

**LATE**

**SB451**

Submitted on: 2/25/2014

Testimony for CPN/WAM on Feb 26, 2014 10:10AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randall Francisco	Kauai Chamber of Commerce	Support	No

Comments:

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## LIFE OF THE LAND

P.O. Box 37158, Honolulu, Hawai`i 96837-0158  
Phone: 927-0709; E: [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)

### COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair

### COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair  
Senator Michelle N. Kidani, Vice Chair

DATE: Wednesday, February 26, 2014

TIME: 10:10 a.m.

PLACE: Conference Room 211

SB 451 Proposed SD 1 RELATING TO THE PUBLIC UTILITIES COMMISSION.

Aloha Chairs Baker and Ige, Vice Chairs Taniguchi and Kidani and Members of the Committees

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Life of the Land has been actively engaged in Public Utility Commission regulatory proceedings since 1971 and in recent years has been involved in over three dozen dockets dealing with generation, transmission, biofuels, biomass, solar, wind, net energy metering, wheeling, surcharges, rate cases, reliability and integrated resource planning.

SB 451 Proposed SD1 proposes an overhaul of the PUC. Life of the Land is in full support of this bill.

Specifically, SB 451 Proposed SD 1 *“specifies that the public utilities commission is an autonomous agency of the state to be assigned, for administrative purposes only, to the department of commerce and consumer affairs.*

*Increases the compensation of the chair and commissioners of the public utilities commission.*

*Clarifies the public utilities commission's authority concerned standard administrative practices, including operational expenditures and the hiring of personnel.*

*Enables the chair of the public utilities commission to appoint and employ an executive officer to assist with managing the operations of the commission.*

*Specifies that the executive director of the division of consumer advocacy shall be the consumer advocate in hearings before the public utilities commission.*

*Appropriates funds for the hiring of an executive officer within the public utilities commission.”*

The Public Utilities Commission must be modernized to efficiently handle its enormous and critically important case load.

The PUC currently has filled about 40 of its allocated 65 staff positions. It makes sense to establish position and pay flexibility to allow the Commission to fill their vacant positions.

The Judiciary, and House and Senate Legislators, have agency-wide staff AND individual staff members assigned to each decision-maker.

The PUC has three Commissioners. Similarly to judges and legislators, it makes sense that the PUC Chair can hire 61 staff members and the two non-Chairs can each hire two staff members. This would strengthen the Commission.

Neighbor island commissioners currently do not, but should, receive travel compensation.

In 1974-76 there was a devastating three-volume audit of the Public Utilities Commission and what was then called the Public Utilities Division (now called the Division of Consumer Advocacy or Consumer Advocate).

As a result of the audit the PUC and CA were given to separate agencies. The regulator went to Budget and Finance while the advocate stayed with what is now called the Department of Commerce and Consumer Affairs (DCCA).

Life of the Land believes this separation was and is important.

Although the bill states that the PUC will be an “autonomous agency” there is no definition of that term in either the bill or state law.

SB 451 states that, “The legislature also finds that the division of consumer advocacy of the department of commerce and consumer affairs protects and advances the interests of Hawaii’s consumers of regulated public utilities.”

There is only one other state in the nation that uses Hawaii’s approach for defining the role of the consumer advocate.

In practically all other states, the agency staff makes a recommendation and the applicant appears on one-side and any consumer entity acts as the pro-consumer counter-balance.

Similarly, at the BLNR, LUC, Water Commission and other Hawaii State agencies the staff makes a recommendation and the applicant and the public chime in.

In Hawai’i the consumer advocate has historically presented the case to the commission. That is because when the PUC and CA split, the CA grabbed practically all of the staff. In practically all other states it is the PUC with the larger staff and the CA with the smaller staff. In Hawaii it was the reverse.

It has only been in the last half decade or so that the PUC has built up its in-house expertise.

The consumer advocate works behind closed doors with the utility and seeks compromise. The consumer advocate has shied away from evidentiary hearings. While in California they have helped public interest and community groups understand and intervene in PUC proceedings, in Hawaii the CA has been agnostic to hostile towards intervenors.

The consumer advocate has focus strictly on utility rates.

Life of the Land submitted a detailed and exhaustive review of all six wind applications file with the PUC between 1998 and 2014. We examined all Information Requests (Discovery) asked by the consumer advocate and all of their Statements of Position. We filed this report with the PUC in December 2013.

The consumer advocate focused almost exclusively on rates and not social, cultural or environmental impacts.

