

HB 2081, HD2

TESTIMONY

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON
TRANSPORTATION AND ENERGY

March 15, 2016
2:45 PM

MEASURE: H.B. No. 2081, H.D. 2
TITLE: RELATING TO ENERGY

Chair Inouye and Members of the Committee:

DESCRIPTION:

This measure creates a new part in Chapter 269, Hawaii Revised Statutes (“HRS”), which details and establishes a process through which State or County agencies can determine that a “public purpose project” is in the public interest and formulate a proposal for such a project. This measure also requires the Public Utilities Commission (“Commission”), by January 1, 2017, to establish a simplified regulatory process and procurement mechanism “for the commission’s review and approval of public purpose projects [. . .]”

POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission understands the intent to establish a simplified regulatory process to facilitate the consideration of projects which are determined to be in the public interest by a government agency. However, the Commission notes that, as currently written, there are a number of provisions in the measure which may be problematic.

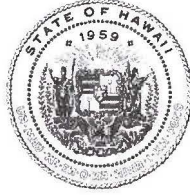
For example, the measure currently defines a public purpose project as “a project that is in the public interest as determined by an agency.” This definition does not limit the types of projects that could be covered by this new process nor does it provide criteria for an agency to consider in determining whether a project is in the public interest. This lack of

clarity greatly expands the applicability of this measure and could lead to unintended consequences.

The measure also requires that a public utility prepare a feasibility report within 90 days of notice that an agency *intends to propose* a public purpose project. However the measure does not require the agency to provide the utility with any details on which a feasibility report could be based. Requiring a utility to prepare, within 90 days, a report describing and analyzing the feasibility of a project in interconnecting and supplying fuel or electrical energy to a public utility without also requiring the proposing agency to provide the utility with the proper level of detail to inform the report would be inappropriate, especially if the cost of the report is to be passed on to ratepayers.

The Commission also has concerns with §269-C of this measure (See p. 5, Ins. 12-18) which requires that the Commission, by January 1, 2017, “establish a simplified regulatory process and procurement mechanism for the commission’s review and approval of public purpose projects [. . .]” The Commission notes that the language in this section appears to require that the Commission establish a process and procurement mechanism to necessarily approve public purpose projects. The Commission notes that any process established should allow the Commission the discretion and flexibility to review a project and then make a determination as to whether that project should be approved or denied. Furthermore, the establishment of a simplified regulatory process and procurement mechanism, as required by this measure, may require the Commission to undertake rulemaking pursuant to Chapter 91, HRS. Given the Commission’s limited resources and other important matters currently before the Commission, establishing a simplified regulatory process and procurement mechanism by January 1, 2017 may be difficult.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

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JO ANN M. UCHIDA TAKEUCHI
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TO THE SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, MARCH 15, 2016
2:45 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE LORRAINE R. INOUE, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. HB 2081, H.D. 2 - RELATING TO ENERGY

DESCRIPTION:

This measure proposes to authorize public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity, and it establishes procedures for the Public Utilities Commission ("PUC") to review these public purpose projects.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") opposes this bill.

COMMENTS:

The PUC is responsible for determining whether any proposed project for electricity generation is in the public interest. This determination requires the PUC to consider a broad spectrum of factors, including the capacity needs of the utility, whether the project contributes to the Renewable Portfolio Standards, costs and risk to the utility and the consumer, economic externalities and community interests.

As amended, this bill no longer prescribes the exact procurement and implementation processes for public purpose projects, but rather directs the PUC to formulate those procurement and implementation processes on a tight timetable. This proposed PUC input notwithstanding, however, the bill still takes the PUC's responsibility for determining which energy projects are in the public interest and places it with the public agency. The determination of whether a public utility is entitled to cost recovery should lie solely with the PUC to avoid inconsistent decisions that create greater risk to the utility.

If a public agency or potential supplier of power feels that a utility is unreasonably refusing to negotiate a power purchase agreement, then the potential energy supplier already has recourse to approach the PUC directly and ask it to order the utility, pursuant to Hawaii Revised Statutes Chapter 269-27.2, to negotiate an agreement with the energy supplier and submit the agreement to the PUC for review. In the event that a rate cannot be agreed upon by the potential energy supplier and the utility, then the rate shall be as prescribed by the PUC. The affected public agency always has the ability to seek intervention in this process.

