



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

THURSDAY, MARCH 17, 2017
2:00 P.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 382, S.D. 2 - RELATING TO THE PUBLIC
UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to make various updates to the structure and operations of the Public Utilities Commission ("PUC" or "Commission") to increase efficiency and effectiveness, including: establishing guiding principles; establishing docket review and decision-making processes; permitting teleconference and videoconference abilities; specifying senior staff members who must file public financial disclosures; beginning January 1, 2018, increasing the number of commissioner to five; updating the composition of the Commission; specifying training requirements; clarifying commissioners' ability to appoint and employ staff; clarifying the roles of the executive officer and chief counsel; permitting neighbor island members to receive per diem compensation and compensation for travel expenses; requiring the Commission to report to the legislature regarding certain staff duties; and requiring a management audit of the Commission.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") offers comments on this bill.

COMMENTS:

The Consumer Advocate believes reasonable measures that might make any agency or entity efficient and effective are a good idea. As will be discussed below, however, the Consumer Advocate defers to the Commission on whether aspects of this bill may adversely affect the Commission's operations and/or result in unintended consequences.

As offered in prior legislative sessions, the Consumer Advocate supports provisions in this legislation that would better enable neighbor island residents to serve on the Commission as well as provisions that enhance the ability to select qualified commissioners and provide for training of commissioners and commission staff. For instance, subject to any concerns related to the required costs to implement the provisions, the provisions allowing for teleconference or videoconference participation by commissioners to attend public hearings and requiring a per diem and travel compensation for neighbor island commissioners could help encourage more neighbor island representation. The Consumer Advocate also supports provisions that would promote diversity in commissioners. However, establishing a requirement that limits the number of attorneys that may serve on the commission or requiring that at least one commissioner be a resident of a county other than the city and county of Honolulu may inhibit the state's ability to attract and select the most qualified individuals as commissioners. Rather than establishing these types of requirements, these characteristics should be criteria that should be considered when determining that individual's qualification to serve as a commissioner.

The Consumer Advocate is concerned that other provisions in this bill that may also have unintended consequences. For example, while the guiding principles to be added to section 269, Hawaii Revised Statutes, articulated in the first additional subchapter in section 2 of the bill, are generally reasonable, writing them into statute may limit the Commission's options, create inconsistent objectives, or both. A possible illustration is how the Commission will be challenged to fulfill the principle of encouraging competition even though there are other provisions that inhibit competition, such as in section 271G-10, Hawaii Revised Statutes, under which the Commission is not allowed to grant a certificate of public convenience and necessity to a new water carrier unless certain criteria are met.

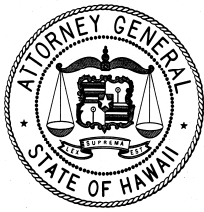
Another example of possible unintended consequences is how increasing the size of the Commission may add more perspectives to the Commission's deliberations, but expanding the number of commissioners may also work against the bill's stated aim of increasing efficiency.

The Consumer Advocate believes that there are other examples of how the proposed legislation may have unintended consequences, but defers to the Commission about whether or not the provisions in this bill regarding the Commission's staff and structure will help it be more efficient and effective.

The Consumer Advocate notes that, in section 2, there is a proposed subsection (c) that provides that a “commissioner who discusses relevant commission-related information at a meeting with an outside party shall inform the other commissioners of the meeting.” The Consumer Advocate supports transparency and the maintenance of objectivity at the Commission. The Consumer Advocate contends that, depending on the nature of the communications between a commissioner and an outside party, further disclosures should be made to ensure that the rights and interests of other parties appearing before the Commission are not prejudiced by ex parte communications.

In summary, the Consumer Advocate believes that an efficient and effective Commission is in the public interest but contends that further consideration may be necessary to ensure that the proposed legislation does not result in unintended and/or undesirable consequences.

Thank you for this opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 382, S.D. 2, RELATING TO THE PUBLIC UTILITIES COMMISSION.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Friday, March 17, 2017

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Elmira Tsang, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill proposes various amendments to the structure and operations of the Public Utilities Commission (PUC).

Section 4 of the bill, among other things, addresses the process of interim appointments to the PUC. The bill proposes to amend the Governor's interim appointments authority, page 18, lines 1-6, as follows:

Each member shall hold office until the member's successor is appointed and [qualified.] confirmed by the senate; provided that a vacancy occurring during a commissioner's term shall be filled for the unexpired term thereof, subject to article V, section 6, of the Constitution of the State of Hawaii.

We believe that this amendment is inconsistent with the Governor's interim appointments authority, as granted by article V, section 6, of the Hawaii State Constitution. Article V, section 6, Hawaii State Constitution, provides in pertinent part: "When the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall expire, unless such appointment is confirmed, at the end of the next session of the senate." In Attorney General Opinion 16-3, we opined

that the Governor's interim appointments authority is self-executing, that is, it does not require any statutory enactment to be effective. Also, we opined that a "vacancy" exists for purposes of the interim appointments provision when a board or commission member's term expires. Further, we opined that statutory law may not restrict the authority granted to the Governor by defining vacancies in office to exclude the expiration of the term.

The Governor is authorized by article V, section 6, of the Hawaii State Constitution, to appoint a successor member to the PUC when the term of the incumbent member expires, and irrespective of whether the incumbent serves as a holdover member under section 269-2, Hawaii Revised Statutes. As part of the state constitution, this provision is superior to the statutory law governing holdover members on a state board, including the PUC.

We respectfully ask the Committee to delete this amendment.

