

SB382

Measure Title: RELATING TO THE PUBLIC UTILITIES COMMISSION.

Report Title: Public Utilities Commission; Commissioners; Structure; Organization; Per Diem; Teleconference; Videoconference; Audit

Description: Makes various updates to the structure and operations of the public utilities commission to increase efficiency and effectiveness, including: permitting teleconference and videoconference abilities; updating the composition of the commission; specifying training requirements; clarifying commissioners' ability to appoint and employ staff; 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.

Companion:

Package: None

Current Referral: CPH, WAM

Introducer(s): BAKER, ENGLISH, INOUYE, KEITH-AGARAN, RUDERMAN, Green, Nishihara



DAVID Y. IGE
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TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND HEALTH

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

THURSDAY, FEBRUARY 2, 2017
9:00 A.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF
THE COMMITTEE

SENATE BILL NO. 382 - 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: permitting teleconference and videoconference abilities; updating the composition of the Commission; specifying training requirements; clarifying commissioners' ability to appoint and employ staff; 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") supports the intent of this bill.

COMMENTS:

The Consumer Advocate generally supports a collaborative and efficient Commission. As will be discussed below, however, the Consumer Advocate defers to the Commission on whether some 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, such as 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. The Consumer Advocate also generally supports provisions of this bill regarding the selection and training of commissioners.

The Consumer Advocate 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 collaborative and efficient. It is the Consumer Advocate's understanding that the Commission has only recently been able to fill many of its vacancies and that various organizational transitions are occurring; thus, an audit at this time may not be as helpful as after "the dust has settled." Therefore, the Consumer Advocate defers to the Commission about whether a management audit would be helpful at this time.

There are some provisions in this bill, however, that the Consumer Advocate worries may have unintended consequences. For example, while the Consumer Advocate agrees with each of the guiding principles articulated in the first additional subchapter in section 2 of the bill, writing them into statute may limit the Commission's ability to facilitate transitions in Hawaii's energy market. A possible illustration is how the Commission has indicated its interest in investigating performance based ratemaking in various dockets, such as Docket Nos. 2013-0141 and 2015-0170, but if the Commission is required to ensure that a fair rate of return is earned by the utility company, the proposed principle may be inconsistent with certain performance or incentive based alternatives. Another point to consider with the proposed principles is that the first principle is focused solely on energy. If the principles are to be adopted, the principles should be drafted to be applicable to all utility services that are regulated by the Commission to reduce confusion and to promote consistency.

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 supports provisions that would assist neighbor island residents in being commissioners (see above), however, requiring that at least one commissioner be a resident of a county other than the city and county of Honolulu may inhibit the ability to select the most qualified individuals if this residency requirement is enacted. Rather than making this a requirement, an individual's island of residence should be one criteria to determine that individual's qualification to serve as a commissioner.

The Consumer Advocate strongly supports having trained staff in both the Commission, including the commissioners, and the Division of Consumer Advocacy and appreciates the intent of the proposal to require training offered by the National Association of Regulatory Utility Commissioners (NARUC) within the first year of a commissioner's appointment. The Consumer Advocate believes it should be pointed out that NARUC tends to offer issue specific training and that some of the basic rate school programs are actually provided by entities other than NARUC, such as Michigan State University's Western and Eastern Rate Schools and New Mexico State University's "The Basics" regulatory training. Also, for non-attorneys, attending a "judge school" to learn about how to conduct and participate in evidentiary hearings may be useful in having qualified commissioners, but such training may not be available from NARUC.

In summary, the Consumer Advocate strongly supports the intent of the bill to make the Commission more efficient and capable in order to serve the public interest but contends that further consideration may be necessary to ensure that unintended and/or undesirable results do not occur.

Thank you for this opportunity to testify.

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

February 2, 2017
9:00 a.m.

MEASURE: S.B. No. 382

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Baker 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, including the general operations of the Commission; the organizational structure of the Commission, including personnel practices; and any other matters that the Auditor deems appropriate.

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.

COMMENTS:

The Commission notes that this measure calls upon the State Auditor to conduct a management audit subsequent to the enactment of this measure and the significant changes it calls for. Requesting an audit by the State Auditor is fully within the discretion of the legislature and the Commission takes no position on the request for an audit. However, it may be more prudent to conduct an audit before enacting significant organizational changes to the Commission.

