

HB  
*275*

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# A BILL FOR AN ACT

RELATING TO THE DIVISION OF THE CONSUMER ADVOCATE.

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

1           SECTION 1. The division of the consumer advocate is  
2 intended to protect and advance the interests of Hawaii's  
3 consumers of regulated public utilities and transportation  
4 services. Despite numerous statutes and administrative rules  
5 that have been adopted to set forth the division's duties and  
6 mandates, the legislature finds that the division of the  
7 consumer advocate is not performing certain functions.

8           The purpose of this Act is to prioritize the duties of the  
9 division of the consumer advocate.

10          SECTION 2. Section 269-51, Hawaii Revised Statutes, is  
11 amended to read as follows:

12          "§269-51 Consumer advocate; executive director of the  
13 division of consumer advocacy. The executive director of the  
14 division of consumer advocacy shall be the consumer advocate in  
15 hearings before the public utilities commission[-], whose duties  
16 shall be primarily dedicated to proceedings concerning  
17 accounting, financing, and rates. The consumer advocate shall



# H.B. NO. 275

1 represent, protect, and advance the interests of all consumers,  
2 including small businesses, of utility services.

3       The responsibility of the consumer advocate for advocating  
4 the interests of the consumer of utility services shall be  
5 separate and distinct from the responsibilities of the public  
6 utilities commission and those assistants employed by the  
7 commission. The consumer advocate shall have full rights to  
8 participate as a party in interest in all proceedings before the  
9 public utilities commission."

10       SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12       SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

DTA  
Lindenberger

JAN 18 2019



# H.B. NO. 275

**Report Title:**

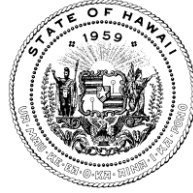
Public Utilities Commission; Division of the Consumer Advocate;  
Duties

**Description:**

Prioritizes the duties of the division of the consumer advocate to proceedings that involve accounting, financing, and utility rates.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Wednesday, February 6, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 275, RELATING TO THE DIVISION OF THE CONSUMER ADVOCATE**

Chair Takumi and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy (Division). The Department opposes this bill.

The purpose of this bill is to prioritize the duties of the Division by limiting its responsibilities to proceedings that involve accounting, financing, and utility rates.

The Division is concerned with how the proposed additional language to Hawaii Revised Statutes section 269-51 in section 2 of the bill would leave many interests of utility consumers unprotected if the Division's scope of duties is limited to only proceedings related to accounting, financing, and rates. The Consumer Advocate is responsible to represent, protect, and advance the interests of all consumers of regulated utility and transportation services in matters before the Public Utilities Commission (Commission). Historically, the Division has also made or sponsored filings before federal agencies, such as the Federal Communications Commission, to

represent Hawaii consumers' interests. Some of the critical issues that the Division addresses include, but are not limited to, long-term energy planning that has facilitated renewable energy in Hawaii and the reliability of utility service in all of the regulated industries such as electricity, gas, water, wastewater, telecommunications, and interisland shipping. The Division also provides recommendations to the Commission related to many other matters such as capital improvement projects, rulemaking, interconnection agreements among telecommunications carriers, power purchase agreements between independent power producers and utility companies, applications related to the certification of eligible telecommunications carriers, and many other important applications before the Commission. For instance, in the application related to the proposed merger and acquisition of Hawaiian Electric by NextEra Energy, the Division played an important role in analyzing the various issues related to the proposed merger transaction, such as corporate governance, impact on employees and employment in Hawaii, and the potential impact on the Commission's ability to exercise oversight over the combined entity. None of the described issues and/or applications identified above fall squarely within the bounds of accounting, financing, or rates. Thus, if the proposed measure passes, consumers would be left without representation before the Commission when many applications and related issues are being considered.