Thank you for the opportunity to testify on this matter.



HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

S.B. No. 382, S.D. 2, Relating to the Public Utilities Commission

Hearing: Friday, March 17, 2017, 2:00 p.m.

The Office of the Auditor has **no position** regarding S.B. No. 382, S.D. 2, which, among other things, directs the Auditor to perform “a management audit to evaluate the efficiency and effectiveness of the Public Utilities Commission.” **However, we have concerns about our ability to conduct the management audit required in the bill.**

Specifically, Section 7 of the bill requires us to evaluate, as part of the audit, the following:

- (1) The appropriateness and applicability of current utility legislation;
- (2) The adequacy of current Public Utilities Commission (“PUC”) policies, rules, and procedures, including the commission's current strategic plan;
- (3) The PUC’s management of technical and analytical staff; and
- (4) The PUC’s effectiveness in addressing telecommunications, energy, and other utility issues.

The areas that we are to specifically examine are beyond our expertise and, generally, outside the scope of a management audit. We suggest that the state energy office may be the more suitable agency to review the appropriateness of utility regulation and adequacy of PUC policies, rules, and procedures. Similarly, given our understanding of the state energy office’s resources, that agency seems to be better equipped to assess the PUC’s management of its technical and analytical staff and the PUC’s effectiveness in addressing issues involving regulated industries.

If the legislature intends that we conduct the audit, **we request an appropriation of not less than \$150,000** for us to retain a consultant who is versed in regulatory matters to assist us in assessing the PUC’s operations. We also are concerned that we may not be able to produce this report before the 2018 session, given that we must first procure the services of the consultant.

Thank you for considering our testimony related to the audit requested in S.B. No. 382, S.D. 2.

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

March 17, 2017
2:00 p.m.

MEASURE: S.B. No. 382, S.D. 2
TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Takumi and Members of the Committee:

DESCRIPTION:

This measure makes numerous significant changes to the structure and operations the Public Utilities Commission (“Commission” or “PUC”).

This measure also requires the State Auditor (“Auditor”) to conduct a management audit to evaluate the efficiency and effectiveness of the Commission.

This measure also requires that the chairperson of the PUC (“chair” or “chairperson”), in conjunction with other commissioners, shall work with the Department of Commerce and Consumer Affairs (“DCCA”) and the Department of Human Resource Development (“DHRD”) to develop clearly defined duties and responsibilities for Commission staff and that a report detailing these duties and responsibilities be submitted to the legislature no later than 20 days prior to the regular session of 2018.

POSITION:

The purported purpose of this bill is to increase the efficiency and effectiveness of the Public Utilities Commission.

However, contrary to the stated intent, the major changes proposed by this bill would lead to inefficiency and ineffectiveness in the Commission’s ability to perform its duties in a timely manner. Moreover, some of the provisions proposed in this bill could raise legal issues that could hamper or prevent executing on those provisions.

Accordingly, and for the reasons set forth below, the Commission **STRONGLY OPPOSES** the passage of S.B. No. 382, S.D. 2.

COMMENTS:

The proposed amendments would NOT achieve the goal of a “more efficient and effective commission.”

The amendments proposed would lead to confusion of operation and thereby seriously affect the ability of the Commission to perform its duties in an efficient, effective, and timely manner.

For example, the proposal *requires* a docket review and decision making process “that engages all commissioners in a collegial, *face-to-face manner*, where commissioners shall have the opportunity to review, discuss and offer input *to any order or decision requiring a consensus of commissioners*” (emphasis added).

- Statutorily mandating “face-to-face” meetings is an incredibly inefficient way to process all dockets that are before the Commission. According to the Commission’s Annual Report for Fiscal Year 2016, the Commission issued a total of 783 decisions and orders in FY 2016.
- Each of these orders requires a consensus of commissioners. However, in a great majority of instances, no face-to-face meetings are necessary. Instead, the more efficient way to proceed – and the process that the Commission generally utilizes now – is for Commission staff to prepare a draft memo and/or order concerning a filing, and to circulate such drafts to the commissioners for review and approval. Commissioners then review, make comments if there are any, and sign off. The process is efficient, transparent, and timely.
- Many orders are procedural in nature, and are thus standard or routine, and are virtually always unanimously approved. It would be an incredible waste of time to require the commissioners to meet “face-to-face” to discuss each of these orders.
- Similarly, there are many filings that are unopposed by the Consumer Advocate and others. These filings can be easily explained and understood by a commissioner simply by reviewing the filing, and any accompanying staff memos and/or draft orders. Again, these dockets are generally not the subject of disagreement other than a few comments.
- I understand that prior to my chairmanship, there were some face-to-face meetings to reach decisions in detailed and/or complex investigative or contested case

proceedings. In my interview with various staff members upon becoming chair I was told these meetings were not productive and were often confusing. Staff was left with a feeling of “Where’s Waldo”. I was informed that staff often left these meetings with no clear indication of what each commissioner’s position was, whether the commissioners agreed on the ultimate outcome, or what the structure of the particular order was to be. Staff often had to guess at what a particular commissioner or commissioners wanted. Many times, commissioners changed their minds once they read what was drafted in response to these meetings. This confusing process, which often resulted in more than one re-draft, left staff demoralized.

