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TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

THURSDAY, FEBRUARY 2, 2017  
8:30 A.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE CHRIS LEE, CHAIR, AND MEMBERS OF THE  
COMMITTEE

HOUSE BILL NO. 1566 - RELATING TO THE PUBLIC UTILITIES COMMISSION

**DESCRIPTION:**

This measure proposes to establish “substantial net benefit” as the Public Utilities Commission’s (“PUC” or “Commission”) standard for a transfer or assignment of an electric utility and specifies certain guidelines to address when examining whether a substantial net benefit exists.

**POSITION:**

The Division of Consumer Advocacy (“Consumer Advocate”) supports this bill with requested amendments.

**COMMENTS:**

The Consumer Advocate has consistently argued that “substantial net benefit” should be the standard of review in utility mergers. The Consumer Advocate also notes favorably that the proposed statutory language for Hawaii Revised Statutes (“HRS”) § 269-19(c) would give the PUC the latitude to establish reasonable criteria pursuant to this standard for specific mergers, thus keeping in mind the specific context of each proposed merger that may come before it in the future.

The language proposed to be added as HRS § 269-19(d) is highly prescriptive and, in a few clauses, would be inapplicable to non-electric utility mergers given the references to electricity rates in the proposed statutory language. HRS § 269-19 applies to mergers or transfers of any type of utility regulated by the Commission, including private water, private wastewater, telecommunications carriers, interisland water carriers, and motor transportation carriers. Furthermore, the PUC should be given broad discretion in determining what constitutes a substantial net benefit given the specific issues present in any particular proposed utility merger or acquisition. For example, it may not be appropriate to apply the detailed factors listed in the bill to a cooperative electric utility that may seek to acquire one or more of the Hawaiian Electric Companies or to a company seeking to acquire a failing utility in Hawaii.

The Consumer Advocate suggests that the bill be amended to remove the language proposed to be added as HRS § 269-19(d), thereby leaving the application of the standard to specific proposed utility merger to the judgment of the Commission. Additionally, changes should be made so that the language is not specific to electric utility mergers/acquisitions.

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON  
ENERGY AND ENVIRONMENTAL PROTECTION

February 2, 2017  
8:30 am

**MEASURE:** H.B. No. 1566

**TITLE:** RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Lee and Members of the Committee:

**DESCRIPTION:**

This measure requires that “substantial net benefit” be the specific standard for the Public Utilities Commission (“Commission”) to consider in the transfer or assignment of ownership of an electric utility. This measure authorizes the Commission to establish reasonable criteria for specific mergers. This measure also details a number of factors for the Commission to consider in determining whether there is a “substantial net benefit”.

**POSITION:**

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

**COMMENTS:**

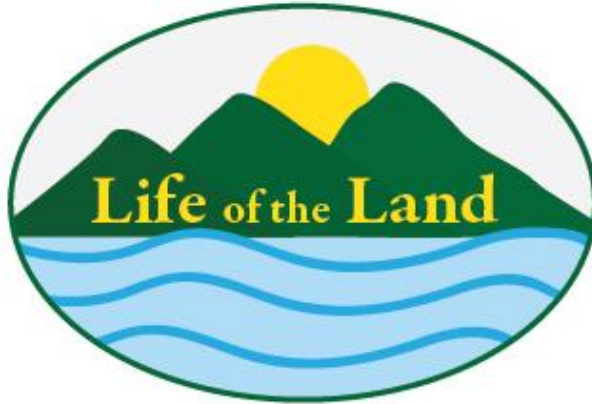
The Commission takes no position regarding the requirement that “substantial net benefit” be the specific standard for the Commission to consider in the transfer or assignment of an electric utility.

The Commission notes that the list of factors proposed by this measure on page 5, line 1 to page 8, line 3 appears to be nearly identical to the Commission’s Statement of Issues used in Docket No. 2015-0022, more commonly known as the HECO-NextEra merger proceeding. The HECO-NextEra Statement of Issues identified specific issues associated with the HECO-NextEra merger. Given that the circumstances of each merger proceeding are unique, it may not be appropriate to examine the exact same issues for every transfer or assignment of ownership of an electric utility going forward. The

H.B. No. 1566  
Page 2

Commission should have the discretion and flexibility to determine what issues are relevant to each specific situation. As currently written, this measure may limit the Commission's discretion and flexibility to make this determination going forward.

Thank you for the opportunity to testify on this measure.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Thursday, February 2, 2017

TIME: 8:30am

PLACE: Conference Room 325

re: HB 1566 Relating to PUC

**SUPPORT**

Aloha Chair Lee, Vice Chair Lowen, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. 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.

The bill proposes that any utility merger result in a "substantial net benefit."

