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# A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES COMMISSION.

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

1           SECTION 1. In its order approving temporary rate relief  
2 for Molokai Public Utilities, Inc. and Waiola o Molokai Inc.,  
3 filed on August 14, 2008, the public utilities commission  
4 granted Molokai Public Utilities, Inc., a public utility that  
5 provides water service in the Kaluakoi area on the west end of  
6 the island of Molokai, a temporary rate increase from \$3.18 per  
7 one thousand gallons to \$6.04 per one thousand gallons, and  
8 granted Waiola o Molokai Inc., a public utility that provides  
9 water service in the Maunaloa, Kualapuu, Kipu, Manawainui, and  
10 Molokai industrial park areas on the island of Molokai, a  
11 temporary rate increase from \$1.85 per one thousand gallons to  
12 \$5.15 per one thousand gallons.

13           The legislature finds that these rate increases, albeit  
14 temporary, to be excessive and a burden on the already stressed  
15 residents of Molokai who pay among the highest utility rates in  
16 the country.



1           The purpose of this Act is to impose a cap on any rate  
2 increase for water services, permanent, temporary, or interim,  
3 by the public utilities commission.

4           SECTION 2. Section 269-16, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§269-16 Regulation of utility rates; ratemaking**  
7 **procedures.** (a) All rates, fares, charges, classifications,  
8 schedules, rules, and practices made, charged, or observed by  
9 any public utility or by two or more public utilities jointly  
10 shall be just and reasonable and shall be filed with the public  
11 utilities commission. The rates, fares, classifications,  
12 charges, and rules of every public utility shall be published by  
13 the public utility in such manner as the public utilities  
14 commission may require, and copies shall be furnished to any  
15 person on request.

16           To the extent the contested case proceedings referred to in  
17 chapter 91 are required in any rate proceeding to ensure  
18 fairness and to provide due process to parties that may be  
19 affected by rates approved by the commission, the evidentiary  
20 hearings shall be conducted expeditiously and shall be conducted  
21 as a part of the ratemaking proceeding.



1 (b) No rate, fare, charge, classification, schedule, rule,  
2 or practice, other than one established pursuant to an automatic  
3 rate adjustment clause previously approved by the commission,  
4 shall be established, abandoned, modified, or departed from by  
5 any public utility, except after thirty days' notice to the  
6 commission as prescribed in section 269-12(b), and prior  
7 approval by the commission for any increases in rates, fares, or  
8 charges. The commission, in its discretion and for good cause  
9 shown, may allow any rate, fare, charge, classification,  
10 schedule, rule, or practice to be established, abandoned,  
11 modified, or departed from upon notice less than that provided  
12 for in section 269-12(b). A contested case hearing shall be  
13 held in connection with any increase in rates, and the hearing  
14 shall be preceded by a public hearing as prescribed in section  
15 269-12(c), at which the consumers or patrons of the public  
16 utility may present testimony to the commission concerning the  
17 increase. The commission, upon notice to the public utility,  
18 may:

19 (1) Suspend the operation of all or any part of the  
20 proposed rate, fare, charge, classification, schedule,  
21 rule, or practice or any proposed abandonment or  
22 modification thereof or departure therefrom;



- 1           (2) After a hearing, by order:
- 2               (A) Regulate, fix, and change all such rates, fares,
- 3               charges, classifications, schedules, rules, and
- 4               practices so that the same shall be just and
- 5               reasonable;
- 6               (B) Prohibit rebates and unreasonable discrimination
- 7               between localities or between users or consumers
- 8               under substantially similar conditions;
- 9               (C) Regulate the manner in which the property of
- 10              every public utility is operated with reference
- 11              to the safety and accommodation of the public;
- 12              (D) Prescribe its form and method of keeping
- 13              accounts, books, and records, and its accounting
- 14              system;
- 15              (E) Regulate the return upon its public utility
- 16              property;
- 17              (F) Regulate the incurring of indebtedness relating
- 18              to its public utility business; and
- 19              (G) Regulate its financial transactions; and
- 20           (3) Do all things that are necessary and in the exercise
- 21              of the commission's power and jurisdiction, all of
- 22              which as so ordered, regulated, fixed, and changed are



1           just and reasonable, and provide a fair return on the  
2           property of the utility actually used or useful for  
3           public utility purposes.