- To address this inefficient and confusing decision making process I instituted the “American Flag” process which was designed to address these shortcomings. It has been very successful. Under this process, appropriate staff personnel analyze the docket, and draft memos and/or meet with legal staff to discuss these issues. A draft order is prepared and transmitted to each commissioner, along with any staff memos. If a commissioner or commissioners disagree with all or a portion of the draft order, they are required to put their comments and/or proposed changes in writing on the draft order. In this way, issues are more focused and the positions of the commissioners are made clear. If necessary, once this is accomplished, a meeting of the commissioners can be held. This process is far superior to the previous method of doing things.

In short, the above amendment would result in the Commission meeting “face-to-face” for hundreds of dockets, many of which do not require such meetings. There should not be a statutory requirement of having meetings for meetings sake, particularly if the requirement hampers and slows down non-controversial or routine decisions. Second, the amendment seeks to eliminate a decision making process which works and mandates a return to a process which left staff confused and directionless. Decisions on such purely operational matters should be left to management.

Another example is the inexplicable reversal of the provisions of Act 108, SLH 2013 which vested authority in the Commission chair to determine the “employment, appointment, applicable salary schedules, promotion, transfer, demotion, discharge, and job descriptions” of Commission employees. Parenthetically, such powers had already been well established under the existing State job description of the powers and duties of the chair of the Public Utilities Commission.

It is a long standing management practice for any organization – public and private – to vest operational authority in the head of that organization. To now require, as this bill does, a

majority vote of three commissioners to, for example, hire an office secretary, clerk, attorney, or analyst, would create major adverse issues. The head of any organization is ultimately responsible for its action. Sound management principles as well as common sense, suggest that the head of that organization should be given the discretion and authority to hire staff and to supervise such matters as salary and demotion.

Another example of a mandate that will create confusion and inefficiencies is the requirement that each commissioner shall be provided the services of a staff attorney or researcher upon request and that “[a]ttorney/client privilege shall exist between the requesting commissioner and staff attorney until and if the work product is shared with other commissioners.”

First, commissioners presently can request and obtain such services. Second, this proposal contradicts a purported goal of this bill – consensus and collaboration. To impose an attorney/client privilege will place staff attorneys in an extremely awkward position – they will have to constantly decide what they can and cannot discuss with other commissioners or staff and may be put in the position of having to refuse to answer other commissioners’ questions. As presently operated, our staff is encouraged to collaborate with other staff and commissioners for assistance and direction. This proposal would create unwanted and unnecessary silos and discourage or prohibit collaboration.

This bill intrudes into the jurisdiction of the executive branch to manage and administer the operation of the agency.

Operational management of a department or agency is vested with the executive branch.

In addition to the above examples, below are some other examples of proposed mandates that interfere with such management and the efficient and effective operations of the Commission.

One example is the mandate that any commissioner may call for a meeting with other commissioners and “within 24 hours of the request the executive officer shall calendar such a meeting.” No commissioner shall refuse such a meeting request without reasonable justification such as illness. The topic could be any topic before the Commission or “likely to come before the commission.”

First, commissioners are presently free to discuss matters with any other commissioner. Second, a commissioner could tie up valuable time of other commissioners and staff simply because that commissioner wants to discuss a topic. Third, a meeting on a topic that may “likely come before the commission” may be highly inappropriate, particularly if such a future

matter may involve a contested case hearing and the commissioner seeks to provide off the record information to the other two commissioners.

Another example is the bill's mandate that the "executive officer shall not be involved in the development of policy or in any decision making for the commission."

This provision targeting the executive officer is unnecessary. First, the *commissioners*, not the executive officer, develop and establish Commission policy. Second, we are a small Commission. In analyzing and drafting proposals the input from staff is important. In fact, the pursuit of information, including input from knowledgeable individuals is crucial in analyzing the facts and issues in a docket. Does this bill suggest that receiving the thoughts and insights of staff personnel constitute "development of policy"? Again, commissioners are the decision makers. Finally, without any rationale, this bill mandates that the Commission and staff are prohibited from seeking input from the executive officer where the executive officer has significant experiences or expertise in a subject area. It simply does not make for sound research and analysis for the Commission to ignore that experience and expertise.

There are legal issues raised by certain provisions of this bill which may VOID such provisions.

First, this bill seeks to amend the holdover provision applicable to commissioners. Presently, a commissioner may be a holdover until the "member's successor is appointed and *qualified*" (emphasis added). This bill would delete the word "qualified" and allow a holdover to remain in office until confirmed by the Senate. In short, the bill seeks to equate the holdover status of commissioners to that of members of only two state boards – the Board of Regents and Board of Education. The legal issue raised is whether, by statute, the Legislature can override the provision of Article V, Section 6 of the State Constitution. That provision vests constitutional authority in the governor to make an interim appointment thereby filling a vacancy. Upon such appointment, the holdover period ends and the interim appointee assumes office.

It is true that members of the Board of Regents and Board of Education, by statute, may hold over until a successor is confirmed. But, there is a critical difference between these two boards and all other state boards and commissions. The State Constitution granted more power to the legislature over these two boards than it has over appointments to all other boards and commissions. Article X, Sections 2 & 6 of the State Constitution govern the Board of Education and Board of Regents. Both these provisions include the phrase "as provided by law" which is not present in Art. V, Sec. 6. Art. V, Sec. 6 is the controlling constitutional provision governing interim appointments (except for the Board of Regents and Board of

Education) and it is highly questionable, at best, if a statute can override this constitutional provision absent the language in Art. X, Sec. 2 & 6.