During the HECO-NextEra merger proceeding, DBEDT described what a substantial net benefit means. Suppose a utility is at point A today, and expects to improve to point B in a year. A buyer comes in, and states that in one year, the utility will be at point B, which is an "improvement" over point A. That is not a "substantial net benefit." Rather, a substantial net benefit occurs when a buyer is able to demonstrate that there will be a significant exceedance of point B in a year.

Mahalo,

Henry Curtis  
Executive Director



**Hawaii Solar Energy Association**  
*Serving Hawaii Since 1977*

**TESTIMONY OF THE HAWAII SOLAR ENERGY ASSOCIATION  
IN REGARD TO SB 1566, RELATING TO ENERGY EFFICIENCY  
BEFORE THE  
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY  
ON  
THURSDAY FEBRUARY 2<sup>ND</sup>, 2017**

Chair Inouye, Vice-Chair Dela Cruz, and members of the committee, my name is William Giese and I represent the Hawaii Solar Energy Association, Inc. (HSEA)

HSEA strongly supports HB 1566. This bill amends §269-19 to adopt a standard of “substantial net benefits” in regard to the transfer or assignment of an electric utility as well as specifying guidelines to indicate whether said benefit exists.

A utility is meant to provide energy to the public and in that way it provides a public good, not unlike a farmer provides food or a hospital provides health care. Accordingly, a utility is also bound by the public that it serves and should seek to provide the best possible service while also providing a roadmap for a utility of the future. In no way is this less true than in the state of Hawaii, which has some of the highest amounts of renewable energy generation in the U.S. per capita as well as the only state with a 100% Renewable Portfolio Standard.

This bill is especially prudent given the recent rejection of the utility acquisition proposed by Nextera Energy Company. The HSEA was an active intervenor in Docket No. 2015-0022 addressing this issue, and as a result of the acquisition being mired by weak public support, a list of complex and ambiguous merger commitments, and an extended evidentiary hearing, it was wholly rejected in July of 2016. This was a significant victory for the people of the state of Hawai’i and it shows our commitment to provide electricity in a manner consistent with the public good.

Additionally, it is important that the PUC has a clear guideline to follow during the acquisition process. Thus this bill would compel the PUC to select an applicant that meets or succeeds the criteria outlined within it.

Thank you for the opportunity to testify.



**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

February 2, 2017  
8:30 a.m., Room 325  
*(Testimony is 1 page long)*

**TESTIMONY IN SUPPORT OF HB 1566**

Chair Lee and Members of the Committee:

The Alliance for Solar Choice (TASC) appreciates the opportunity to comment on HB 1566, clarifying that the substantial net benefit standard applies to reviewing the sale of an electric utility. TASC supports this measure.

This bill does not significantly change existing Public Utilities Commission (“Commission”) precedent, but rather it clarifies an ongoing controversy. The underlying issue is a question of policy. To that extent, it is appropriate for this body to provide guidance to the Commission.

The “substantial net benefit” standard should be the baseline standard when considering these types of deals. We must guard against transactions that generate millions for shareholders, but provide minimal benefit (or even later harm) to ratepayers. Requiring proposed purchasers of a utility to prove a “substantial” net benefit ensures the public interest is served.

Mahalo for considering these comments.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 1:26 PM  
**To:** EEPtestimony  
**Cc:** skaye@runbox.com  
**Subject:** \*Submitted testimony for HB1566 on Feb 2, 2017 08:30AM\*

**HB1566**

Submitted on: 1/31/2017

Testimony for EEP on Feb 2, 2017 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sally kaye	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 6:35 PM  
**To:** EEPtestimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1566 on Feb 2, 2017 08:30AM\*

**HB1566**

Submitted on: 1/30/2017

Testimony for EEP on Feb 2, 2017 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SIERRA CLUB OF HAWAII  
MĀLAMA I KA HONUA. *Cherish the Earth.*

**LATE**

**House Committee on Energy and Environmental Protection**

Thursday, February 2, 2017 8:30AM Room 325

**In SUPPORT HB1566** Relating to the PUC

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Aloha Chairman Lee, Vice-Chair Lowen, and members of the Energy and Environmental Protection Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i offers this testimony in SUPPORT of HB1566, seeking to clarify the substantial net benefit requirement for the transfer of Hawai'i's utility to another entity.

The Sierra Club is committed to the just and equitable transition to a 100% renewable energy economy in Hawai'i. To be achieve this goal, we recognize that any purchase or transfer of our utility monopoly must be done with the goal of serving a substantial net benefit to Hawaiian Electric customers.

This bill is essential because it provides clear guidelines to both potential utility-suitors and the Public Utilities Commission about the standards by which a proposal to transfer the utility will be evaluated. The failed NextEra takeover was a costly demonstration of the importance of these guidance.

The Sierra Club of Hawai'i strongly urges this Committee to pass HB1566.

Mahalo,

Martha Townsend  
Director