

MAR - 6 2020

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A COMPREHENSIVE MANAGEMENT  
AUDIT OF THE DIVISION OF CONSUMER ADVOCACY IN THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

1           WHEREAS, the Division of Consumer Advocacy in the  
2 Department of Commerce and Consumer Affairs was created to  
3 protect and advance the interests of Hawaii's consumers of  
4 regulated public utility and transportation services; and

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6           WHEREAS, despite the numerous statutes and administrative  
7 rules that have been enacted and adopted to set forth the  
8 division's duties and mandates, the Legislature finds that the  
9 division is not performing certain functions; and

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11           WHEREAS, the Legislature finds that a comprehensive  
12 management audit is necessary to evaluate the effectiveness of  
13 the division in representing, protecting, and advancing consumer  
14 and public interests in light of evolving clean energy and  
15 climate imperatives, consumer preferences, and utility  
16 regulatory priorities; and

17  
18           WHEREAS, in 1975, a management audit of the State's public  
19 utilities program found there was "considerable confusion" with  
20 respect to the role of the division, which at that time was  
21 called the Public Utilities Division; and

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23           WHEREAS, in 1989, another management audit found that  
24 "ambiguities and deficiencies" in the functions and duties of  
25 the Public Utilities Commission and the division "still exist"  
26 and the agencies "have been passive and reactive" rather than  
27 "pro-active in defining and carrying out their separate roles";  
28 and

29  
30           WHEREAS, a 2003 comprehensive evaluation of the State's  
31 energy utility regulation expanded on these concerns, observing  
32 that, unlike as in most states, the division combines two



1 functions, the first being an "audit and litigation" function  
2 that involves traditional accounting review and litigation of  
3 utility ratemaking (which in other states is usually performed  
4 by internal public utilities commission staff), and the second  
5 being "true consumer advocacy", which is a role that in other  
6 states has historically involved advocating as a change agent  
7 for progressive initiatives in consumers' interests; and

8  
9 WHEREAS, the Public Utilities Commission has built up its  
10 own internal, independent staff capacity and no longer needs to  
11 rely on the Division of Consumer Advocacy for staff support, yet  
12 the division continues to combine its two historical functions  
13 by acting as the lead or sole public agency party in commission  
14 proceedings, while also retaining its specific title and  
15 function focused on consumers; and

16  
17 WHEREAS, in 2004, another management audit conducted on the  
18 commission and the division found that the agencies lacked  
19 strategic plans and "a vision of Hawaii's regulatory future and  
20 [their] role in that process" with the result that the agencies  
21 "trudge through daily operational work mired in process and  
22 individual case details"; and

23  
24 WHEREAS, the 2004 audit also cited the "planning and  
25 organization deficiencies" found in the 1975 and 1989 audits,  
26 concluding that since the time of those audits, "neither agency  
27 has planned strategies to correct the deficiencies and many of  
28 the same serious problems persist"; and

29  
30 WHEREAS, in the fifteen years since the 2004 audit, the  
31 electric services sector in Hawaii has evolved significantly  
32 with the emergence of new technologies, consumer preferences,  
33 and environmental and climate imperatives, and segments of the  
34 electric sector have increasingly opened up to market  
35 competition, creating lower costs to consumers and an increased  
36 range of energy services and choices; and

37  
38 WHEREAS, recent statutory developments such as the  
39 renewable energy portfolio standard, carbon neutrality, and  
40 ratepayer protection have passed during a time of unprecedented  
41 climate change as well as a full-scale transition to renewable  
42 energy in the State and across the nation; and



1           WHEREAS, the Legislature finds that these statutory  
2 developments necessitate an expanded, long-term, and visionary  
3 perspective in utility regulation and consumer advocacy to  
4 advance customer and public interests in clean energy  
5 transformation and reduced economic, environmental, and climate  
6 costs; and  
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8           WHEREAS, the Legislature also finds that utility regulatory  
9 practices must change from their traditional focus on auditing  
10 utility costs and rates to a new focus on aligning utility  
11 incentives with a broader, modern view of the consumer and  
12 public interests as the Public Utilities Commission itself  
13 articulated in its landmark inclinations document in 2014, and  
14 as the Legislature set forth in enacting in Act 5, Session Laws  
15 of Hawaii 2018, which was the nation's first mandate to "break  
16 the direct link" between utility investments and revenues; now,  
17 therefore,  
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19           BE IT RESOLVED by the Senate of the Thirtieth Legislature  
20 of the State of Hawaii, Regular Session of 2020, the House of  
21 Representatives concurring, that the Auditor is requested to  
22 conduct a comprehensive management audit of the Division of  
23 Consumer Advocacy in the Department of Commerce and Consumer  
24 Affairs; and  
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26           BE IT FURTHER RESOLVED that the audit include:  
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- 28           (1) Any updates to the findings in previous audits,  
29 including the inherent ambiguity and conflict in the  
30 division's roles and lack of strategic vision;  
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- 32           (2) The actions, initiatives, and performance of the  
33 division in promoting Hawaii's clean energy goals,  
34 including the State's commitment to its one hundred  
35 percent renewable energy mandate and other greenhouse  
36 gas and climate goals;  
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- 38           (3) The actions, initiatives, and performance of the  
39 division relating to its statutory duty to represent,  
40 protect, and advance the interests of all consumers,  
41 including the interests of consumers who adopt clean



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1 energy resources such as distributed renewables and  
2 energy efficiency; and  
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- 4 (4) Any recommendations to update, redefine, or realign  
5 the division's mission and organization based upon the  
6 evolving needs of utility regulation as well as  
7 consumer and public interests; and  
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9 BE IT FURTHER RESOLVED that in conducting the audit, the  
10 Auditor is requested to solicit comprehensive and, as necessary,  
11 confidential feedback from the State's clean energy stakeholder  
12 community; and  
13

14 BE IT FURTHER RESOLVED that the Auditor is further  
15 requested to submit a report of findings and recommendations,  
16 including any proposed legislation, to the Legislature no later  
17 than twenty days prior to the convening of the Regular Session  
18 of 2020; and  
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20 BE IT FURTHER RESOLVED that certified copies of this  
21 Concurrent Resolution be transmitted to the Auditor, Chair of  
22 the Public Utilities Commission, Director of Commerce and  
23 Consumer Affairs, and Executive Director of the Division of  
24 Consumer Advocacy in the Department of Commerce and Consumer  
25 Affairs.  
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OFFERED BY:

