
HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A COMPREHENSIVE MANAGEMENT
AUDIT OF THE DIVISION OF CONSUMER ADVOCACY.

1 WHEREAS, the Division of Consumer Advocacy is mandated by
2 law to "represent, protect, and advance the interests of all
3 consumers, including small businesses, of utility services"; and
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5 WHEREAS, the Division of Consumer Advocacy is given "full
6 rights to participate as a party in interest in all proceedings
7 before the public utilities commission," but the Division's role
8 "shall be separate and distinct from the responsibilities of the
9 public utilities commission"; and
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11 WHEREAS, in 1975, a management audit of Hawaii public
12 utilities regulation found "considerable confusion" in the role
13 of the Division of Consumer Advocacy, then called the public
14 utilities division, in which the Division acted as both staff
15 for the Public Utilities Commission and a representative of
16 consumers, resulting in the Division serving two masters; and
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18 WHEREAS, in 1989, another management audit found that
19 ambiguities and deficiencies still existed in the Public
20 Utilities Commission's and Division of Consumer Advocacy's
21 functions and duties, and that the agencies had been passive and
22 reactive, rather than proactive, in defining and carrying out
23 their separate roles; and
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25 WHEREAS, a subsequent comprehensive evaluation of Hawaii
26 energy utility regulation expanded on these concerns and
27 observed that, unlike most other states, the Division of
28 Consumer Advocacy in Hawaii had combined two functions: (1) an
29 audit and litigation function, which involved traditional
30 accounting review and litigation of utility ratemaking, and
31 which in other states was usually performed by internal Public



1 Utilities Commission staff; and (2) a true consumer advocacy
2 role, which in other states had historically involved advocating
3 as an agent of change for progressive initiatives in the
4 consumers' interests; and

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6 WHEREAS, the 1975 audit proposed placing the audit and
7 litigation staff under the Public Utilities Commission, while
8 creating a separate consumer advocate office; and

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10 WHEREAS, the subsequent statutory amendments in 1976 only
11 partly addressed the 1975 audit's recommendations,
12 administratively separating the Public Utilities Commission and
13 the office now called the Division of Consumer Advocacy, but
14 maintaining the dual roles within the Division of Consumer
15 Advocacy; and

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17 WHEREAS, over the years, the Public Utilities Commission
18 has developed its own independent internal staff capacity, and
19 it no longer needs to rely on the Division of Consumer Advocacy
20 for staff support; and

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22 WHEREAS, the Division of Consumer Advocacy continues to
23 combine its two historical functions, acting as the lead or sole
24 public agency party in Public Utilities Commission proceedings,
25 while retaining its specific title and function focused on
26 consumers; and

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28 WHEREAS, in 2004, another management audit was conducted on
29 the Public Utilities Commission and the Division of Consumer
30 Advocacy, finding that the agencies lacked strategic plans and a
31 vision of Hawaii's regulatory future and their roles in that
32 process, and further finding that the agencies trudged through
33 daily operational work mired in process and individual case
34 details; and

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36 WHEREAS, the 2004 audit also cited the "planning and
37 organization deficiencies" found in the 1975 and 1989 audits and
38 concluded that since the time of those audits "nearly thirty and
39 fifteen years ago—neither agency has planned strategies to
40 correct the deficiencies and many of the same serious problems
41 persist"; and



1 WHEREAS, in the fifteen years since the 2004 audit, public
2 utilities regulation and, more broadly, the electric services
3 sector in Hawaii have significantly evolved, and new
4 technologies, consumer preferences, and environmental and
5 climate imperatives have emerged; and

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7 WHEREAS, increasing numbers of consumers are adopting
8 distributed energy resources, leading to a change in the
9 fundamental role of Hawaii's ratepayers from primarily passive
10 consumers of electricity to "prosumers," with the ability to
11 respond to price signals in a way that lowers costs for all
12 ratepayers; and

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14 WHEREAS, segments of the electric energy sector
15 traditionally subsumed under the regulated utility monopoly
16 model have increasingly opened up to market competition, thus
17 creating lower costs to consumers and an increased range of
18 energy services and choices; and

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20 WHEREAS, recent statutory changes such as the State's one
21 hundred percent renewable portfolio standard, carbon neutrality
22 goal by 2045, and the Hawaii Ratepayer Protection Act have been
23 passed in light of the unprecedented crisis from climate change
24 and the full-scale transition to renewable energy underway in
25 Hawaii and across the nation; and

