

JAN 24 2019

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 nature and
3 effectiveness of the role of the division of consumer advocacy
4 ("DCA") in representing, protecting, and advancing consumer and
5 public interests in light of evolving clean energy and climate
6 imperatives, consumer preferences, and utility regulatory
7 priorities.

8 In 1975, a management audit of the Hawaii public utilities
9 regulation found considerable confusion in the role of the DCA
10 (then called the public utilities division or "PUD"), where the
11 DCA acted as both staff for the public utilities commission
12 ("PUC"), and a representative of consumers, resulting in the DCA
13 effectively serving "two masters".

14 In 1989, another management audit found ambiguities and
15 deficiencies in the PUC's and DCA's functions and duties, and
16 that the agencies have been passive and reactive rather than
17 proactive in defining and carrying out their separate roles.



1 A subsequent comprehensive evaluation of Hawaii energy
2 utility regulation, conducted by Freedman and Lazar in 2003,
3 expanded on these concerns. The report observed that, unlike
4 most other states, the DCA in Hawaii has combined two functions.
5 The first is an audit and litigation function, which involves
6 traditional accounting review and litigation of utility
7 ratemaking. In other states, this function is usually performed
8 by internal PUC staff. The second function is a true consumer
9 advocacy role. In other states, this has historically involved
10 advocating as an agent of change for progressive initiatives in
11 the consumers' interests.

12 The 1975 audit proposed placing the audit and litigation
13 staff under the PUC, while creating a separate consumer advocate
14 office. The subsequent legislative amendments in 1976, however,
15 administratively separated the PUC and the office now called the
16 DCA, but maintained the dual roles within the DCA.

17 Over the years, the PUC has built up its own internal,
18 independent staff capacity and no longer needs to rely on the
19 DCA for staff support. Nonetheless, the DCA continues to
20 combine its two historical functions, acting as the lead or sole



1 public agency party in PUC proceedings, while retaining its
2 specific title and function focused on consumers.

3 In 2004, another management audit was conducted on the PUC
4 and DCA, finding that the agencies lacked strategic plans and a
5 vision of Hawaii's regulatory future and their role in that
6 process. Much of the agencies' daily operational work is mired
7 in process and individual case details.

8 The 2004 audit also cited the planning and organization
9 deficiencies found in the 1975 and the 1989 audits and concluded
10 that since the time of those audits nearly thirty and fifteen
11 years ago, respectively, that neither agency has planned
12 strategies to correct the deficiencies and that many of the same
13 serious problems persist.

14 Further, in the fifteen years since the 2004 audit, public
15 utilities regulation and, more broadly, the electric services
16 sector in Hawaii has significantly evolved. New technologies,
17 consumer preferences, and environmental and climate imperatives
18 have emerged. For example, distributed energy resources
19 adoption has grown significantly, leading to a change in the
20 fundamental role of Hawaii's ratepayers from primarily passive
21 consumers of electricity to "prosumers", with the ability to



1 respond to price signals in a way that lowers costs for all
2 ratepayers. Segments of the electric sector have increasingly
3 opened up to market competition, thus creating lower costs to
4 consumers and an increased range of energy services and choices.

5 Also, recent statutory changes such as the State's one
6 hundred per cent renewable portfolio standard (Act 97, Session
7 Law of Hawaii 2015), the Hawaii Ratepayer Protection Act (Act 5,
8 Session Laws of Hawaii 2018), and carbon neutrality goal by 2045
9 (Act 15, Session Laws of Hawaii 2018) have been passed in light
10 of the unprecedented crisis from climate change and the full-
11 scale transition to renewable energy underway in the State and
12 across the nation. The legislature finds that these statutory
13 changes necessitate an expanded long-term and visionary
14 perspective in utility regulation, including consumer advocacy
15 to advance customer and public interests in clean energy
16 transformation, reduced electrical costs, and environmental and
17 climate concerns.

18 The legislature further finds that utility regulatory
19 practice must change from its traditional focus on auditing
20 utility costs and rates to a new vision of aligning utility
21 incentives with a broader, modern view of the consumer and



1 public interests. The PUC has articulated this strategic vision
2 in its landmark Inclinations documents in 2014. Further, in Act
3 5, Session Laws of Hawaii 2018, the legislature similarly
4 enacted the nation's first mandate to break the direct link
5 between utility investments and revenues.

6 The legislature has also enacted various amendments
7 broadening and supplementing the PUC's mandate including but not
8 limited to the requirement that the PUC consider the need to
9 reduce the State's reliance on fossil fuels through energy
10 efficiency and increased renewable energy generation and
11 explicitly consider the effect of the State's reliance on fossil
12 fuels on price volatility, export of funds for fuel imports,
13 fuel supply reliability risk, and greenhouse gas emissions. The
14 only similar amendment that has been made to the DCA's mandate
15 thus far is the addition of general language in Act 132, Session
16 Laws of Hawaii 2003, that requires the DCA to consider the long-
17 term benefits of renewable resources in its role as consumer
18 advocate.

19 Ensuring Hawaii's regulatory bodies and agencies are best
20 positioned and equipped to navigate the transformation of
21 Hawaii's energy sector is paramount. Recent audits have been



1 conducted on the PUC and the State Energy Office in 2018.
2 However, no audit has been conducted on the DCA in fifteen
3 years, since 2004, despite the concerns raised in previous
4 audits, the evolutionary changes in utility regulation, and the
5 energy sector explained above, and the DCA's ongoing prominent
6 role in the PCU's clean energy proceedings.

7 SECTION 2. (a) The state auditor shall conduct a
8 comprehensive management audit for the division of consumer
9 advocacy. The audit shall include but not be limited to:

- 10 (1) Any updates of the findings in previous audits,
11 including the inherent ambiguity and conflict in the
12 DCA's roles and the lack of strategic vision;
- 13 (2) The actions, initiatives, and performance of the
14 division in promoting Hawaii's clean energy goals,
15 including the State's one hundred per cent renewable
16 mandate and greenhouse gas and climate commitments;
- 17 (3) The actions, initiatives, and performance of the
18 division to represent, protect, and advance the
19 interests of all consumers pursuant to existing law,
20 including the interests of consumers who adopt clean



1 energy resources such as distributed renewables and
2 energy efficiency; and

3 (4) Recommended improvements, including proposed
4 legislation, to update, redefine, or realign the
5 division's mission and organization based on the
6 evolving needs of utility regulation and the consumer
7 and public interests.

8 (b) In conducting the audit pursuant to this Act, the
9 state auditor shall solicit comprehensive and confidential
10 feedback, if necessary, from the stakeholder community involved
11 in clean energy issues in Hawaii.

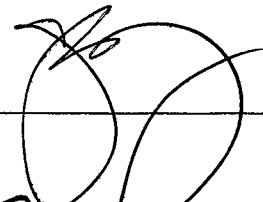


12 (c) The state auditor shall submit a report of its
13 findings and recommendations, including any proposed
14 legislation, to the legislature no later than twenty days prior
15 to the convening of the regular session of 2020.

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

17

INTRODUCED BY:

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S.B. NO. 1441

A handwritten signature in black ink, appearing to read "D. K. ...", with a long horizontal flourish extending to the right.

S.B. NO. 1441

Report Title:

Public Utilities Commission; Division of Consumer Advocacy;
Management Audit; State Auditor; Report

Description:

Requires the state auditor to conduct an audit of the division
of consumer advocacy and submit a report of its findings.

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