Thank you for this opportunity to testify.

William P. Kenoi
Mayor



Walter K.M. Lau
Managing Director

Randall M. Kurohara
Deputy Managing Director

County of Hawai'i Office of the Mayor

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March 15, 2016

The Honorable Lorraine Inouye, Chair
and Members of the Senate Committee
on Transportation and Energy
Hawai'i State Capitol, Room, 229
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: House Bill 2081, HD 2 - RELATING TO ENERGY

Aloha, Chair Inouye and Committee Members:

Mahalo for this opportunity to express our support of HB 2081, HD 2, which authorizes public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity.

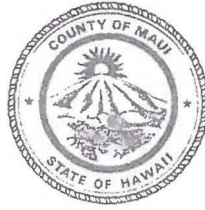
This bill creates a simplified regulatory process and procurement mechanism for counties to bring public interest projects to the Public Utilities Commission. This simplified regulatory process has the potential to encourage and facilitate the development of projects important to the counties.

Mahalo for your consideration.

Aloha,

William P. Kenoi
MAYOR

ALAN M. ARAKAWA
MAYOR



KEITH A. REGAN
MANAGING DIRECTOR

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

TESTIMONY OF ALAN ARAKAWA, MAYOR COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON TRANSPORTATION & ENERGY

Tuesday, March 15, 2016
2:45 p.m. (Conference Room 229)

HB 2081, HD2, RELATING TO ENERGY

Honorable Sen. Lorraine R. Inouye, Chair
Honorable Members of the Senate Committee on Transportation & Energy

Thank you for this opportunity to testify in **SUPPORT of HB 2081, HD2.**

This measure creates a new part in Chapter 269, Hawaii Revised Statutes, which details and establishes a process through which State or County agencies can petition the Public Utilities Commission (“PUC”) to review and make determinations on “public purpose projects.” The measure also requires the PUC to establish a simplified regulatory process and procurement mechanism for the commission’s review and approval of public purpose projects.

As Mayor of Maui County, I support this bill for the following reasons:

1. Presently, the electric utility is the gatekeeper who decides whether or not a project is proposed to the PUC. The utility does not act in the public’s interest; its responsibilities first are to its shareholders.
2. Currently no viable mechanism exists in Hawaii for counties to bring public interest projects to the Commission should the project not have the blessing of the local utility. This bill creates a mechanism to look at public purpose projects in a holistic way. This bill is of particular importance on the neighboring islands due to intertwined interest of the people and lack of scale.

I strongly urge the legislature to approve this bill. The County believes that the PUC is well equipped and experienced to guide the state’s and counties’ acquisition of electricity and fuel, by way of solid purchase agreements that benefit ratepayers, taxpayers, and the environment.

For these reasons I **strongly support HB 2081, HD2.**

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

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MAYOR



LORI M.K. KAHIKINA, P.E.
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DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 16-62

March 11, 2016

The Honorable Lorraine R. Inouye, Chair
and Members of the Senate Committee on
Transportation and Energy
State Senate
State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

SUBJECT: House Bill 2081, HD2 Relating to Energy

The City and County of Honolulu, Department of Environmental Services (ENV) supports House Bill 2081, HD2. This measure creates a new part in Chapter 269, Hawaii Revised Statutes, which details and establishes a process through which State or County agencies can petition the Public Utilities Commission (PUC) to review and make determinations on "public purpose projects." The measure also requires the PUC to establish a simplified regulatory process and procurement mechanism for the commission's review and approval of public purpose projects.

Presently, the electric utility decides whether or not a project is proposed to the PUC. The utility's responsibilities first are to its shareholders. Currently no viable mechanism exists in Hawaii for counties to bring public interest projects to the Commission should the project not have blessing of the local utility. This bill creates a mechanism to look at public purpose projects in a holistic way.

ENV believes that the PUC is well equipped and experienced to guide the state's and counties' acquisition of electricity and fuel, by way of solid purchase agreements that benefit ratepayers, taxpayers, and the environment.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori M.K. Kahikina".

