner that will restore or maintain an acceptable  
5 level of service to customers. The receiver shall be authorized  
6 to expend existing company utility revenues for labor and  
7 materials and to commit additional expenditures as are essential  
8 to providing an acceptable level of service, such expenditures  
9 to be funded in accordance with generally accepted ratemaking  
10 practices. Any costs incurred by the commission, its staff, or  
11 the appointed receiver under this section shall be the  
12 responsibility of the utility in receivership or its ratepayers.  
13 Control of and responsibility for the utility shall remain in  
14 the receiver until the utility can, in the best interests of its  
15 customers, be returned to the original owners, transferred to  
16 new owners, or liquidated, whichever the commission may  
17 determine to be in the public interest.

18 (b) If the commission determines that the utility's  
19 action, or inaction, that caused it to be placed under the  
20 control and responsibility of a receiver under this section, was  
21 due to intentional misappropriation or wrongful diversion of the  
22 assets or income of such utility or to other wilful misconduct



1 by any director, officer, or manager of the utility, it may  
2 require such director, officer, or manager to make restitution  
3 to the utility."

4 SECTION 3. New statutory material is underscored.

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



**Report Title:**

Utilities; Receivership

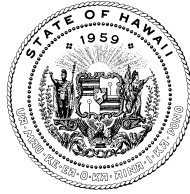
**Description:**

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.

(HB1061 HD1)







LINDA LINGLE  
GOVERNOR  
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TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

MONDAY, MARCH 23, 2009  
1:15 P.M.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS TO THE HONORABLE SENATOR BAKER, CHAIR, SENATOR ENGLISH,  
CHAIR, AND MEMBERS OF THE COMMITTEES

**HOUSE BILL NO. 1061, H.D. 1- 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  
SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION  
AND TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL  
AFFAIRS  
MARCH 23, 2009**

**MEASURE: H.B.1061 H.D.1**  
**TITLE: Relating to Public Utilities.**

Chairs Baker and English, and Members of the Committees:

**DESCRIPTION:**

This bill proposes to add a new section to chapter 269, 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.

**POSITION:**

The Commission strongly supports this Administration bill.

**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.

Thank you for the opportunity to testify.