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**TO THE SENATE COMMITTEE ON  
WAYS AND MEANS**

**TWENTY-NINTH LEGISLATURE  
Regular Session of 2018**

Friday, February 23, 2018  
11:00 A.M.

**WRITTEN TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE DONAVAN M. DELA CRUZ, CHAIR,  
AND MEMBERS OF THE COMMITTEE**

**SENATE BILL NO. 2648, S.D. 1 – RELATING TO THE PUBLIC UTILITIES  
COMMISSION.**

**DESCRIPTION:**

This measure makes various updates to the structure and operations of the Public Utilities Commission (“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 01/01/19, increasing the number of commissioners 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; and requiring the Commission to report to the Legislature regarding certain staff duties.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) offers the following comments.

COMMENTS:

The Consumer Advocate believes measures that could increase the efficiency or effectiveness of an agency should be considered. As 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 who 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 may also have unintended consequences. For example, the addition of a new section to Hawaii Revised Statutes (“HRS”) chapter 269, entitled “Guiding principles of the public utilities commission,” in section 2 of this bill may limit the Commission’s options, create inconsistent objectives, or both. The Commission will be challenged to fulfill the principle of encouraging competition, even though there are other provisions that inhibit competition, such as in HRS section 271G-10, 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. A second example 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.

There are other examples of how the proposed legislation may have unintended consequences; however, 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 efficient and effective.

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.

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. NARUC tends to offer issue-specific training, and 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 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 RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON  
ON WAYS AND MEANS

February 23, 2018  
11:00 a.m.

**MEASURE:** S.B. No. 2648 SD1

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

Chair Dela Cruz and Members of the Committee:

**DESCRIPTION:**

Makes various updates to the structure and operations of the public utilities 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 01/01/19, increasing the number of commissioners 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; and requiring the commission to report to the legislature regarding certain staff duties. Effective 7/1/2050. (SD1).

**POSITION:**

The Public Utilities Commission ("Commission") **STRONGLY OPPOSES** SB 2648 SD1 and offers the following comments for consideration.

**COMMENTS:**

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 unnecessary and counterproductive 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 raise legal issues that could hamper or prevent executing on those provisions.

Furthermore, the Commission notes that the Legislative Auditor's report on the Commission has not yet been published. As such, the Commission recommends the Legislature review the findings of this audit before enacting significant organizational changes to the Commission.

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

The amendments proposed would lead to confusion of operation and there by 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 an open, 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).

- During Fiscal Year 2017, there were 617 open dockets, in which the Commission issued a total of 859 decisions and orders.
- Statutorily mandating “face-to-face” meetings is an incredibly inefficient way to process all dockets that are before the Commission.
- 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 commissioners 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 and research 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, the bill does not provide 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 costs associated with these requirements. The Commission also notes that the PUC office renovation currently underway was designed to meet the Commission's current staffing authorization 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.	<b>\$30,000</b>	<b>\$13,500/year</b>
Federal DoD per diem for neighbor island Commissioners.		(\$275 per day * 5 days per week * 52 weeks per year)  <b>\$71,500/year</b>
2 New Commissioners		2 Commissioners * (\$117,132 salary + 58,566 fringe)  <b>\$351,396/year</b>
Training Expenses	(NARUC training for 2 new Commissioners)  <b>\$7,000</b>	(Additional funds as necessary for staff training and new Commissioners appointments)
Travel expenses for neighbor island Commissioners		(Once per week * \$200 per trip * 52 weeks per year)  <b>\$10,500/year</b> for each Neighbor Island Commissioner
Personal clerical staff for each of 4 Commissioners		4 staff * (\$40,000 salary + \$20,000 fringe)  <b>\$240,000/year</b>
<b>Est. Total</b>	<b>\$37,000</b>	<b>\$686,896/year or more</b>

Thank you for the opportunity to testify on this measure.



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## HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813  
50<sup>th</sup> ANNIVERSARY 1968-2018

Committee: Committee on Ways and Means  
Bill Number: S.B. 2648 SD1, Relating to the Public Utilities Commission  
Hearing Date/Time: February 23, 2018, 11:00 a.m.  
Re: Testimony of the Hawaii State Ethics Commission with **COMMENTS**

Dear Chair Dela Cruz and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits comments on S.B. 2648, Section 3,<sup>1</sup> which seeks to add the Public Utilities Commission (“PUC”) Executive Officer, Chief Legal Counsel, Chief of Policy and Research, and all Hearings Officer to the list of individuals required to file financial disclosure statements pursuant to HRS § 84-17.

As an initial matter, the Commission notes that the Executive Officer and all Hearings Officers of the PUC are already required to file confidential financial disclosure statements. This bill would require these individuals’ filings to be public, and would also require the Chief Legal Counsel and the Chief of Policy and Research to file public financial disclosure statements.

