
A BILL FOR AN ACT

RELATING TO THE DIVISION OF CONSUMER ADVOCACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that a comprehensive
2 management audit is necessary to evaluate the effectiveness of
3 the department of commerce and consumer affair's division of
4 consumer advocacy in representing, protecting, and advancing
5 consumer and public interests in light of evolving clean energy
6 and climate imperatives, consumer preferences, and utility
7 regulatory priorities.

8 In 1975, a management audit of the Hawaii public utilities
9 program found there to be "considerable confusion" with respect
10 to the role of the division of consumer advocacy, at that time
11 called the public utilities division. At the time, the division
12 of consumer advocacy acted both as staff for the public
13 utilities commission and as a representative of consumers,
14 resulting in the division of consumer advocacy "serv[ing] two
15 masters uncomfortably". The audit proposed placing the audit
16 and litigation staff under the public utilities commission while
17 creating a separate consumer advocate office. Legislative



1 amendments in 1976 administratively separated the public
2 utilities commission and the office now called the division of
3 consumer advocacy, but maintained the dual roles within the
4 division of consumer advocacy.

5 In 1989, another management audit found that "ambiguities
6 and deficiencies" in the functions and duties of the public
7 utilities commission and the division of consumer advocacy
8 "still exist" and the agencies "have been passive and reactive"
9 rather than "pro-active in defining and carrying out their
10 separate roles".

11 A 2003 comprehensive evaluation of Hawaii energy utility
12 regulation expanded on these concerns. The report observed that
13 unlike most states, the division of consumer advocacy combines
14 two functions. The first is an "audit and litigation" function
15 that involves traditional accounting review and litigation of
16 utility ratemaking. In other states, this function is usually
17 performed by internal public utilities commission staff. The
18 second function is "true consumer advocacy", which is a role
19 that in other states has historically involved advocating as a
20 change agent for progressive initiatives in consumers'
21 interests.



1 Over the years, the public utilities commission has built
2 up its own internal, independent staff capacity and no longer
3 needs to rely on the division of consumer advocacy for staff
4 support. However, the division of consumer advocacy continues
5 to combine its two historical functions by acting as the lead or
6 sole public agency party in public utilities commission
7 proceedings, while also retaining its specific title and
8 function focused on consumers.

9 In 2004, another management audit conducted on the public
10 utilities commission and the division of consumer advocacy found
11 that the agencies lacked strategic plans and "a vision of
12 Hawaii's regulatory future and [their] role in that process".
13 Thus, the agencies "trudge through daily operational work mired
14 in process and individual case details". The 2004 audit also
15 cited the "planning and organization deficiencies" found in the
16 1975 and 1989 audits, concluding that since the time of those
17 audits, "neither agency has planned strategies to correct the
18 deficiencies and many of the same serious problems persist".

19 Further, in the fifteen years since the 2004 audit, public
20 utilities regulation and, more broadly, the electric services
21 sector in Hawaii has evolved significantly. New technologies,



1 consumer preferences, and environmental and climate imperatives
2 have emerged. For example, adoption of distributed energy
3 resources has grown significantly, leading to a change in the
4 fundamental role of Hawaii's ratepayers from primarily passive
5 consumers of electricity to "prosumers" with the ability to
6 respond to price signals in a way that lowers costs for all
7 ratepayers. Segments of the electric sector have increasingly
8 opened up to market competition, creating lower costs to
9 consumers and an increased range of energy services and choices.

10 Also, recent statutory changes such as the State's:

- 11 (1) One hundred per cent renewable energy portfolio
12 standard, enacted by Act 97, Session Laws of Hawaii
13 2015;
- 14 (2) Carbon neutrality by 2045 goal, enacted by Act 15,
15 Session Laws of Hawaii 2018; and
- 16 (3) Hawaii ratepayer protection act, enacted by Act 5,
17 Session Laws of Hawaii 2018,

18 have passed during a time of an unprecedented climate change as
19 well as movement toward full-scale transition to renewable
20 energy in the State and across the nation. The legislature
21 finds that these statutory changes necessitate an expanded,



1 long-term, and visionary perspective in utility regulation and
2 consumer advocacy to advance customer and public interests in
3 clean energy transformation and the reduced economic,
4 environmental, and climate costs that it will provide.