Authority Over Commission Personnel Decisions (p. 9, ln. 14 to p. 12, ln. 6)

Just three (3) years ago this legislature enacted Act 108 of 2014 (“Act 108”) which was intended to “clarify the Public Utilities Commission’s authority concerning standard administrative practices, including operational expenditures and the hiring of personnel.” See Senate SSCR No. 2153. The Senate Committee on Commerce and Consumer Protection found that “the Public Utilities Commission is undergoing a major transition due to increased work complexity and program responsibilities, particularly in the area of energy regulation. A streamlined administrative process that clearly defines the authority of the Commission’s chairperson to make decisions on hiring and operational expenditures is therefore necessary.” (emphasis added) Id.

To streamline the administrative process, this Legislature vested authority in the chairperson of the Commission to implement necessary actions. Act 108 directed that:

- “Operational expenditures such as travel, consultant services and staff training shall be determined by the chairperson and may be delegated to the executive officer.”
- “[. . .]the employment, appointment, applicable salary schedules, promotion transfers, demotion, discharge and job description of all officers and employees of a or under the jurisdiction of the commission shall be determined by the chairperson and may be delegated to the executive officer[. . .]”
- “The chairperson of the commission shall appoint, employ and dismiss, at pleasure an executive officer who shall be responsible for managing the operations of the commission.” The responsibilities of the executive officer includes “management and recruitment of personnel, budget planning and implementation, strategic planning and implementation[. . .]”

In these three (3) short years since the enactment of Act 108 the reasons compelling the enactment of Act 108 have not changed. In fact, with the heavy caseload the Commission will face this year e.g. four (4) utility rate cases, several water rate cases, the upcoming Young Brothers rate case, and the four (4) ongoing major renewable energy investigatory dockets, the workload is even greater and more complex.

Moreover, since Act 108 I have moved expeditiously to increase staff size and salary which had helped to address morale issues that existed. Act 108 has resulted in significant improvement of the capabilities and operation of the Commission compared to previous years. For example, in January 2015, after the departure of employees, the Commission staff had been reduced to 32 employees, and the positions of Executive Officer, Fiscal Officer, and Personnel Officer authorized by Act 108 had not been filled. In response, we sought to

address these staffing issues, in part, by aggressively recruiting and hiring qualified professional staff, offering training and professional development opportunities, providing a process for an efficient work flow so that staffers can focus on critical dockets, and adjusting salaries to align with comparable positions in other Hawaii State agencies. Since then, Commission staff is nearly at full capacity with 59 of 65 authorized positions filled, including all Act 108 positions. Given the Commission's heavy workload, we continue our efforts to recruit qualified personnel who can provide the technical and legal expertise the Commission requires. In enacting Act 108 the legislature made clear that from a pure management perspective, decisions on such matters as operational expenditure, administrative operations, staff hiring and retention, etc. should be vested in the agency head as is the case in other private and public institutions. It is a principle and practice that works and has worked for the Commission in fulfilling Act 108.

Staff for Individual Commissioners (p. 11, Ins. 1 to 8)

At the present time, the Commission staff is made up of well qualified and enthusiastic employees all working towards the common goal of establishing well-reasoned regulatory policy. Each commissioner is free to consult, communicate, and collaborate with all staff assigned to work on dockets and to provide input. When draft decisions are produced, each commissioner is free to access and provide his or her position or amendments directly to the assigned docket team responsible for producing that draft.

However, if the legislature believes that personal staff for commissioners is appropriate, the positions should be created and funded to fulfill that purpose. The present Commission staffing should not be diverted and be reduced to staff individual commissioners. Such a diversion and reduction of the present staff will adversely impact the Commission's ability to review and act on increasingly complex dockets before the Commission.

Chief Counsel and Executive Officer (p. 10, Ins. 16 to 18 and p. 11, Ins. 16 to 18)

This measure would require that the chief counsel report to the commissioners as a whole and not the executive officer. This measure also requires that the executive officer not be involved in the development of policy.

First, under the Commission's organizational chart, the chief counsel reports to the Commission and not the executive officer, so this language is not necessary.