Lori M.K. Kahikina, P.E.
Director

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
TRANSPORTATION AND ENERGY**

H.B. No. 2081, H.D.2

Relating to Energy

Tuesday, March 15, 2016

2:45 pm

State Capitol, Conference Room 229

Duke Oishi

Senior Associate General Counsel, Legal Department

Hawaiian Electric Company, Inc.

Chair Inouye, Vice Chair Gabbard, and Members of the Committee:

My name is Duke Oishi and I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company (collectively, the "Hawaiian Electric Companies") in **opposition** to H.B. 2081, H.D.2.

This bill allows any state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, to propose a "public purpose project." "Public purpose project" is defined broadly as in the public interest and the agency proposing the project makes its own determination. There is no limit to size, scope, scale, or location. This bill also proposes to minimize the required information submitted to the Hawai'i Public Utilities Commission (PUC) to make a determination whether it is feasible, has definite benefits in Hawai'i, and is in the public interest and creates an unrealistic regulatory schedule that transfers additional costs and expense to the utility and its customers.

The agency proposing the project is responsible for determining for itself if its own project is in the public interest. There is no limit as to location, size, scope, or scale of a particular project. However, the utilities are asked to prepare a "feasibility report" within 90 days only having conferred with the agency. This report is the

equivalent of an Interconnection Requirements Study ("IRS"), which requires much more detail about a project than this bill requires. An effective IRS completed by the utility includes, among other things, power systems analysis and identification of equipment, costs, and schedule to evaluate the upgrades necessary to interconnect the proposed project into the utility's system safely and reliably. In order to conduct the IRS, the utility would need, among other things, single line diagrams, equipment details, performance capabilities and associated models. Under this bill, the cost of the study is to be borne by the utility's customers instead of the developer, as is the current accepted practice (which charges the cost to the party that causes the cost). The range of cost for an IRS is \$100,000 to \$200,000. The Hawaiian Electric Companies' tariff Rule No. 14H already provides a process to govern the interconnection review for distribution level projects, and Rule No. 19 has guidelines for an IRS under a request for proposal issued by the utility.

Under this bill, the agency is required to provide minimal information on the project including: (1) location, (2) a brief description of the facility, (3) the primary energy source to be used by the facility, (4) the power production capacity, (5) the public benefit created by the project, (6) proposed rates, and (7) the feasibility of the project in interconnecting and providing renewable energy or fuel to the utility. However, the bill does not provide a vehicle for discovery or enforcement by the PUC over the agency proposing the project. This bill also limits the time for the PUC, the Hawai'i Consumer Advocate, and other interested parties to fully understand the costs and benefits of a proposed project and whether the project is in the public interest.

In applications for PUC approval of power purchase agreements (PPA), utilities provide the PUC with detailed information on the proposed project so that the

PUC can determine whether the PPA should be approved, the PPA payment rates are reasonable, and the terms and conditions of the PPA are prudent and in the public interest. Information supporting the utility's PUC application includes for example, a description of the PPA's terms and conditions, facility performance requirements, design, construction and interconnection cost details, schedule of development milestones, and pricing and bill impact analysis. A PPA's contractual terms, which include provisions to protect the utility's customers, are binding on the developer. The proposed bill, however, would not require the agency proposing the project to enter into an agreement with the utility. Additionally, in applications for approval of fuel supply contracts, the utility provides the PUC with terms and conditions of the contract and a detailed explanation of the utility's competitive bidding process to ensure the utility has obtained a fair market price.

Hawaii's electrical grids are isolated. Unlike most mainland utilities, the Hawaiian Electric Companies cannot plug into the mainland grid, either to buy or sell electricity to neighboring utilities and for reliability. As has been noted publicly, the Hawaiian Electric Companies' grids have limited capacity. Filling this capacity with projects that are not properly vetted and which may be more expensive than other forms of generation may not be in the best interest of the Hawaiian Electric Companies' customers and may cause electricity rates to rise. The Hawaiian Electric Companies believe the existing regulatory framework already ensures that projects are reviewed for viability, cost-effectiveness, and benefits to customers.

Accordingly, the Hawaiian Electric Companies oppose H.B. 2081, H.D.2.