4           (c) The commission may in its discretion, after public  
5           hearing and upon showing by a public utility of probable  
6           entitlement and financial need, authorize temporary increases in  
7           rates, fares, and charges; provided that the commission shall  
8           require by order the public utility to return, in the form of an  
9           adjustment to rates, fares, or charges to be billed in the  
10          future, any amounts with interest, at a rate equal to the rate  
11          of return on the public utility's rate base found to be  
12          reasonable by the commission, received by reason of continued  
13          operation that are in excess of the rates, fares, or charges  
14          finally determined to be just and reasonable by the commission.  
15          Interest on any excess shall commence as of the date that any  
16          rate, fare, or charge goes into effect that results in the  
17          excess and shall continue to accrue on the balance of the excess  
18          until returned.

19          (d) The commission shall make every effort to complete its  
20          deliberations and issue its decision as expeditiously as  
21          possible and before nine months from the date the public utility  
22          filed its completed application; provided that in carrying out



1 this mandate, the commission shall require all parties to a  
2 proceeding to comply strictly with procedural time schedules  
3 that it establishes. If a decision is rendered after the nine-  
4 month period, the commission shall report in writing the reasons  
5 therefor to the legislature within thirty days after rendering  
6 the decision.

7 Notwithstanding subsection (c), if the commission has not  
8 issued its final decision on a public utility's rate application  
9 within the nine-month period stated in this section, the  
10 commission, within one month after the expiration of the nine-  
11 month period, shall render an interim decision allowing the  
12 increase in rates, fares and charges, if any, to which the  
13 commission, based on the evidentiary record before it, believes  
14 the public utility is probably entitled. The commission may  
15 postpone its interim rate decision for thirty days if the  
16 commission considers the evidentiary hearings incomplete. In  
17 the event interim rates are made effective, the commission shall  
18 require by order the public utility to return, in the form of an  
19 adjustment to rates, fares, or charges to be billed in the  
20 future, any amounts with interest, at a rate equal to the rate  
21 of return on the public utility's rate base found to be  
22 reasonable by the commission, received under the interim rates



1 that are in excess of the rates, fares, or charges finally  
2 determined to be just and reasonable by the commission.  
3 Interest on any excess shall commence as of the date that any  
4 rate, fare, or charge goes into effect that results in the  
5 excess and shall continue to accrue on the balance of the excess  
6 until returned.

7 The nine-month period in this subsection shall begin only  
8 after a completed application has been filed with the commission  
9 and a copy served on the consumer advocate. The commission  
10 shall establish standards concerning the data required to be set  
11 forth in the application in order for it to be deemed a  
12 completed application. The consumer advocate may, within  
13 twenty-one days after receipt, object to the sufficiency of any  
14 application, and the commission shall hear and determine any  
15 objection within twenty-one days after it is filed. If the  
16 commission finds that the objections are without merit, the  
17 application shall be deemed to have been completed upon original  
18 filing. If the commission finds the application to be  
19 incomplete, it shall require the applicant to submit an amended  
20 application consistent with its findings, and the nine-month  
21 period shall not commence until the amended application is  
22 filed.



1           (e) In any case of two or more organizations, trades, or  
2 businesses (whether or not incorporated, whether or not  
3 organized in the State of Hawaii, and whether or not affiliated)  
4 owned or controlled directly or indirectly by the same  
5 interests, the commission may distribute, apportion, or allocate  
6 gross income, deductions, credits, or allowances between or  
7 among the organizations, trades, or businesses, if it determines  
8 that the distribution, apportionment, or allocation is necessary  
9 to adequately reflect the income of any such organizations,  
10 trades, or businesses to carry out the regulatory duties imposed  
11 by this section.

12           (f) Notwithstanding any law to the contrary, for public  
13 utilities having annual gross revenues of less than \$2,000,000,  
14 the commission may make and amend its rules and procedures to  
15 provide the commission with sufficient facts necessary to  
16 determine the reasonableness of the proposed rates without  
17 unduly burdening the utility company and its customers. In the  
18 determination of the reasonableness of the proposed rates, the  
19 commission shall:

20           (1) Require the filing of a standard form application to  
21               be developed by the commission. The standard form  
22               application for general rate increases shall describe





1 the specific facts that shall be submitted to support  
2 a determination of the reasonableness of the proposed  
3 rates, and require the submission of financial  
4 information in conformance with a standard chart of  
5 accounts to be approved by the commission, and other  
6 commission guidelines to allow expeditious review of a  
7 requested general rate increase application;