As a general rule, the Commission supports efforts to increase transparency in government by requiring high-level government officials to submit financial disclosures and by requiring some of those disclosures to be public.<sup>2</sup> Should the Legislature add PUC officials to this list, the Commission is, of course, capable of overseeing those filings.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on S.B. 2648 SD1.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

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<sup>1</sup> The Ethics Commission takes no position on the remaining sections of S.B. 2648 SD1.

<sup>2</sup> Roughly 300 state officials are required to file public financial disclosure statements, including legislators, department directors, and members of high-profile volunteer boards and commissions such as the Board of Regents, Board of Education, and Ethics Commission. Approximately 1,700 other state officials are required to file confidential financial disclosures, including roughly 800-900 state employees (such as deputy attorneys general, all hearings officers, and agency procurement officers) and approximately 800 volunteer board and commission members (serving on more than 100 boards and commissions, including such boards and commissions as the Real Estate Commission, the Island Burial Councils, the Commission on the Status of Women, and the Civil Rights Commission).



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

SENATE COMMITTEE ON WAYS & MEANS  
Friday, February 23, 2018 — 11:00 a.m. — Room 211

**Ulupono Initiative Supports the Intent with Amendments SB 2648 SD 1, Relating to the Public Utilities Commission**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, 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 better management of waste and fresh water. 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 supports the intent of SB 2648 SD 1**, which updates the Public Utilities Commission structure and operations, because it aligns with our goal of increasing the production of clean, renewable energy in Hawai'i. However, we have concerns over the drafting of the bill that certain sections could lead to counter-productive, unintended consequences and therefore we offer amendments for consideration.

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 caution the Legislature that the Public Utilities Commission is effective only if it is an independent regulatory body that is not subject to undue influence by either the executive branch or the Legislature. This includes the micromanagement of the internal operations of a regulatory agency.

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

*Investing in a Sustainable Hawai'i*

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 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. This would have severe unintended consequences.
  - 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. There are already ex-parte ethical guidelines in place.
  - 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 attempting to legislate diversity of thought, gender, and profession is 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. We do believe there is value in having one commissioner from the neighbor islands due to the diversity of issues represented.
- 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. If the legislature provides more resources to allow each commissioner to have a dedicated staff member, similar to judicial clerks, this could be a workable solution.
  - b. **Strike:** (in part b) ~~“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.

As Hawai'i's energy issues become more complex and challenging, we appreciate this committee's efforts to look at policies that support renewable energy production.

Thank you for this opportunity to testify.

Respectfully,

Kyle Datta  
General Partner



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  
David Bissell, Kauai Island Utility Cooperative  
Michael Brittain, IBEW, Local Union 1260  
Jade Butay, Hawaii Dept of Transportation  
Caroline Carl, Hawaii Energy  
Albert Chee, Island Energy Services  
Elizabeth Cole, The Kohala Center  
Kyle Datta, Ulupono Initiative  
Richard DeGarmo, Hawaii Gas  
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, Ofc of Hawaii State Governor  
Will Giese, Inter-Island Solar Supply  
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  
Darren Kimura, Energy Industries  
Representative Chris Lee, Hawaii State Legislature  
Gladys Marrone, Building Industry Assn of Hawaii  
Stephen Meder, UH Facilities and Planning  
Sharon Moriawaki, UH Public Policy Center  
Rocky Mould, Ofc of Climate Change  
Aina Naniolo, Ofc of US Congresswoman Colleen Hanabusa  
Ron Nelson, Defense Logistics Energy Agency  
Dean Nishina, Division of Consumer Advocacy  
Denise Oda, US Department of Agriculture  
Stan Osserman, HCATT  
Melissa Pavlicek, Hawaii Public Policy Advocates  
Randy Pereira, Hawaii Government Employees Assn  
Fredrick Redell, Maui County Energy Office  
Rick Rocheleau, UH Hawaii Natural Energy Institute  
Ross Roley, PACOM  
Will Rolston, Hawaii County, Research & Development  
Peter Rosegg, Hawaiian Electric Companies  
Scott Seu, Hawaiian Electric Companies  
Carilyn Shon, Hawaii State Energy Office, DBEDT  
Joelle Simonpietri, Simonpietri LLC  
Ben Sullivan, Kauai County  
Lance Tanaka, Par Hawaii  
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, Electricity Working Group  
Hawaii Energy Policy Forum

To the  
Senate Committee on Ways and Means

February 23, 2018 at 11:00 am in Conference Room 211

**OFFERING COMMENTS ON SB 2648, SENATE DRAFT 1, RELATING  
TO THE PUBLIC UTILITIES COMMISSION**

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee,

I am John Cole, Chair of the Electricity 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 2648 SD1 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 video conference.