Thank you for this opportunity to testify.



Testimony Before the Senate Committee on
Transportation and Energy

By Jim Kelly
Member Services & Communications Manager
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Tuesday, March 15, 2016, 2:45 p.m.
Conference Room # 229

House Bill No. 2081, HD2 – Relating to Energy

To the Honorable Lorraine R. Inouye, Chair; Mike Gabbard, Vice-Chair, and Members of the
Committee:

Thank you for the opportunity to testify on this measure. I am Jim Kelly, Member Service and
Communications Manager at Kauai Island Utility Cooperative (“KIUC”). KIUC opposes House Bill No.
2081, HD2.

HB 2081, HD2 authorizes public agencies to develop “public purpose projects” for electricity generation
and establishes procedures by which the utilities and the Public Utilities Commission review these
projects.

As a member-owned, not-for-profit cooperative, one of our key points of disagreement with this bill is
the presumption that a utility “is not obligated or incentivized to look beyond its own interests.” By its
nature as a cooperative with an elected board of directors from our community, KIUC is not forced to
weigh “its own interests” against those of the community since they are one in the same.

Because the County of Kauai and KIUC share the same constituency, our interests are closely aligned.
This is not simply wishful thinking but a matter of fact. Since 2013, KIUC and the County of Kauai have
worked under a detailed Memorandum of Understanding to develop projects of mutual benefit to
taxpayers and co-op members.

Among our other concerns:

- The Consumer Advocate and the Public Utilities Commission already have the authority to
determine whether a project – whether publicly or privately developed - is in the public interest.

- The definition of “public purpose project” is overly broad with no limits on size and scope and with the determination of “public interest” left solely to the sponsoring agency.
- The requirement that the utility provide a feasibility report on proposed public interest projects within 90 days, an unrealistic deadline and an assignment whose cost would be borne by our members.

KIUC believes this measure’s potential for unintended negative consequences for our 30,000 members is significant and for these reasons we are opposed to its passage.

Thank you for the opportunity to inform you of KIUC's position on this matter.



COLLEGE OF SOCIAL SCIENCES
HAWAII ENERGY POLICY FORUM
UNIVERSITY OF HAWAI'I AT MĀNOA

Hawaii Energy Policy Forum

Jeanne Schultz Afuvai, Hawaii Inst. for Public Affairs
Karie Asato, Hawaii Government Employees Assn
Joseph Boivin, Hawaii Gas
Warren Bollmeier, Hawaii Renewable Energy Alliance
Michael Brittain, IBEW, Local Union 1260
Albert Chee, Chevron
Elizabeth Cole, The Kohala Center
Kyle Datta, Ulupono Initiative
Mitch Ewan, UH Hawaii Natural Energy Institute
Jay Fidell, ThinkTech Hawaii
Carl Freedman, Haiku Design & Analysis
Matthias Fripp, REIS at University of Hawaii
Ford Fuchigami, Hawaii Dept of Transportation
Mark Glick, Hawaii State Energy Office, DBEDT
Justin Gruenstein, City & County of Honolulu
Dale Hahn, Ofc of US Senator Brian Schatz
Michael Hamnett, SSRI at University of Hawaii
Senator Lorraine Inouye, Hawaii State Legislature
Randy Iwase, Public Utilities Commission
Ashley Kaono, Ofc of US Representative Tulsi Gabbard
Jim Kelly, Kauai Island Utility Cooperative
Darren Kimura, Energy Industries
Kelly King, Sustainable Biodiesel Alliance
Kal Kobayashi, Maui County Energy Office
Representative Chris Lee, Hawaii State Legislature
Gladys Marrone, Building Industry Assn of Hawaii
Stephen Meder, UH Facilities and Planning
Hermína Morita, Energy Dynamics
Sharon Moriwaki, UH Public Policy Center
Tim O'Connell, US Dept of Agriculture
Jeffrey Ono, Division of Consumer Advocacy, DCCA
Stan Osserman, HCATT
Darren Pai, Hawaiian Electric Companies
Melissa Pavlicek, Hawaii Public Policy Advocates
Randy Perreira, Hawaii Government Employees Assn
Rick Reed, Hawaii Solar Energy Assn
Cynthia Rezendes, Ofc of US Representative Mark Takai
Rick Rocheleau, UH Hawaii Natural Energy Institute
Will Rolston, Hawaii County, Research & Development
Riley Saito, SunPower Systems
Scott Seu, Hawaiian Electric Companies
Joelle Simonpietri, US Pacific Command Energy Ofc
H. Ray Starling, Hawaii Energy
Ben Sullivan, Kauai County
Lance Tanaka, Par Hawaii, Inc.
Maria Tome, Public Utilities Commission
Alan Yamamoto, Ofc of US Senator Mazie Hirono