Second, as all Commission staffers recognize, policy is made by the commissioners. Drawing upon the knowledge and input from staff does and must occur. Providing information and

opinion is not, per se, policy development. It is, purely and simply, informational exchange. Ultimately, it is the commissioners, through a deliberative process, who develop and decide upon policy. That is the process followed here at the PUC.

We respectfully request that Section 4 of this measure be deferred.

Management Audit by the State Auditor (p. 12, In. 17 to p. 13, In. 9)

As noted above, we believe the current Commission's efforts to address pre-existing management and workflow issues have provided a stable working environment where the Commission has the means to not only continue to reduce the Commission's docket backlog, but to also make major progress on the State's priority electric industry dockets while simultaneously reviewing the forthcoming major utility rate case dockets (HECO, MECO, HELCO, KIUC, and Hawaii Gas).

The current Commission has a clear mission and direction, so a management audit may not be necessary at this time.

Commissioner Appointment Process (p. 7, Ins. 7 to 11)

The Commission takes no position on the provisions regarding commissioner appointment.

Commission Composition Requirements (p. 6, In. 14; p. 7, In. 18 to p. 8, In. 1)

The Commission takes no position on the proposed increase in Commission membership from three commissioners to five commissioners other than to note that increasing the size of the Commission would require additional appropriations for salaries and office space to accommodate the three new commissioners as well as any additional staff required. Additional appropriations would also be necessary to adapt and re-design the Commission's ongoing office space renovation to accommodate the new structure and size of the Commission.

The Commission takes no position regarding the requirements that that at least two commissioners be women, at least one commissioner be a resident of a county other than the City and County of Honolulu, and no more than two commissioners be attorneys. However, the Commission notes that given the Commission's limited size, whether the Commission consists of three members or five members, the Governor should be given wide discretion in appointing qualified members. The Commission also notes that there may be constitutional and legal issues associated with limiting Commission composition on the basis

of membership of a particular group or class. We recommend a legal review of these issue before moving forward with these amendments.

Commissioner Training and Seminars (p. 8, Ins. 9 to 18)

This bill mandates that new commissioners must attend “at least one meeting or training seminar offered by the National Association of Regulatory Utility Commissioners within the first year of the commissioner’s appointment.” The bill further provides that commissioner’s may attend additional seminars offered “by the National Association of Regulatory Utility Commissioners.”

The Commission fully recognizes the value of such training and is fully committed to providing such training opportunities to staff and new commissioners. However, as reflected in Act 108, such training decisions, which often include travel costs, are a management decision to be made by the chairperson.

The travel issue was one of the early matters I had to confront in my first year as chair. First, we received an information request from a news station regarding travel by commissioners. Based on the requested information, the news station broadcasted a report that for calendar year 2014 the three commissioners were away from the office for a total of 109 days and the Commission paid a total of \$33,522 for the travel expenses. Second, in a May 1, 2015 memo to the Commission, Budget and Finance (“B&F”) denied a commissioner’s request to attend a conference in Europe. In the memo, B&F articulated certain travel policy guidelines including:

1. Out of State Travel requests must be closely reviewed and evaluated internally by the Commission prior to submission for review and approval (by B&F);
2. Each travel request must include ample justification to show the critically urgent need and direct benefits to the State that will be provided by the travel and training and an assessment regarding the operational impacts and what measures will be taken to ensure that the work of the Commission is not affected.

B&F further stated that “you are reminded that there is a need to be cognizant of the operational requirement of the Commission especially where there are substantial amount of travel by certain Commissioners and or staff.”

On May 14, 2015, I issued a Travel Policy memo which stated that travel requests would be approved where the travel “will result in the professional education or other related benefit to the employee... and/or is consistent with the interest, duties or needs of the PUC.” By memo dated May 20, 2015, I advised that due to budget restraints we needed to reduce travel expenses, that staff travel for education and training would be a top priority. Further, I stated that we probably could accommodate travel to all four National Association of Regulatory Utility Commissioners meetings but may have to limit travel to just one commissioner.

We continue to adhere to the above policy and will continue to send staff and commissioners to the conferences that meet the policy guidelines.

Teleconferencing and Video Conferencing for Public Hearings (p. 5, ln. 7 to p. 6, ln. 9)

The Commission appreciates the option to allow a commissioner to attend public hearings held on islands that they do reside via teleconference or video conference, provided that the public hearing is not a contested case hearing. The Commission notes that establishing the ability to exercise this option could be costly, particularly if the service employed would afford a level of functionality and reliability similar to that which could be expected if the commissioner were physically present. In 2016, the Commission estimated that the initial costs of setting up a system that would support this sort of functionality to be, at minimum, \$30,000 with an ongoing operational cost of at least \$13,500 per year. The Commission would also need a staff member at each hearing dedicated to managing the connection, audio, and evidence transfers. There is a strong possibility that additional unforeseen costs would also be incurred.

Per Diem and Travel Compensation for Neighbor Island Commissioners (p. 6, ln. 20 to p. 7, ln. 5; p. 9, lns. 6 to 13)

The Commission notes that providing per diem and travel compensation for commissioners who reside in a county other than the City and County of Honolulu is fair given the costs associated with working outside one’s county of residence. However, it is unclear whether “the maximum federal employee rate for Hawaii as established by the United States Department of Defense” is an appropriate level of per diem compensation for a commissioner residing in a county other than the City and County of Honolulu. It is also unclear what the costs of providing for travel expenses for neighbor island commissioners equal to “at least one round trip per week” might amount to. The total costs of implementing these provisions could be very high, especially if multiple commissioners reside in a county other than the City and County of Honolulu.

“Guiding Principles” of the Commission (p. 4, ln. 19 to p. 5, ln. 6)

The Commission notes that the “guiding principles” proposed by this measure are unnecessary as the Commission is already statutorily required to serve these proposed principles, and many more, through various statutory requirements in Chapter 269, HRS. Furthermore, it appears that these principles are directly aligned with the Commission’s Mission Statement which reads:

“The Commission’s mission is to provide effective, proactive, and informed oversight of all regulated entities to ensure that they operate at a high level of performance so as to serve the public fairly, efficiently, safely, and reliably, while addressing the goals and future needs of the State in the most economically, operationally, and environmentally sound manner, and affording the opportunity for regulated entities to achieve and maintain commercial viability.”

Report on Commission Staff Duties and Responsibilities (p. 12, Ins. 7-16)

The Commission notes that all current staff duties and responsibilities are clearly defined through staff position descriptions. The Commission further notes that in 2015, a review was conducted of all staff position descriptions, appropriate changes were made, and that all revised staff positions were reviewed and approved by DCCA and DHRD.

Thank you for the opportunity to testify on this measure.



SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair

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

Hearing: Thursday, February 2, 2017, 9:00 a.m.

The Office of the Auditor has **no position** regarding S.B. No. 382, Relating to the Public Utilities Commission, which restructures the Public Utilities Commission and updates certain of its operations; however, **we request that the committee clarify Section 6 of the bill**, which requires us to perform a “management audit” to evaluate the Public Utilities Commission’s efficiency and effectiveness.

Specifically, the bill requires us to examine the Public Utilities Commission’s general operations and the organizational structure, including personnel practices, and any other matters that we deem appropriate. We are required to report our findings and recommendations to the legislature no later than twenty days prior to the 2018 legislative session.

We have concerns about the breadth of the required audit, especially considering the period of time to complete the review. During the planning phase of our audit work, generally, we attempt to gain a broad understanding of an agency’s programs and activities; based on our planning work, we next identify specific programs or activities that we believe are appropriate and meaningful to audit. For an audit to be completed within roughly six months, the scope of the audit must be relatively focused.

The required audit, as defined in S.B. No. 382, is broad and likely will require us to narrow the scope of the audit, **which may result in an audit that does not review the specific program area or practice that the legislature is interested in having audited**. If there are specific activities of the Public Utilities Commission that the legislature is interested in having us audit, we strongly recommend that the legislature define in the bill, **as specifically as practicable**, the scope of the required audit.

We are available to work with the committee to more clearly define an audit scope that addresses the specific operations or practices that the legislature is interested in having us assess. Assuming that the bill passes out of the committee, we intend to discuss our concerns about the breadth of the required audit with the bill’s primary sponsors, if possible.