In representing the interests of all consumers, the Division understands that certain customers may contend the Division did not adequately represent their interests. For instance, rate design can be one of the most challenging aspects of regulatory analysis, as balancing the interests of all customers in developing fair rates can result in the perception that certain customers "won" and other customers "lost." Similarly, the Division assumes certain special interests may believe that the Division's past recommendations were counter to their interests, due to the efforts to represent consumers and balance all customers' interests. Respectfully, it would be a mistake to allow the proposed measure to pass, as it would eliminate the Division's ability to represent all customers' interests in all regulated utility and transportation matters.

Also, the Department disagrees with the statement in section 1 of the bill that the Division has not performed certain functions and the implication that the Division has

not properly prioritized its duties. As compared to the regulated companies, especially the larger companies, the Division has limited resources. Nevertheless, with the resources available, the Division does its best to meet the requirements of representing, protecting, and advancing the interests of consumers in all of the various industries the Commission regulates. As just one example of how the Division is ably performing its duties related to accounting, financing, and rates, and contrary to the implications in section 1 of this bill, in FY 2017-18, the Division was able to justify adjustments in rate proceedings before the Commission that resulted in first-year savings for utility consumers of approximately \$126,920,000.

Due to the diligence and hard work of its staff, the Division has been able to accomplish significant savings and provide various recommendations that the Commission adopted in consumers' interests and, ultimately, in the public interest. Despite these achievements, the Division believes it can improve and constantly looks for ways to improve its ability to represent consumers' interests. If the Legislature supports the Division's request for additional positions and does not pass this measure, the Division will be better able to balance the work volume, handle the complexity of the work, and continue to strengthen its ability to represent all consumers' interests before the Commission.

Thus, the Department opposes this bill and humbly requests that the Committee not advance this measure. Thank you for the opportunity to testify on this bill.

TESTIMONY OF  
JAMES P. GRIFFIN, Ph.D.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

February 6, 2019  
2:00 p.m.

Chair Takumi and Members of the Committee:

**MEASURE:** H.B. No. 275

**TITLE:** RELATING TO THE DIVISION OF THE CONSUMER ADVOCATE.

**DESCRIPTION:** Prioritizes the duties of the division of the consumer advocate to proceedings that involve accounting, financing, and utility rates.

**POSITION:**

The Public Utilities Commission offers the following comments for consideration.

**COMMENTS:**

The Public Utilities Commission (“Commission”) has concerns with this measure, which would require the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (“Consumer Advocate”) to focus on “proceedings concerning accounting, financing, and rates.”

The Consumer Advocate represents and advances the interests of all consumers in proceedings before the Commission, and the Consumer Advocate is frequently the only party in the docket, other than the regulated utility. As such, the Commission relies on the expertise and testimony of the Division of Consumer Advocacy in reviewing a wide range of utility applications and other docketed matters.

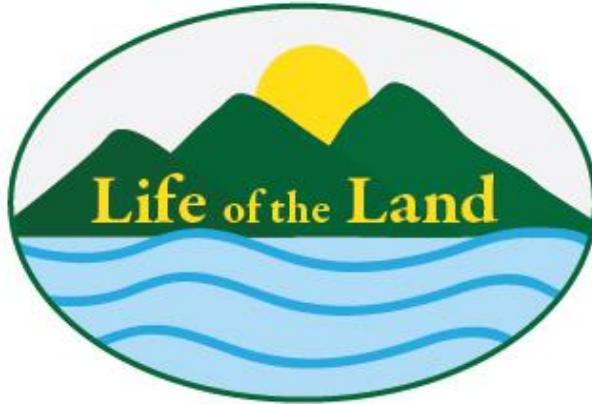
This measure may have the effect of limiting the scope of the Consumer Advocate’s participation in Commission proceedings, which could hinder the Commission’s decision-making. While general rate cases, financing activities (such as issuance of debt and equity), and accounting proceedings (such as setting depreciation rates) are important



matters, such proceedings constitute a small portion of the number and types of dockets before the Commission. The participation of the Consumer Advocate in the review of power purchase agreements, capital investment projects, utility planning activities, and major policy investigations, among other dockets, is essential to developing a sound record and assisting the Commission in making decisions that are in the public interest.