Second, this bill seeks to expand the Commission to five members and further provides that the Commission shall “[n]ot include more than two commissioners who have a solely legal background.” First, and most obvious, is the bill may be deemed discriminatory by excluding from consideration for appointment an entire class of people – those with “a solely legal background” – simply because there are two commissioners with legal background. Second, and just as important, the term “a solely legal background” is vague and ambiguous. Left undefined, competent candidates who are not attorneys-at-law could be excluded from consideration.

This bill also unfairly targets the Commission’s chief counsel and chief of policy and research by mandating that they file disclosures of financial interests. Presently 84-17(c) requires only chiefs at the department division level to file. The chief counsel and chief of policy are, at most, branch chief level positions, which is a level below department division chiefs. The bill and committee report provide no rational basis for targeting the Commission’s branch chiefs as a matter of policy.

Additionally, sadly, the bill goes even further. It amends 84-17(d). This section provides that the financial disclosure statements “shall be public records”. This is a serious requirement and the Legislature has wisely limited such a requirement to cover only those at the highest level of government. Namely, those who are the decision makers, e.g. the governor, department directors and deputy directors, and members of certain boards and commissions. Again, neither the bill, nor committee report provides strong policy reasons for such a drastic departure from public policy - i.e. to require public disclosure of financial statements of staff who are not decision makers. Yet this bill does just that by requiring public financial statements from the Commission’s, “executive officer, chief counsel, chief of policy and research, and any individual employed as or in the role of a hearings officer[. . .]” These staffers DO NOT make the ultimate decisions – the commissioners do. The inclusion of such staffers in the public disclosure provision is unfair.

The implementation of this measure will necessitate expenditure of funds.

Various requirements in this measure will necessitate expenditures by the Commission in order to implement. Please see the table below for a summary of the estimated foreseeable costs associated with these requirements. The Commission also notes that the PUC office renovation currently underway was designed to house the Commission’s current staffing authorization, in one connected office space, while remaining compliant with DAG’s Office

Space Standards. Providing additional office space for two new Commissioners and four new clerical staff will either require the Commission to secure additional office space in a separate location or to halt construction and redesign the Commission’s current office renovation, to which the Commission has already dedicated significant funding and estimates its final cost at roughly \$10M.

<u>Requirement</u>	<u>Non-Recurring Cost</u>	<u>Recurring Cost</u>
Hearing attendance by teleconference or video conference. (p. 10, ln. 1 to p. 11, ln. 8).	\$30,000	\$13,500/year
Federal DoD per diem for neighbor island Commissioners. (p. 17, lns. 8-14)		(\$275 per day * 5 days per week * 52 weeks per year) \$71,500/year per N.I. Comm.
2 New Commissioners (p. 17 ln. 2)		2 Commissioners * (\$117,132 salary + \$58,566 fringe) \$351,396/year
Training Expenses (p.19, lns. 3-17)	(NARUC training for 2 new Commissioners) \$7,000	(Additional funds as necessary for staff training and new Commissioners appointments)
Travel expenses for neighbor island Commissioners (p. 20, lns. 5-12)		(Once per week * \$200 per trip * 52 weeks per year) \$10,500/year per N.I. Comm.
Personal clerical staff for each of 4 Commissioners (p. 22, lns. 12-18)		4 staff * (\$40,000 salary + \$20,000 fringe) \$240,000/year
Est. Total	\$37,000	\$686,896/year or more

For the foregoing reasons, the Commission respectfully requests that this bill be held.



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
Hajime Alabanza, Hawaii Solar Energy Association
John Antonio, US Dept of Agriculture
Karlie Asato, Hawaii Government Employees Assn
David Bissell, Kauai Island Utility Cooperative
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
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
Brian Kealoha, Hawaii Energy
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
Joshua Michaels, Ofc of US Rep. Colleen Hanabusa
Sharon Moriwaki, UH Public Policy Center
Ron Nelson, US Pacific Command Energy Office
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
Fredrick Redell, Maui County Energy Office
Rick Rocheleau, UH Hawaii Natural Energy Institute
Will Rolston, Hawaii County, Research & Development
Peter Rosegg, Hawaiian Electric Companies
Riley Saito, SunPower Systems
Scott Sen, Hawaiian Electric Companies
Joelle Simonpietri, UH Applied Research Lab
Ben Sullivan, Kauai County
Terry Surlis, Hawaii State Energy Office, DBEDT
Lance Tanaka, Par Hawaii, Inc.
Maria Tome, Public Utilities Commission
Kirsten Turner, Ofc of US Representative Tulsi Gabbard
Alan Yamamoto, Ofc of US Senator Mazie Hirono

Testimony of John Cole
Chair, Regulatory Reform Working Group
Hawaii Energy Policy Forum

To the
House Committee on Consumer Protection & Commerce

March 17, 2017 at 2:00 PM in Conference Room 329

COMMENTS ON SB382 SD2, Relating To the Public Utilities Commission.

Chair Takumi, Vice-Chair Ichiyama, and Members of the Committee,

I am John Cole, Chair of the Regulatory Reform Working Group of the Hawaii Energy Policy Forum (Forum). The Forum, 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 and mission, and comprehensive "10 Point Action Plan" serves as a guide to move Hawaii toward its preferred energy goals and our support for this bill.

SB 382 SD2 makes numerous structural and operational changes to the public utilities commission to increase its efficiency and effectiveness.

The Forum provides the following comments:

Section 2 of the bill would add three new sections to Chapter 269, HRS that would establish guiding principles, establish a docket review/decision-making process, and allow for attendance at hearings via videoconference.

