

JAN 26 2009

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:

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- 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;

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- 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:

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- 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

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- 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

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the receiver or commission may deem necessary under
the circumstances pursuant to section 269- ; and

[+5+] (6) Which are specific procurements expressly exempt
from any or all of the requirements of this chapter
by:

(A) References in state or federal law to provisions
of this chapter or a section of this chapter, or
references to a particular requirement of this
chapter; and

(B) Trade agreements, including the Uruguay Round
General Agreement on Tariffs and Trade (GATT),
which require certain non-construction and non-
software development procurements by the
comptroller to be conducted in accordance with
its terms."

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

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

INTRODUCED BY: _____

~~_____~~
BY REQUEST

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.

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.