5 The legislature also finds that utility regulatory practice
6 must change from its traditional focus on auditing utility costs
7 and rates to a new vision for aligning utility incentives with a
8 broader, modern view of the consumer and public interests. The
9 public utilities commission articulated this strategic vision in
10 its landmark inclinations document in 2014, and in Act 5,
11 Session Laws of Hawaii 2018, the legislature similarly enacted
12 the nation's first mandate to "break the direct link" between
13 utility investments and revenues.

14 The legislature also enacted various amendments broadening
15 and supplementing the public utilities commission's mandate,
16 including but not limited to the requirement that the public
17 utilities commission "consider the need to reduce the State's
18 reliance on fossil fuels through energy efficiency and increased
19 renewable energy generation" and "explicitly consider . . . the
20 effect of the State's reliance on fossil fuels on price
21 volatility, export of funds for fuel imports, fuel supply



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1 reliability risk, and greenhouse gas emissions". The only
2 similar amendment that has been made to the division of consumer
3 advocacy's mandate is the addition of general language in Act
4 132, Session Laws of Hawaii 2003, that the division of consumer
5 advocate "consider the long-term benefits of renewable resources
6 in the consumer advocate's role as consumer advocate".

7 The legislature finds that ensuring Hawaii's regulatory
8 bodies and agencies are best positioned and equipped to navigate
9 the transformation of Hawaii's energy sector is a paramount
10 priority. It has been fifteen years since an audit has been
11 conducted on the division of consumer advocacy, despite the
12 concerns raised in previous audits, the changes in utility
13 regulation and the energy sector, and the division of consumer
14 advocacy's ongoing prominent role in the public utilities
15 commission's clean energy proceedings.

16 Accordingly, the purpose of this Act is to require the
17 auditor to conduct a comprehensive management audit of the
18 division of consumer advocacy.

19 SECTION 2. (a) The state auditor shall conduct a
20 comprehensive management audit of the department of commerce and



1 consumer affairs' division of consumer advocacy. The audit
2 shall include but not be limited to:

- 3 (1) Any updates of the findings in previous audits,
4 including the inherent ambiguity and conflict in the
5 division of consumer advocacy's roles and lack of
6 strategic vision;
- 7 (2) The actions, initiatives, and performance of the
8 division of consumer advocacy in promoting Hawaii's
9 clean energy goals, including the State's commitment
10 to its one hundred per cent renewable mandate and
11 other greenhouse gas and climate goals;
- 12 (3) The actions, initiatives, and performance of the
13 division of consumer advocacy's statutory duty to
14 represent, protect, and advance the interests of all
15 consumers, including the interests of consumers who
16 adopt clean energy resources such as distributed
17 renewables and energy efficiency; and
- 18 (4) Any recommended improvements, including proposed
19 legislation, to update, redefine, or realign the
20 division of consumer advocacy's mission and



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1 organization based on the evolving needs of utility
 2 regulation as well as consumer and public interests.

3 (b) In conducting the audit, the auditor shall solicit
 4 comprehensive and, as necessary, confidential feedback from the
 5 State's clean energy stakeholder community.

6 (c) The auditor shall submit a report to the legislature
 7 of its findings and recommendations, including any proposed
 8 legislation, no later than twenty days prior to the convening of
 9 the regular session of 2020.

10 SECTION 3. This Act shall take effect upon its approval.

11

INTRODUCED BY:

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Richard King

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Report Title:

DCCA; Division of Consumer Advocacy; Auditor; Audit

Description:

Requires the Auditor to conduct a comprehensive management audit of the Department of Commerce and Consumer Affairs' Division of Consumer Advocacy.

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