The guiding principles are not necessary and are mostly embodied in current statute, long-standing regulatory principles, and the commission's own mission statement. The forum believes the operations of the commission can and should be as efficient as possible, but the proposed docket review/decision-making process would not solve problems or disagreements between commissioners, and could provide tools to exacerbate such circumstances – such as requiring face-to-face meetings being calendared within twenty-four hours on any topic. The Forum believes the provision regarding the use of panels of three commissioners should be clarified as to the decision-making power of such panels (i.e. do the three panel members make the final decision, or bring it to the full five member commission for decision-making?). If the latter, it would make the decision-making process longer.

The Forum supports the intent of allowing for video-conferencing of the commissions' public hearings if it is not too much of a financial or technical



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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
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
Brian Kealoha, Hawaii Energy
Darren Kimura, Energy Industries
Kelly King, Sustainable Biodiesel Alliance
Kal Kobayashi, Maui County Energy Office
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Rick Rocheleau, UH Hawaii Natural Energy Institute
Will Rolston, Hawaii County, Research & Development
Peter Rosegg, Hawaiian Electric Companies
Riley Saito, SunPower Systems
Scott Sen, Hawaiian Electric Companies
Joelle Simonpietri, UH Applied Research Lab
Ben Sullivan, Kauai County
Terry Surles, Hawaii State Energy Office, DBEDT
Lance Tanaka, Par Hawaii, Inc.
Maria Tome, Public Utilities Commission
Kirsten Turner, Ofc of US Representative Tulsi Gabbard
Alan Yamamoto, Ofc of US Senator Mazie Hirono

burden.

Section 3 of the bill would require the executive officer, chief counsel, chief of policy and research and hearings officers to file annual financial disclosures with the State Ethics Commission, and make the disclosures available to the public.

While the Forum supports transparency in government (and the commission), this section seems to single out employees at the commission for financial disclosure requirements that generally don't apply to other government employees at the same level; and in particular, that the financial disclosures be made public.

Section 4 of the bill would increase the number of commissioners from three to five, add requirements/limits to the sex, residence, and background of commissioners, require training for new commissioners, allow per diem and travel compensation for commissioners that reside on neighbor islands (when hearings convene on Oahu), and clarifies appointment provisions.

The Forum provides the following comments on the proposed changes to the number of commissioners and requirements on gender, island of residence, or of particular experience or professional background. Adding additional commissioners will not necessarily improve the commission's processes or decisions; in fact, with five [personalities] individuals instead of three, the commission's work and decisions could become more difficult and slower. Further, an additional two commissioners and individual commissioner staff, as proposed, would substantially add to the commission's operating cost. These additional costs must be provided for in the budget to ensure the effectiveness of the commission. While appropriate to consider gender, professional experience and island of residence in appointment and confirmation of commissioners, requiring them by statute limits the pool of qualified applicants and thus should be avoided.

The Forum believes that although training might be beneficial for many new commissioners, it should not be required by statute. A new commissioner could have a background that would make required additional training a waste of time and resources.

Clarification to the commissioner holdover and appointment language is necessary since the current language and related statutes can be reasonably interpreted in at least two ways. The ambiguity that has caused recent confusion and distraction in this area should be eliminated and this provision effectively does that.

The Forum supports the provisions of the bill that would allow commissioners that reside on neighbor islands to receive compensation for travel and some per



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David Bissell, Kauai Island Utility Cooperative
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
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
Brian Kealoha, Hawaii Energy
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
Joshua Michaels, Ofc of US Rep. Colleen Hanabusa
Sharon Moriwaki, UH Public Policy Center
Ron Nelson, US Pacific Command Energy Office
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
Fredrick Redell, Maui County Energy Office
Rick Rocheleau, UH Hawaii Natural Energy Institute
Will Rolston, Hawaii County, Research & Development
Peter Rosegg, Hawaiian Electric Companies
Riley Saito, SunPower Systems
Scott Sen, Hawaiian Electric Companies
Joelle Simonpietri, UH Applied Research Lab
Ben Sullivan, Kauai County
Terry Surles, Hawaii State Energy Office, DBEDT
Lance Tanaka, Par Hawaii, Inc.
Maria Tome, Public Utilities Commission
Kirsten Turner, Ofc of US Representative Tulsi Gabbard
Alan Yamamoto, Ofc of US Senator Mazie Hirono

diem expenses when required to do the commission's work on islands other than their own. Commissioners that reside on neighbor islands have had to spend substantial amounts of their own money for travel to Oahu and other expenses of living away from home. This is not only unfair, but likely limits the pool of qualified commissioners to those with enough extra wealth to bear this burden, or to truly exceptional public servants who will be willing to make such a financial sacrifice.

The Forum takes no position on Sections 5-7 of the bill.

Thank you for the opportunity to testify.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Consumer Protection and Commerce

Testimony by
Hawaii Government Employees Association

March 17, 2017

S.B. 382, S.D. 2 – RELATING TO
THE PUBLIC UTILITIES COMMISSION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 382, S.D. 2 which makes various updates to the structure and operations of the Public Utilities Commission in order to increase efficiency and effectiveness, as well as requires a management audit of the commission.

The role of the Public Utilities Commission is increasing in complexity and morphing beyond a traditional regulatory function, therefore it is necessary for the operations to also evolve. Many of the components of S.B. 382 are necessary changes to ensure that the PUC is operated effectively and efficiently, including allowing tele- and videoconferencing abilities, updating the composition of the Commission, specifying training requirements for commissioners, and clarifying the commissioners' ability to appoint their staff. However, the required management audit to evaluate the PUC is arguably the most critical component of this measure, as it will provide critical information to create a better performing commission.