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





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  
David Bissell, Kauai Island Utility Cooperative  
Michael Brittain, IBEW, Local Union 1260  
Jade Butay, Hawaii Dept of Transportation  
Caroline Carl, Hawaii Energy  
Albert Chee, Island Energy Services  
Elizabeth Cole, The Kohala Center  
Kyle Datta, Ulupono Initiative  
Richard DeGarmo, Hawaii Gas  
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, Ofc of Hawaii State Governor  
Will Giese, Inter-Island Solar Supply  
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  
Darren Kimura, Energy Industries  
Representative Chris Lee, Hawaii State Legislature  
Gladys Marrone, Building Industry Assn of Hawaii  
Stephen Meder, UH Facilities and Planning  
Sharon Moriwaki, UH Public Policy Center  
Rocky Mould, Ofc of Climate Change  
Aina Naniolo, Ofc of US Congresswoman Colleen Hanabusa  
Ron Nelson, Defense Logistics Energy Agency  
Dean Nishina, Division of Consumer Advocacy  
Denise Oda, US Department of Agriculture  
Stan Osserman, HCATT  
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  
Ross Roley, PACOM  
Will Rolston, Hawaii County, Research & Development  
Peter Rosegg, Hawaiian Electric Companies  
Scott Seu, Hawaiian Electric Companies  
Carilyn Shon, Hawaii State Energy Office, DBEDT  
Joelle Simonpietri, Simonpietri LLC  
Ben Sullivan, Kauai County  
Lance Tanaka, Par Hawaii  
Maria Tome, Public Utilities Commission  
Kirsten Turner, Ofc of US Representative Tulsi Gabbard  
Alan Yamamoto, Ofc of US Senator Mazie Hirono

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?).

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 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. Particularly that the financial disclosures be made public.

Section 4 of the bill would increase the number of commissioners from 3 to 5, adds requirements/limits to the sex, residence, and background of commissioners, requires training for new commissioners, allow per diem and travel compensation for commissioners that reside on neighbor islands, and clarifies appointment provisions.

The forum provides the following comments on the proposed changes to the number of commissioners, and requirements that commissioners be of a certain sex, island of residence, or requiring or limiting those of particular experience or professional background. Adding additional commissioners will not necessarily improve the commissions' processes or decisions; in fact, with five personalities instead of three, it could make things more difficult and slower. An additional two commissioners and individual commissioner staff, as proposed, would substantially add to the commissions operating cost – and that should be provided for in the budget. Furthermore, statutory requirements or limitations based on sex, professional experience and island of residence should also be avoided. While it is appropriate that these things be considered in the appointment and confirmation of commissioners, requiring them by statute limits the pool of qualified applicants.

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.



COLLEGE OF SOCIAL SCIENCES  
**HAWAII ENERGY POLICY FORUM**  
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**Hawaii Energy Policy Forum**

Jeanne Schultz Afuwai, Hawaii Inst. for Public Affairs  
David Bissell, Kauai Island Utility Cooperative  
Michael Brittain, IBEW, Local Union 1260  
Jade Butay, Hawaii Dept of Transportation  
Caroline Carl, Hawaii Energy  
Albert Chee, Island Energy Services  
Elizabeth Cole, The Kohala Center  
Kyle Datta, Ulupono Initiative  
Richard DeGarmo, Hawaii Gas  
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, Ofc of Hawaii State Governor  
Will Giese, Inter-Island Solar Supply  
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  
Darren Kimura, Energy Industries  
Representative Chris Lee, Hawaii State Legislature  
Gladys Marrone, Building Industry Assn of Hawaii  
Stephen Meder, UH Facilities and Planning  
Sharon Moriwaki, UH Public Policy Center  
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Ron Nelson, Defense Logistics Energy Agency  
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Clarification to the commissioner holdover and appointment language is necessary since it is obvious that 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.

The forum supports the portions of the bill that would allow commissioners that reside on neighbor islands to receive compensation for travel and some per diem expenses. 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. The existing burdens on neighbor island commissioners 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*

**SB-2648-SD-1**

Submitted on: 2/21/2018 3:45:07 PM

Testimony for WAM on 2/23/2018 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stephanie Austin	Individual	Oppose	No

Comments:

This bill, which has not had significant public discussion, is problematic in many areas. Please do not be misguided by

the complexity: there would be many unintended (or possibly just hidden) consequences to passage in this form.

**SB-2648-SD-1**

Submitted on: 2/21/2018 4:07:09 PM

Testimony for WAM on 2/23/2018 11:00:00 AM

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

Comments: