

TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
JANUARY 25, 2012

**MEASURE:** H.B. No. 1882

**TITLE:** Relating to the Public Utilities Commission

Chair Herkes and Members of the Committee:

**DESCRIPTION:**

This measure proposes to restructure the Commission by 1) increasing the number of commissioners to five from three, 2) imposing residency and professional requirements on Commission appointments and composition, 3) dividing the Commission into two subject matter panels that each could take official action without full Commission approval, 4) providing for an executive officer in the Commission to oversee staffing issues, and 5) setting out transition requirements for the governor and others to follow in restructuring the Commission. This measure also appropriates funding from the public utilities commission special fund for salary expenses of two added commissioners for FY2012-2013.

**POSITION:**

The Commission believes this bill is unnecessary if the Commission's reorganization plan, which was approved by the Legislature in Act 177, SLH 2007, is followed through on. Furthermore, in this Legislative session alone there are numerous bills aimed at removing certain sectors from the Commission's jurisdiction, as well as adding further responsibilities, thus altering the Commission's ability to carry out its current statutory responsibilities if adopted. Therefore, it would be important to clarify the Legislature's purpose and priority policy directives for the Commission, and, if necessary, reorganize it to meet those objectives. The Commission offers the following comments for your consideration.

**COMMENTS:**

*The Commission is concerned about the potential effect of this measure on the Commission's ability to function in light of the uncertainty from all of the Legislature's proposed changes to the Commission's organization and responsibilities without a clear purpose and objectives for these changes.*

In recent years the Commission has improved speed, efficiency, and overall quality with which it performs its statutory responsibilities. A second, significant reorganization of the structure of the Commission at this time impedes that progress. In each of the Auditor reports this measure cites, adequate staffing and resources to support Commission operations were identified over the decades as the principal concern for PUC's operational inefficiencies. The Commission's 2007 reorganization plan adopted by the Legislature in Act 177, SLH 2007, and bolstered by Act 130, SLH 2010, focused on improving staffing and resources. This included key positions that would enhance the technical wherewithal of the Commission and complement existing staff positions to improve workflow effectiveness. Act 164, SLH 2011, authorized and funded all the positions as outlined in the Commission's 2007 reorganization plan. However, a key component to the reorganization plan, the relocation of the Commission's entire Oahu office, was not approved. The relocation of the Commission's office is necessary to accommodate all existing and newly created reorganization positions and to meet the Commission's specific needs for a hearing room and adequate document storage space. Presently, there is no sufficient State owned space available that meets the Commission's Oahu office space requirement. Therefore, due to lack of adequate space, the Commission prioritized and focused on four (4) key reorganization positions to recruit for, i.e., Information Technology Specialist, Engineer, Compliance and Consumer Affairs Chief and Legal Assistant, while backfilling existing positions. This, unfortunately, resulted in the Commission having to refrain from recruiting for seventeen (17) funded positions. Given this office space situation, the Commission is concerned the addition of two more commissioners, and the need for corresponding support staff, may detract from the hiring of key positions that have been long identified as critical and may inadvertently derail the efficiencies and operations the Commission is striving for. Other concerns are as follows:

- o The measure only appropriates an amount to cover the salary expenses of two new commissioners, but does not make any provisions for either the new executive officer position or the additional staff that would be required to support two new commissioners. Given that the Commissioners are full-time State employees, the Committee may want to carefully evaluate the need for an executive officer position which is usually contemplated for

part-time, volunteer boards and commissions. Currently, the Chair of the Commission has administrative oversight with the day-to-day management of staff delegated to section heads (Legal, Audit, Policy & Research, Engineering, Compliance & Enforcement and Administration). As the Commission is a creature of statute and an extension of the Legislature, careful consideration must be given to the powers and duties of an executive officer who is not subject to an appointment and confirmation process.

- o There is no provision in the measure for the travel and related lodging expenses that two neighbor island commissioners would incur in performing their duties. Only salaries are provided for in the \$700,000 appropriated in this measure.