Thank you for the opportunity to testify in support of S.B. 382, S.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director



Email: communications@ulupono.com

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Friday, March 17, 2017 — 2:00 p.m. — Room 329

Ulupono Initiative Strongly Supports SB 382 SD 2 with Amendments, Relating to the Public Utilities Commission

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

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 produced food; increase affordable, clean, renewable energy; and reduce waste. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono strongly supports SB 382 SD 2, which updates the Public Utilities Commission structure and operations.

Ulupono supports the overall intent of this bill, which is to improve the Public Utilities Commission's effectiveness and transparency. In particular, we support the sections of the bill that allow for video conferencing, require ethics disclosures by commissioners, provide absolute clarity regarding the appointment process for new commissioners, require all new commissions to receive training in public utility regulation, allow for per diem expenses for neighbor island commissioners, and require at least one commissioner to come from the neighbor islands. All of these provisions improve the transparency and the representativeness of this important regulatory body.

We offer amendments to the other sections because we are considering the pragmatic issues of the management and operations of this regulatory body, and believe there are unintended consequences of certain provisions. Our amendments are as follows:

- 1) For the new section on "Guiding Principles of the Public Utility Commission". These principles are already enshrined in the existing statute or long standing regulatory practices, so the section is unnecessary. However, to the extent the legislature wishes to clarify the guiding principles for the avoidance of doubt, a seventh principle should be included which is "7) Supports achievement of state energy policy goals, including 100% renewables or any new goals that are

Investing in a Sustainable Hawai'i

- adopted into law”.
- 2) For the new section on “Commission Docket review, decision making, process”, there are a number of unintended consequences for the level of micromanagement of the commissions’ practices that will ultimately slow commission decision making. We offer the following recommendations:
 - a. **Strike Section (a) entirely:** While collaboration is a good, the language is unenforceable, and consensus decision making is not appropriate for a voting body.
 - b. **Strike Section (c) entirely:** This provision will have a chilling effect on all commissioner conversations with stakeholders and limit their ability to participate in meaningful policy discussions.
 - c. **Strike Section (d) entirely:** The entire approach of creating a three commissioner panel for smaller dockets is utterly vague and undermines the entire intent of the remaining governance provisions. Questions left unanswered include who decides which dockets are presided over by three commissioners, who appoints the three commissioners, whether a decision by three commissioners are binding on the entire commission.
 - 3) **For Section 4, regarding the diversity of Commissioners. Strike parts (1), (2) and (4):** We believe that legislative diversity of thought, gender, and profession are not advisable under any circumstance. In reference to a regulatory commission, these restrictions can lead to unintended challenges in commissioner composition and obtaining the most qualified individuals.
 - 4) **Regarding 269-3: Employment of Assistants:** Ulupono recognizes that these changes are in response to the lessons learned from the NextEra merger. Therefore we support the majority of the changes, with the following observations:
 - a. Changing from the chairperson to commissioners in matters of human resources without clarifying how decisions would then be made is from a practical perspective, impossible to manage. These roles should remain with the chair and can be delegated to the executive director.
 - b. **Strike:** “~~Attorney/client privilege shall exist between the requesting commission and the staff attorney until and if the work product is shared with other commissioners~~”. This unintended consequence of this is it will reduce collaboration and encourage hiding of information.

Ulupono applauds the legislature for taking on Public Utilities Commission reform. Thank you for this opportunity to testify.

Respectfully,

Kyle Datta
General Partner

Testimony of Hermina M. Morita
House Committee on Consumer Protection and Commerce
Senate Bill 382, Senate Draft 2, Relating to the Public Utilities Commission
Friday, March 17, 2017, 2:00 p.m.

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the Committee:

Thank you for the opportunity to submit testimony on an important piece of legislation affecting the Public Utilities Commission whose decisions affects every person and business throughout the State of Hawaii and also has a huge effect on Hawaii's business climate. I have broken down my testimony to coordinate with each section of the bill with some general comments at the end.

Section 2. Guiding Principles of the Public Utilities Commission - While many may mistakenly view the Public Utilities Commission (PUC) as a part of the executive branch, the PUC is a creature of the legislative branch, formed by statute and granted its powers and authority by the legislature over 100 years ago. Clearly stated guiding principles help to articulate the legislature's expectations of the PUC - as an agency and secondly, to govern the conduct of each individual commissioner and the PUC's staff.

Section 2. Commission; docket review; decision-making; process – Similar to the development of guiding principles, this section may help to articulate the legislature's expectations for professional conduct, respect, collegiality and collaboration between commissioners to serve in the public interest in its deliberations.

Section 2. Hearing attendance by teleconference or video conferencing - This section acknowledges changes in technology and multiple ways a commissioner may participate in meetings without being physically present. I support these changes along with administrative rules updates to utilize tele- and video conferencing.

Section 3. Amendments to Section 84-17, HRS – Financial disclosure – I am concerned about an overzealousness to require financial disclosure which may have an adverse impact in assigning hearing officer duties. From my experience, in most cases a staff attorney, uninvolved in an enforcement action, would preside as the hearings officer and if the hearings officers' decision is contested it is reviewable by the commission. I believe current conflict laws and rules governing professional conduct are sufficient in the case of hearing officers.

Section 4. Amendments to Section 269-2, HRS

1. Increasing PUC from 3 to 5 commissioners - I believe the increase from 3 to 5 commissioners will allow for a more diverse commission, allowing for not only profession/expertise diversity but also an opportunity for gender and geographic diversity.