8 (2) Hold a public hearing as prescribed in section  
9 269-12(c) at which the consumers or patrons of the  
10 public utility may present testimony to the commission  
11 concerning the increase. The public hearing shall be  
12 preceded by proper notice, as prescribed in section  
13 269-12; and

14 (3) Make every effort to complete its deliberations and  
15 issue a proposed decision and order within six months  
16 from the date the public utility files a completed  
17 application with the commission; provided that all  
18 parties to the proceeding strictly comply with the  
19 procedural schedule established by the commission and  
20 no person is permitted to intervene. If a proposed  
21 decision and order is rendered after the six-month  
22 period, the commission shall report in writing the



1 reasons therefor to the legislature within thirty days  
2 after rendering the proposed decision and order.

3 Prior to the issuance of the commission's proposed  
4 decision and order, the parties shall not be entitled  
5 to a contested case hearing.

6 If all parties to the proceeding accept the  
7 proposed decision and order, the parties shall not be  
8 entitled to a contested case hearing, and section  
9 269-15.5 shall not apply. If the commission permits a  
10 person to intervene, the six-month period shall not  
11 apply and the commission shall make every effort to  
12 complete its deliberations and issue its decision  
13 within the nine-month period from the date the public  
14 utility's completed application was filed, pursuant to  
15 subsections (b), (c), and (d).

16 If a party does not accept the proposed decision  
17 and order, either in whole or in part, that party  
18 shall give notice of its objection or nonacceptance  
19 within the timeframe prescribed by the commission in  
20 the proposed decision and order, setting forth the  
21 basis for its objection or nonacceptance; provided  
22 that the proposed decision and order shall have no



1 force or effect pending the commission's final  
2 decision. If notice is filed, the above six-month  
3 period shall not apply and the commission shall make  
4 every effort to complete its deliberations and issue  
5 its decision within the nine-month period from the  
6 date the public utility's completed application was  
7 filed as set forth in subsection (d). Any party that  
8 does not accept the proposed decision and order under  
9 this paragraph shall be entitled to a contested case  
10 hearing; provided that the parties to the proceeding  
11 may waive the contested case hearing.

12 Public utilities subject to this subsection shall follow  
13 the standard chart of accounts to be approved by the commission  
14 for financial reporting purposes. The public utilities shall  
15 file a certified copy of the annual financial statements in  
16 addition to an updated chart of accounts used to maintain their  
17 financial records with the commission and consumer advocate  
18 within ninety days from the end of each calendar or fiscal year,  
19 as applicable, unless this timeframe is extended by the  
20 commission. The owner, officer, general partner, or authorized  
21 agent of the utility shall certify that the reports were  
22 prepared in accordance with the standard chart of accounts.



1 (g) Any automatic fuel rate adjustment clause requested by  
2 a public utility in an application filed with the commission  
3 shall be designed, as determined in the commission's discretion,  
4 to:

5 (1) Fairly share the risk of fuel cost changes between the  
6 public utility and its customers;

7 (2) Provide the public utility with sufficient incentive  
8 to reasonably manage or lower its fuel costs and  
9 encourage greater use of renewable energy;

10 (3) Allow the public utility to mitigate the risk of  
11 sudden or frequent fuel cost changes that cannot  
12 otherwise reasonably be mitigated through other  
13 commercially available means, such as through fuel  
14 hedging contracts;

15 (4) Preserve, to the extent reasonably possible, the  
16 public utility's financial integrity; and

17 (5) Minimize, to the extent reasonably possible, the  
18 public utility's need to apply for frequent  
19 applications for general rate increases to account for  
20 the changes to its fuel costs.

21 (h) Anything contained in this chapter to the contrary  
22 notwithstanding, no increase in rates, fares, or charges,



1 whether permanent, temporary, or interim, charged to consumers  
2 for water supplied to them by a public utility for domestic or  
3 agricultural uses and purposes shall exceed \_\_\_\_\_ per cent."

4 SECTION 3. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before its effective date.

7 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY: Mel Carrad

**ROLAND SQUIVILL**  
Tom Brown  
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JAN 23 2009



**Report Title:**

Public Utilities Commission; Water Utility Rates

**Description:**

Imposes a cap on any water rate, fare, or charge increase, permanent, temporary or interim, for domestic or agricultural purposes.