The Commission respectfully recommends that rather than limiting the scope of the Consumer Advocate's participation, the Consumer Advocate's budget and staffing requests should be granted so that the Consumer Advocate can continue to effectively represent the interests of consumers in proceedings before the Commission.

Thank you for the opportunity to testify on this measure.



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**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Rep. Roy M. Takumi, Chair

Rep. Linda Ichiyama, Vice Chair

DATE: Wednesday, February 6, 2019

TIME: 2 p.m.

PLACE: Conference Room 329

**HB 275 CONSUMER ADVOCATE.**

**STRONG SUPPORT**

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

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 49 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The intent of the bill is to align what the Division of Consumer Advocacy (Consumer Advocate) does and what the Hawai`i Revised Statutes (HRS) says the entity may or shall do. In essence, the law is far more expansive than policy, and has required specific actions for more than 15 years for which the Consumer Advocate has never

done so. The ultimate purpose of the bill is to promote a cost-effective and efficient approach that will advance the State's objectives and goals.

The Division of Consumer Advocacy (Consumer Advocate) is by law a party to every proceeding before the Hawai'i Public Utilities Commission.

Following the massive three-volume audit of the PUC in 1974-76, the Consumer Advocate was removed as a part of the PUC and became an entity unto itself. The Legislature merely authorized the splitting of the entities and the Executive Branch did the separation. The Consumer Advocate took virtually all of the staff leaving the PUC as a stripped down entity.

The role of the Hawai'i Consumer Advocate became unlike practically every other State in the Nation. In virtually all states, the utility presents a case, the Consumer Advocate presents the other side, and the PUC acts as the decision-maker. In Hawai'i, the utility would present one case and then the Consumer Advocate would represent the State presenting all of the State's analysis. The PUC was three-people, one who made decisions and two who were high-threes, getting higher pay for three years so they could retire in style.

If memory serves me correctly, the Consumer Advocate's first, last, and only court appeal involved the FERC docket re Kalaeloa Partners opened in 1989.<sup>1</sup> The Consumer Advocate argued that FERC has no jurisdiction in Hawai'i. FERC ruled they have limited jurisdiction.

The modern PUC is the result of PUC Chairs Caliboso, Morita, Iwase, and as of late, Griffin serving Governors Lingle, Abercrombie, and Ige. The modern PUC gained the staff expertise to challenge assumptions made by the Consumer Advocate.

Another recent transformation is the end of the agency capture by HECO. Up into fairly recent, the Consumer Advocate was owned and controlled by HECO. The

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<sup>1</sup> Federal Register, Vol. 54 No. 61 Pages 13223-24  
<https://www.gpo.gov/fdsys/pkg/FR-1989-03-31/pdf/FR-1989-03-31.pdf>

Consumer Advocate and HECO engaged in extensive off-book dialogue. In some cases, such as the early wind farms, HECO would privately come to a position, the Consumer Advocate would announce it, HECO would agree, and the Consumer Advocate would get credit.

Hawai'i Revised Statutes is misaligned with what the Consumer Advocate actually does. In 2003 the State Legislature passed a law mandating the Consumer Advocate to consider the environmental aspects of utility regulation. The Consumer Advocate has never done so. At the urging of the State Legislature, the Commission opened a proceeding on Performance-Based Regulation in 2018. The Commission asked parties to rank the importance of various metrics. The Consumer Advocate gave a low priority to environmental issues. The Commission gave the Consumer Advocate the option of filing climate change testimony in a recent docket. The Consumer Advocate declined.

A community outreach position was created a decade ago. The position has been vacant for a decade. The Consumer Advocate flies to Neighbor Islands to participate in Commission hearings, but does not consider community input in its statements of position.

The Consumer Advocate is authorized to establish rules to define what it does, but has never done so.

The Consumer Advocate has special knowledge and expertise in financial matters and little expertise or interest in other matters. Over the past decade the level of non-financial expertise by intervenors and by the PUC staff has grown exponentially. Rather than duplicating this expertise, the Consumer Advocate should stick to what it knows and does. The law should reflect the reality.

Mahalo

Henry Curtis  
Life of the Land