2. Per diem for a neighbor island commissioner – as a former neighbor island commissioner who has spent tens of thousands of dollars in airfare, ground travel and accommodations on the island of Oahu while away from my home on Kauai, I strongly support the per diem allowance. As an island state, if it is the intent of the legislature to appoint the most qualified candidates statewide and to accomplish geographic diversity, a per diem allowance will help to mitigate the unfair financial burden placed on a neighbor island candidate to obtain the aforementioned objectives.
3. The Senate’s role in advice and consent - Consistent with our State’s constitution, there is no question that the Governor has the authority to fill a “vacancy.” However, the Governor’s action last year in making an interim appointment at the expiration of an incumbent’s term of office does not constitute the filling of a “vacancy” because state law is explicit in avoiding a vacancy by stating that “each (incumbent) member shall hold office until the member’s successor if appointed and qualified (receives the Senate’s advice and consent). Therefore, no vacancy existed at the expiration of the term because of the “holdover” provision stated above. Black’s Law Dictionary defines vacancy as such:

A place which is empty. The term is principally applied to an interruption in the incumbency of an office. The term “vacancy” applies not only to an interregnum (interval between reigns) in an existing office, but it aptly and fitly describes the condition of an office when it is first created, and has been filled by no incumbent.

A vacancy created upon the death or resignation of the incumbent commissioner, can be filled by the Governor, using his constitution given authority.

In part, Article V, section 6 states:

When the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall expire, unless such appointment is confirmed, at the end of the next session of the senate. The person so appointed shall not be eligible for another interim appointment to such office if the appointment failed to be confirmed by the senate.

No person who has been nominated for appointment to any office and whose appointment has not received the consent of the senate shall be eligible to an interim appointment thereafter to such office.

The amendments to this section clarifies and maintains the balance of power in protecting the Senate’s authority and right to advise and consent.

4. Broadening experience, gender and geographic diversity – I support the bill's effort to include a background in economics as qualifying experience and recognizing the need for gender, geographic and professional diversity.
5. Commissioner training – I strongly believe that all commissioners and key staff members benefit in educational and training seminars offered by organizations like the National Association of Regulatory Utility Commissioners. Regulation and regulated entities are undergoing massive transformation and changing business models and roles. If Hawaii wants to continue its role as a leader in clean energy systems, our regulators must be on top of emerging issues and challenges where we are prepared to not only adopt best practices but to develop the next set of practices.

Section 5. Employment of Assistants - If these various amendments help each commissioner equally, to be independent, active and informed to seek out facts and reach consensus-based, well-formed decisions to advance the public interest, I am in support.

Section 6. Staff position descriptions and report to the legislature – Given the number of exempt positions allocated to the PUC, the more proactive role that is required of the PUC to advance the public interest and the number of years it has been taking to update position descriptions and align salary scales to aid in recruitment, oversight by the legislature is justified to ensure all modernization and reorganizational efforts are moving forward.

Section 7. Management Audit – Efforts to restructure and modernize the PUC is not a new subject. In 1975 the Legislative Auditor conducted a management audit of the public utilities program. Given the workload and complexity of issues before the PUC, in 1976 the PUC statutes were given a major overhaul, moving from a 5-member, part-time representative based PUC to a 3-member, full-time expert based PUC.

In a 2004 Management Audit, the Legislative Auditor reported in part the following:

We found that the commission and the division did not have strategic plans to guide their respective agencies. More importantly, neither agency had a vision of Hawaii's utility regulatory future and its role in that process. Without a vision and corresponding plans to achieve it, the commission and the division trudge through daily operational work mired in process and individual case details. Core deficiencies result from a lack of vision and plans.

In 1975 and 1989, we conducted management audits of the commission and found planning and organization deficiencies. Since that time--nearly 30 and 15 years ago--neither agency has planned strategies to correct the deficiencies and many of the same serious problems persist.

My predecessor, and during my tenure at the PUC, we both continued to address many issues pointed out in the 2003 Hawaii Energy Policy Forum's Hawaii Energy Utility Regulation and Taxation Report and the 2004 Management Audit by the Legislative Auditor. Now, more than 10 years later, I believe an audit is due to gauge any improvement and the progress made or not. I believe a management audit will also help to better define roles and responsibilities touched on in Section 45 and staff resources and responsibilities in Section 6.

In the development of a well-functioning PUC, there are two crucial factors that this measure tries adopt through its attempt to articulate best practices; (1) the appointment of well-qualified commissioners and (2) acting in the public interest. In 2010, regulatory expert Scott Hempling wrote an essay to Governors and Legislators on appointing excellent regulators (link to the essay: <http://www.scotthemplinglaw.com/essays/letter-to-governors>). The following paragraph captures the ten-dimensional job of a regulator, its complexity and the changing role of the PUC:

. . . Utility regulation used to be straightforward. Utilities built infrastructure, sold products and services, proposed rate increases. Commissions approved projects and set rates. Their central aim was to protect customers from monopoly abuse—in the form of imprudent investments, inefficient operations, and undue discrimination against choiceless customers—while setting rates that gave investors a fair shot at a reasonable return.

Today's regulators do much more: They make markets, design programs, administer investment funds, incubate renewable energy industries, disseminate broadband, promote energy efficiency, protect critical infrastructure, and resolve stakeholder differences. They even act as political shields for governors and legislators paralyzed by the complexity of it all.