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

IBEW1260

‘A‘OHE HANA NUI KE ALU ‘IA

February 2, 2017

Chair Baker, Vice Chair Nishihara and Members of the Committee,

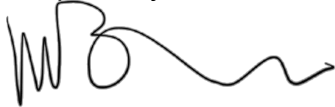
The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members throughout the State of Hawaii, more than 1500 of whom work in Hawaii's utility industry and respectfully offers the following **COMMENTS** on Senate Bill 382 (SB382).

As Hawaii moves towards its renewable energy future, the ability of the Public Utilities Commission (Commission or PUC) to regulate Hawaii's rapidly changing utility industry in a streamlined manner is more critical now than ever before. As the representative of most of Hawaii's utility workers, IBEW1260 is concerned about any legislation with potential to impede the Commission's ability to operate efficiently in Hawaii's complex, dynamic, utility environment. Any such impediment negatively impacts our members, the people of Hawaii and our progress towards a 100% renewable energy goal.

IBEW1260 respectfully ask the committee to ensure the Commission and its Chair retain their authority to make administrative and operational decisions as the legislature has done in the recent past. Protecting such authority guarantees the PUC remain a proactive agency capable of accomplishing the State's policy directives, ultimately benefiting all stakeholders.

Mahalo for the opportunity to provide testimony on this issue.

Respectfully,



Michael M. Brittain
Asst. Business Manager
IBEW1260 / AFL-CIO



SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

SENATE BILL NO. 382 scheduled for hearing on February 2, 2017, 9:00 a.m.

Testimony of Roy Catalani,
Vice President of Strategic Initiatives and External Affairs,
Young Brothers, Limited

Chair Baker, Vice Chair Nishihara, and Members of the Senate Committee on Commerce, Consumer Protection, and Health:

Thank you for the opportunity to testify on House Bill No. 382 relating to the Public Utilities Commission (**HB 382**). **Young Brothers, Limited (YB) supports HB 382.**

Young Brothers is, of course, a regulated utility and, as such, comes under the jurisdiction of the PUC and, in all PUC proceedings, the Consumer Advocate is, effect, designated as an adverse party to YB.

Separate and apart from this jurisdiction, YB's harbor operations and harbor facilities are also under the jurisdiction of the State Department of Transportation (**DOT**). As a user of harbor properties, YB is bound by the DOT's administrative rules; as a DOT tenant, YB's is bound by DOT leases, revocable permits and other forms of agreement. As a harbor operator, the efficiency of YB's operations are significantly driven by the condition of harbor facilities and DOT decisions on how and where to spend capital and maintenance dollars (from the harbor special fund, which is funded by harbor user fees of various types).

Young Brothers would like to offer a perspective as a regulated utility that is also subject to DOT jurisdiction.

Over a decade ago, both the DOT and harbor users (who were otherwise competitors for harbor capital and maintenance dollars) recognized that state harbors, being the State's economic lifeline, were in crisis condition and the State's economic well-being required a clear path and plan to modernization. That is, the DOT, in collaboration with harbor users, determined and agreed that not only did harbor facilities require modernization, but also that, if the modernization imperative were to be achieved, the process under which the State plans, finances and constructs critical harbor infrastructure also had to be modernized. That is not to say that the State DOT and harbor users did not have qualified and dedicated individuals – they did and they do – however, we had to think differently about how to achieve public interest infrastructure goals and relook at process and procedures designed and built in a much different world with much different pressures and demands. In large part, we had to rethink a process that was then built upon adversarial relationships between the State and harbor users as well as competition between harbor users for capital and maintenance dollars, and move past gridlock to a process based to a much greater extent on

TESTIMONY BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND
HEALTH BY YOUNG BROTHERS, LIMITED

February 2, 2017

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collaboration and partnership to achieve the legislative purpose that directs DOT to develop “a safe, efficient and accessible and affordable inter-modal transportation system.”

From this hard look at our history and (then) status relating to harbors, the Hawaii Harbors Users Group was formed and, with the State DOT as a partner, albeit a senior partner, a working group and a working relationship was formed. Today, this working group can point to specific and major projects as well as rely upon a different environment and a more productive forum under which to address new and emerging demands.