The Consumer Advocate occasional summarized laws or reported what others have said about non-rate impacts. When this occurred, the Consumer Advocate always reported it in a positive light and without any analysis.

For example, HECO has stated that global warming / climate change is real and it caused by fossil fuel.

The consumer advocate has not taken a position regarding whether climate change is real, nor what might be causing it. Climate change is an externality and as mentioned above, the CA does not focus on non-financial impacts.

Therefore the Consumer Advocate should be renamed the Rate Advocate.

Historically the State has hired engineers and lawyers who build up expertise and then go to work for regulated companies appearing before the PUC.

While PUC Commissioners have a one-year cooling off period where they cannot represent a client in a PUC regulatory proceeding, utilities can negotiate with currently employed PUC staff and hire them for immediate work involving issues currently before the PUC.

There have been times when critical work at the PUC is delayed because the key staff member suddenly switched sides.

The PUC web site should provide the names of their engineers and lawyers. No utility should be permitted to "steal" workers away from the PUC.

Engineers and lawyers should be required not to work for a regulated utility for one-year after they leave the PUC. This should be a condition of their initial employment just like Legislators.

Each PUC Commissioner is required to file an annual financial disclosure statement with the Ethics Commission.

The Ethics Commission lacks the time, resources and expertise to examine most of the 1600 annually filed statements, and under currently law the statements filed by PUC Commissioners are classified.

Therefore the filing meets the letter, but not the intent, of the ethics law. These annual filings should be made public and place on the PUC web site.

Mahalo for this opportunity to testify,

Henry Curtis  
Executive Director

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SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION AND WAYS & MEANS  
Wednesday, February 26, 2014 – 10:10 a.m. – Room 211

**Ulupono Initiative Supports the Intent of SB 451 SD 1, Relating to the Public Utilities Commission**

Dear Chair Baker, Vice Chair Taniguchi, Chair Ige, Vice Chair Kidani and Members of the Committees:

My name is Kyle Datta and I am general partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase renewable energy, and reduce/recycle waste. Ulupono invests in projects that have the potential to create large-scale, innovative change.

**Ulupono supports the intent SB 451 SD 1**, which specifies that the Public Utilities Commission (PUC) is an autonomous agency and provides additional funding for operations. The PUC is the gatekeeper for many industries, including the energy sector in Hawai'i. Yet, it does not have the resources to handle all of the work it is required to do. This has directly hurt Hawai'i's renewable energy industry, created delays in projects that will reduce imports of fossil fuel products, and will hurt the long-term prosperity of the overall economy.

As an investment firm, one of the largest reasons to avoid making investments is uncertainty. We, as well as many in the renewable energy industry, struggle with delays from regulatory bodies and often results in projects being less financeable or scrapped completely.

The PUC needs to have a continuous and reliable stream of funding to attract high quality talent and prevent staff turnover. No PUC can make intelligent and timely decisions without enough trained staff to support the commissioners. Salaries will need to be increased to attract and retain the caliber of talent needed to address these complex issues. Furthermore, we recommend this bill add language to allow the PUC to keep a minimum of 75% of its special fund every year. On this note, we feel SB 451 SD 1 should be integrated with SB 2924, which allows for the PUC to keep a greater share of its funds.

If the goal of the Legislature is to have the PUC as an effective autonomous agency, then we recommend the PUC be transferred to the Judiciary, which has greater independence in its own decision making. We concur with this bill's intent to clarify the ability of the PUC commissioners and its staff to be able to make the decisions with their expertise. We note that defining specific organizational positions is inconsistent with that intent.

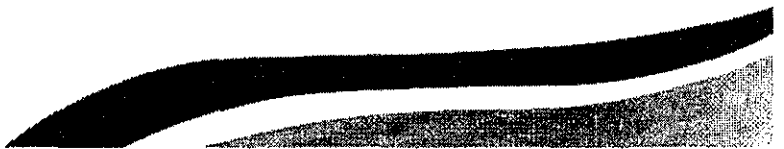
Thank you for this opportunity to testify.

Respectfully,

Kyle Datta  
General Partner

Pacific Guardian Center, Mauka Tower  
737 Bishop Street, Suite 2350, Honolulu, HI 96813

808 544 8960 | 808 544 8961 f  
[www.ulupono.com](http://www.ulupono.com)



Email: [communications@uluono.com](mailto:communications@uluono.com)

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Robert Petricci	Puna Pono Alliance	Support	No

Comments: Puna Pono Alliance strongly supports SB451. Life Of The Lands position and testimony on SB451 articulates the issue for us very well. Thank you for your consideration Robert Petricci President Puna Pono Alliance

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