In addition, the Commission is concerned that significant restructuring of the Commission is premature at this time, given the number of bills introduced increasing or decreasing the role and functions of the Commission. In addition to three bills being heard by this committee today, the Commission has identified at least ten (10) different existing legislative proposals that would significantly redefine the role and/or organization of the Commission<sup>1</sup>. Some of these measures propose major changes, such as the transferring of entire regulatory divisions to or from the Commission's purview. For example, H.B. 2524 and S.B. 2786 both intend to transfer the regulation of telecommunications in the State from the Commission to the Department of Commerce and Consumer Affairs, while in contrast H.B. 2085 and S.B. 2189 both would add cable services regulation to the Commission's responsibilities.

- o This bill provides that the number of commissioners will be increased from three to five commissioners and the bill states, "At all times, the commission shall include at least two commissioners representing the

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<sup>1</sup>A few of the existing measures aimed at altering the operations of the Commission include H.B. 1742, H.B. 1882 and S.B. 2439, H.B. 2043 (relating to renewable energy), H.B. 2085 and S.B. 2189 (relating to cable service), H.B. 2377 (relating to renewable energy), H.B. 2524 and S.B. 2786 (relating to the regulation of telecommunications and cable television services), H.B. 2525 and S.B. 2787 (relating to electricity), S.B. 99, S.B. 2427, and S.B. 2613 (relating to electric utilities). Those measures not indicated otherwise are titled as relating to the public utilities commission.

**Testimony for HB1882 on 1/25/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, January 24, 2012 10:53 PM

**To:** CPCtestimony

**Cc:** brian@hfbf.org

**Attachments:** HB 1882 PUC Structure.doc (50 KB)

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Testimony for CPC 1/25/2012 2:00:00 PM HB1882

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Brian Miyamoto

Organization: Hawaii Farm Bureau

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Submitted on: 1/24/2012

Comments:



**Hawaii Farm Bureau**  
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JANUARY 25, 2012

HEARING BEFORE THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TESTIMONY ON HB 1882  
RELATING TO THE PUBLIC UTILITIES COMMISSION

Room 325  
2:00 PM

Chair Herkes, Vice Chair Yamane and Members of the Committee:

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFBF strongly supports HB 1882, which reorganizes and clarifies the role of the Public Utilities Commission.

The actions of the PUC is a major concern to the agricultural industry. The viability of farmers and ranchers in Hawaii is largely dependent upon services provided by entities under the direction of the Public Utilities Commission. Recent decisions by the PUC in the Pasha Hawaii case make it imperative to clarify their decision making process in law.

We agree that the scope of responsibility for PUC has expanded not only in volume but in complexity. Expansion of the number of members, and specifically those that understand neighbor island needs should provide increased capacity to address this need. The panels allowing greater focus by members on topic areas is also important as these topics have increased in complexity as Hawaii seeks to increase its' efforts in renewable energy and alternative transportation.

We respectfully request your strong support of this measure with appropriate funding. It impacts not only those of us in agriculture but every small business and consumer in Hawaii.

I can be reached at (808) 848-2074 if you have any questions. Thank you for the opportunity to testify.

counties of Hawaii, Kauai, and Maui.” As the Commission is a creation of statute, it defers to the Legislature as to how the Commission should be comprised and constituted. However, should this measure move forward, residency requirements should be clearly established, as the word “**representing**” is vague and ambiguous. Given the specialized nature and statutory experience required to serve as commissioner, this measure’s residency, professional, and compositional requirements may further reduce the pool of qualified applicants.

- To reiterate an earlier point, there is no provision in this measure to support the travel and related lodging expenses that would be incurred by neighbor island commissioners in performing their duties. Only salaries are provided for in the \$700,000 appropriation in the measure.
- It appears that the two panel structure replicates the Intermediate Court of Appeals, and the Commission has concerns about how a two panel structure that gives each panel the power to operate autonomously and independently of the other would affect Commission staffing and resources efficiencies. The staff works across regulated sectors and workload priorities are defined through statutory deadlines and policy mandates.

Thank you for the opportunity to testify on this matter.