Much like DOT-Harbors, the PUC and the Consumer Advocate, as well as the utilities within the PUC’s jurisdiction, include many dedicated individuals. However, because the State faces great 21st century challenges relating to achieving the legislative purposes of the regulation of utilities as well as to the planning, financing, building of infrastructure and other critical assets, YB supports this bill’s somewhat analogous move to process modernization combined with a legislative directive to achieve (and a review of the means towards achieving) greater communication, efficiency, diversity and improved processes supported by resources, training and refined staff structure.

In both the case of DOT (and HHUG) and the PUC, there is a need to strategically plan for desired results. We believe such a plan, to be effective, must include a recognition of need for optimization of limited human and financial resources (as well as limited time) as well as State and private cooperation that results in the collaborative investment in infrastructure and equipment. Such strategic planning for desired results, collaboration and optimization of resources are necessary in order for the State to make real the development of “a safe, efficient and accessible and affordable inter-modal transportation system that ensures the mobility of people and goods, and enhances and preserves economic prosperity and quality of life for the people of this State”, as is the mission of the DOT, or otherwise more succinctly stated, “a sound transportation system by water”, as is the mission of the PUC relating to water carriers.

Thank you for the opportunity to testify.

Testimony of Hermina M. Morita
Senate Committee on Consumer Protection and Health
Senate Bill 382, Relating to the Public Utilities Commission
Thursday, February 2, 2017, 9:00 a.m.

Aloha Chair Baker 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 1. Page 1, line 16 – clarify the need to work efficiently and effectively through best practices as suggested below:

“ . . . it is essential that the structure and operations of the public utilities commission be updated to enable the commission to operate more efficiently and effectively, consistent with best practices. For example, . . . ”

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 guide the conduct of each individual commissioner and the PUC's staff. As currently written, the principles appear to be directed to just the electricity/power regulated entities. However, I think the principles should be broad to encompass all regulated entities under the PUC's jurisdiction. Below are some suggested language changes to help broaden the scope of the guiding principles.

- (1) Ensure reliability and delivery of all essential services provided by regulated entities at all times;
- (2) Manage resource planning efforts to ensure adequacy and resiliency to ensure essential services are available when needed;
- (3) Strive for affordability for consumers while allowing regulated entities to earn a reasonable rate of return on prudent investments; and
- (4) Align private interest with public interest through the proactive and aggressive pursue of factual information and technical competency to result in fair and timely decisions and orders in pursuit of the public interest.

Please note I grouped the original (3) and (4) together. Affordability is in the eye of the beholder. Many times prudent investments may not appear to be affordable in the short term but are beneficial in the long term. The cost to the consumer and necessary investments to ensure services are weighty issues regulators grapple with in tandem.

In his book, **Preside or Lead? The Attributes and Actions of Effective Regulators**, regulatory expert Scott Hempling shares views on the definition of public interest:

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].

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 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 while seeking the most qualified individuals with the desired attributes of a “purposeful” regulator statewide.
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 in order to do my job 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 appointee to obtain the aforementioned objectives above.
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 prevents a vacancy. 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. However, I am concerned that as currently written the bill appears to state that the Senate is giving up its power of advice and consent when an interim appointment is made for the entire duration of the term. This language appears to be in conflict with Article V, section 6 of the State’s constitution.

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.

For clarity, perhaps this section can be amended to reflect language already found in Section 26-34, HRS:

“ . . . appointed and 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.

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 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. These educational and training seminars offer an opportunity for commissioners and PUC staff to learn, grow in their professionalism and in many instances to lead by sharing Hawaii’s experiences.

Section 4. 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 5. 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 6. Management Audit – Efforts to restructure and modernize the PUC is not a new issue. 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 4 and staff resources and responsibilities in Section 5.

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? . . .

The issue 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. Legislators need to be assured that the important responsibilities and tasks delegated to the PUC can be accomplished with a clear understanding of the interplay between the roles and responsibilities of the commissioners, its staff, the regulated entities and the ratepayer/consumer. Furthermore, professionalism, trust and adequate resourcing are prerequisites to gain the public's confidence in the many critical decisions made by the PUC affecting essential services for Hawaii's residents and businesses. This bill is an important attempt to that endeavor.

Thank you for the opportunity to comment.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 26, 2017 1:00 PM
To: CPH Testimony
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SB382

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Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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