Testimony of the
Hawaii Energy Policy Forum

Before the

Senate Committee on Transportation and Energy

Tuesday, March 15, 2016 at 2:45 pm in Conference Room 229

In Opposition of HB 2081 HD2, Relating to Energy

Chair Inouye, Vice-Chair Gabbard, and Members of the Committee,

The Hawaii Energy Policy Forum (“HEPF”), created in 2002, is comprised of over 40 representatives from Hawaii’s electric utilities, oil and natural gas suppliers, environmental and community groups, renewable energy industry, and federal, state and local government, including representatives from the neighbor islands. Our vision, mission and comprehensive “10 Point Action Plan” guide us in moving Hawaii toward its preferred energy goals. The Forum recommends that we oppose this bill. Below is our recommended testimony in opposition:

HB 2081 HD2 authorizes public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity.

The HEPF opposes the bill because it is vague and ambiguous and also not necessary.

As pointed out by the Consumer Advocate in its testimony in the House Committee on Energy and Environmental Protection, the Hawaii Public Utilities Commission (“PUC”) already has the authority to determine if a project, whether privately or publicly developed, is in the public interest as it relates to Hawai’i’s electric system.

It should be noted that a project may be in the public interest by serving a need and a purpose such as wastewater treatment. On the other hand, such a project may not be in the electricity ratepayer/public interest if the power purchase price is not competitive or the project fails to cost-effectively bring value to the Hawaii electric system. Therefore, the public utility and electricity ratepayer should not be placed in a position to bear the burden of an overall uneconomic project built in the “public interest” for a purpose other than electricity generation or ancillary services to be provided for the electric system. Under its existing authority, the PUC can adequately address and weigh the cost and benefits of these types of multi-purpose public projects.

For the foregoing reasons, the HEPF opposes HB2081 HD2 and recommends that it be held.

This testimony reflects the position of the Forum as a whole and not necessarily of the individual Forum members or their companies.

Senate Committee on Transportation & Energy
House Bill 2081, House Draft 2 – Relating to Energy
Testimony of Hermina Morita

Chair Inouye and Members of the Committee:

I urge this committee to hold this measure. This bill's single purpose is an attempt to justify a controversial County of Maui waste to energy project.

This measure authorizes public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity. This measure appears address an on-going dispute between the County of Maui and Maui Electric Company over a power purchase agreement (<http://www.mauinews.com/page/content.detail/id/602023/Anaergia-asks-PUC-to-compel-MECO-to-negotiate-contract.html?nav=10>).

Under the guise of serving a public purpose (for example a solid waste or wastewater treatment facility), such a process may force a public utility to purchase fuel or electricity at an unreasonable or highly subsidized cost. Fuel and power purchase costs are passed to the electricity ratepayer/customer. This measure has the potential to open the backdoor for a State or county facility to push costs off to the electricity ratepayer/customer rather than raise user fees or taxes to fully support a public purpose project. Therefore, this bill has the potential to undermine the Public Utilities Commission and Consumer Advocate's duty to protect the electricity ratepayer/customer from unwarranted costs from public projects.

Last week, the Maui Council completed an audit which asserts that the Administration's estimate of this 20-year waste to energy contract net cost is off by \$35 million (<http://mauicounty.us/environment/administrations-estimate-of-waste-to-energy-net-cost-off-by-35-million/>). It would behoove the Legislature to protect the interest of both the Maui taxpayer and ratepayer by holding this measure.

Thank you for the opportunity to submit testimony.

Mina Morita
P.O. Box 791
Hanalei, Kauai, HI 96714