With all these demands, what does it take to excel at regulation? On a personal level, what must regulators be, and what must they do, to be effective? . . .

In his book, **Preside or Lead? The Attributes and Actions of Effective Regulators**, Hempling shared his views on the definition of public interest, the ultimate objective and desired outcome of any sound regulatory decision:

Regulatory statutes require regulators to make decisions "consistent with the public interest." These statutes presume that private behavior, unregulated, will diverge from the public interest. The purposeful regulator seeks to align private behavior with the public interest. To do so, she must (1) define the public interest, (2) identify the private interests, (3)

articulate how each private interest, unregulated, might diverge from the public interest, and then (4) design regulatory inducements to achieve alignment.

What is "the public interest"? The phrase has multiple meanings. Its breadth invites flexibility, but flexibility requires accountability. Accountability comes from articulation. The effective regulator—the purposeful regulator—crafts her own definition, and articulates it publicly.

My definition of "public interest"—hardly the only possible definition—is a composite of economic efficiency, sympathetic gradualism, and political accountability:

Economic efficiency means “biggest bang for the buck”—the best feasible benefit-cost ratio. Elementary economics tells us that if an outcome is inefficient, someone has foregone some benefit attainable without cost to others. That is not a public-interest outcome.

Sympathetic gradualism means smoothing economic efficiency's hard edges. Strict benefit- cost calculation does not sympathize with citizens' short-term situations. Sympathetic gradualism means moderating efficiency's short-term pain to preserve the public acceptability necessary to long-term gain.

Political accountability requires the regulator to create political acceptance of decisions that implement economic efficiency and sympathetic gradualism. Political accountability does not mean caving in to interest groups. It means educating and explaining—adjusting and explaining the angle of change without compromising the direction of change.

Derived from three components, the public interest is both a composite and a compromise: a compromise not among private interests, but among components of the public interest. Understanding this difference is a prerequisite for purposefulness [of a regulator].

The issues of appointing fully qualified commission-leaders and having a fully resourced and accountable PUC are critical to the success of Hawaii’s clean energy future. More importantly, a well-functioning PUC is critical to Hawaii’s economic viability, environmental sustainability and our quality of life. Thank you for the opportunity to comment on this very important bill.

Hermina “Mina” Morita
P.O. Box 791
Hanalei, HI 96714

minamoritaenergy@gmail.com

House Committee on Consumer Protection & Commerce

**Testimony of Michael E. Champley
Former Hawaii Public Utilities Commissioner**

Senate Bill 382 SD2 - Relating to Public Utilities Commission

**Friday, March 17, 2017
2:00 P.M.**

Aloha Representative Takumi and Members of the Committee:

Thank you for the opportunity to submit testimony on SB 382 SD2 which is an important piece of legislation affecting the Public Utilities Commission (PUC). After 35 years working in the energy utility sector, I retired and was finally able to make Maui my home full-time. And, much to my surprise and a personal desire and goal to engage in public service, I have had the honor and privilege to serve as a Hawaii PUC Commissioner from 2011 to June 2016.

In my prior career, I interacted with many mainland state public utility regulatory commissions and the Federal Energy Regulatory Commission (FERC). I had the opportunity for many decades to observe first-hand state public utility commissions that were effective and well-functioning and state commissions that were not so. This is why I strongly support the intent of the legislation, which is to improve the effectiveness of the PUC, ensure the independence and integrity of commission decision-making process and mitigate the logistic and economic challenges affecting Commissioners who are neighbor island residents.

From my past experience, the best practices that characterize effective and well-functioning state public utility regulatory commissions became evident. SB328 SD2 reflects and incorporates these best practices. State public utility regulatory commission best practices, and their applicable sections in SB382 SD2, include:

- Collegial and collaborative deliberation processes that includes periodic face-to-face decision-making "study sessions" including both commissioners and staff (Section 2)

- Dedicated legal and technical advisors for each commissioner to enable independent commissioner assessment of issues and evidence (Section 5)
- Commissioners with a diversity of knowledge and expertise and an intellectual curiosity to review and analyze intricate filings (Section 4)
- Regular attendance and active participation by commissioners and key staff in National Association of Regulatory Utility Commissioners (NARUC) and academic sponsored meetings, seminars and training programs (Section 4)
- Collaboration and agreement among commissioners on major personnel decisions for senior staff positions given the importance of these positions to ensure effective internal operation of the commission (Section 5)
- Knowledgeable and well-trained staff capable of providing independent, objective and insightful analysis and assessment of issues and evidence (Section 5)
- Ability for technical and policy staff members to interact with individual commissioners and provide independent, candid assessments of issues and evidence in decision-making processes without apprehensions regarding future employment and other personnel issues (Section 5)

Commissioners who are neighbor island residents face logistic and economic challenges that commissioners who are residents of the City and County of Honolulu do not. I can attest to this having spent tens of thousands of dollars to be able to participate in-person in Honolulu. SB382 SD2, Sections 2 and 4 provide neighbor island commissioners with the ability to both utilize technologies to participate remotely in PUC activities to minimize cost impacts and be reimbursed when participating in-person.

The Hawaii PUC is unique among mainland state public utility regulatory commissions. The latter share regulatory oversight responsibilities with FERC for electric and gas utilities. FERC has no jurisdiction in Hawaii because State utility infrastructure is not interconnected to other states. Given the additional oversight responsibilities for electric utilities in Hawaii as compared with mainland state public utility regulatory commissions, it is essential that the State have an effective and well-functioning PUC. SB382 SD2 would ensure that this happens.