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27 WHEREAS, these changes in consumer preferences and roles,
28 market directions and structures, and environmental and clean
29 energy laws and policies necessitate an expanded long-term and
30 visionary perspective in utility regulation and consumer
31 advocacy to advance customer and public interests in clean
32 energy transformation and the resulting reductions in electrical
33 costs and environmental and climate harms that this
34 transformation will provide; and

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36 WHEREAS, utility regulatory practice must change from its
37 traditional focus on auditing utility costs and rates to a new
38 vision for aligning utility incentives with a broader, modern
39 view of the consumer and public interests; and

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41 WHEREAS, the Public Utilities Commission has articulated
42 this strategic vision in its landmark Inclinations document in



1 2014, and in Act 5, Session Laws of Hawaii 2018, the Legislature
2 similarly enacted the nation's first mandate to break the direct
3 link between utility investments and revenues; and
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5 WHEREAS, the Legislature has also enacted various
6 amendments broadening and supplementing the Public Utilities
7 Commission's mandate, including requiring the Public Utilities
8 Commission to consider the need to reduce the State's reliance
9 on fossil fuels through energy efficiency and increased
10 renewable energy generation, and to explicitly consider the
11 effect of the State's reliance on fossil fuels on price
12 volatility, export of funds for fuel imports, fuel supply
13 reliability risk, and greenhouse gas emissions; and
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15 WHEREAS, the only similar amendment that has been made to
16 the Division of Consumer Advocacy's mandate thus far is the
17 addition of general language in 2003 that the Division of
18 Consumer Advocacy "consider the long-term benefits of renewable
19 resources in the consumer advocate's role as consumer advocate";
20 and
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22 WHEREAS, the Legislature finds that it is a paramount
23 concern and priority to ensure that Hawaii's regulatory agencies
24 are fully aligned with state clean energy laws and policies and
25 are best positioned and equipped to navigate the transformation
26 of Hawaii's energy sector; and
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28 WHEREAS, recent audits have been conducted on both the
29 Public Utilities Commission and the State Energy Office in 2018,
30 but no audit has been conducted on the Division of Consumer
31 Advocacy since 2004, despite the concerns raised in previous
32 audits, the evolutionary changes in utility regulation and the
33 energy sector, and the Division of Consumer Advocacy's ongoing
34 prominent role in the Public Utilities Commission's clean energy
35 proceedings; now, therefore,
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37 BE IT RESOLVED by the House of Representatives of the
38 Thirtieth Legislature of the State of Hawaii, Regular Session of
39 2019, the Senate concurring, that the Auditor is requested to
40 conduct a comprehensive management audit of the Division of
41 Consumer Advocacy, including but not limited to:
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- 1 (1) Updating the findings of previous audits, including
2 the problems regarding the inherent ambiguity and
3 conflict in the Division of Consumer Advocacy's roles
4 and the lack of strategic vision;
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- 6 (2) The actions, initiatives, and performance of the
7 Division of Consumer Advocacy in promoting Hawaii's
8 clean energy goals, including the State's one hundred
9 per cent renewable mandate and greenhouse gas and
10 climate commitments;
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- 12 (3) The actions, initiatives, and performance of the
13 Division of Consumer Advocacy in representing,
14 protecting, and advancing 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
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- 19 (4) Any recommended improvements, including proposed
20 legislation, to update, redefine, or realign the
21 Division of Consumer Advocacy's mission and
22 organization based on the evolving needs of utility
23 regulation and the consumer and public interests; and
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25 BE IT FURTHER RESOLVED that, in conducting the audit, the
26 Auditor is requested to solicit comprehensive feedback from the
27 stakeholder community involved in clean energy issues in Hawaii;
28 and
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30 BE IT FURTHER RESOLVED that the Auditor is requested to
31 submit a report of findings and recommendations, including any
32 proposed legislation, to the Legislature no later than twenty
33 days prior to the convening of the Regular Session of 2020; and
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35 BE IT FURTHER RESOLVED that certified copies of this
36 Concurrent Resolution be transmitted to the Governor, Auditor,
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1 Director of Commerce and Consumer Affairs, Chairperson of the
 2 Public Utilities Commission, and Executive Director of the
 3 Division of Consumer Advocacy.
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OFFERED BY:

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