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**SYLVIA LUKE**  
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## **Testimony of the Department of Commerce and Consumer Affairs**

**Before the**  
**House Committee on Consumer Protection & Commerce**  
**Tuesday, February 28, 2023**  
**2:00 p.m.**  
**Conference Room 329**

**On the following measure:**  
**H.B. 370, RELATING TO THE PUBLIC UTILITIES COMMISSION**

Chair Nakashima and Members of the Committee:

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

The purpose of this bill is to require the Public Utilities Commission (Commission) to complete its review and issue a decision within nine months from the date that a public utility, other than an investor—owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control and within twelve months from the date of the application for an investor-owned electric utility company.

The intent of this bill is to expedite the timeline for Commission review of applications requesting approval for a merger, consolidation, acquisition, or other change of control, but the Department offers that imposing a strict deadline takes away flexibility in establishing the procedural schedule that allows the appropriate scrutiny depending on

the complexity of issues associated with a proposed merger, consolidation, acquisition, or other change of control. If such flexibility is no longer available, that may not be in the consumers' interests. Such transactions are often complex, especially when there may be affiliated entities that may raise questions about possible subsidies between the regulated company and other affiliated companies and/or whether there may be market control concerns.

The Department acknowledges that the proposed measure allows a distinction between every other industry and company by indicating that only an investor-owned electric utility transaction, which is the Hawaiian Electric companies, can have twelve months for review whereas every other qualifying utility transaction would need to be reviewed within nine months. The Department offers that the last proposed transfer of control for the only investor-owned electric utility took more than eighteen months but that time was necessary given the importance of the transaction to the State related to clean energy goals, involved the largest regulated electric utility, and there were nearly thirty parties to that docket, to name a few factors. Restricting the time available to review the proposed transaction could raise due process issues if a party believes that there was insufficient time allowed to support its position in a proceeding.

The Department notes that the Commission took *less than* twelve months to issue a decision on the recent acquisition of The Gas Company, LLC (dba Hawaii Gas) in Docket No. 2021-0098. This proceeding also involved the review of clean energy and decarbonization objectives, a utility that serves the entire state, and had affiliate and intracompany allocations issues. In contrast to the transaction involving the Hawaiian Electric companies, there were only a handful of parties in the proceeding, which mitigated the need for an extended review and procedural steps that might have been required if there were more parties.

Finally, the Department notes that for less complex mergers, consolidations, acquisitions, or other changes of control, the Commission has taken far less time to review and approve such transactions. For instance, applications requesting approval of proposed transfers of control involving less complex transactions in Docket Nos. 2021-

Testimony of DCCA

H.B. 370

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0110, 2022-0146, and 2022-0151 resulted in a Commission order closing the docket within three, two, and one months, respectively

The considerations in a given application for merger, acquisition, or change of control are varied and complex, and the Department respectfully requests that this committee take note of the needed flexibility in addressing such transactions and how, if adopted, this measure could be contrary to consumers' and the public interest.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF  
LEODOLOFF R. ASUNCION, JR.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

February 28, 2023  
2:00 p.m.

Chair Nakashima, Vice Chair Sayama, and Members of the Committee

**MEASURE:** H.B. No. 370

**TITLE:** RELATING TO THE PUBLIC UTILITIES COMMISSION

**DESCRIPTION:** Requires the public utilities commission to complete its review and issue a decision within nine months from the date that a public utility, other than an investor-owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control and within twelve months from the date of the application for an investor-owned electric utility company.

**POSITION:**

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

**COMMENTS:**

The Commission appreciates the intent of this measure to provide for the timely review by the Commission of applications by public utilities for seeking Commission authorization for a merger, consolidation, acquisition, or other change of control.

The Commission appreciates the intent of this measure to provide for the timely review by the Commission of applications by public utilities seeking Commission authorization for a merger, consolidation, acquisition, or other change of control.

The Commission is concerned that this measure may hamper the Commission’s ability to make an informed decision on applications by public utilities seeking Commission authorization for a merger, consolidation, acquisition, or other change of control. If any

of the state's larger public utilities are involved, the nine-month and twelve-month timelines imposed on the Commission in this bill may not be sufficient time for the Commission to determine if the public will continue to receive safe, reliable, and adequate service as a result of the merger, consolidation, acquisition, or other change of control given the scale of those public utilities' operations. Such a decision from the Commission can be a significant undertaking, which requires a discovery phase with the opportunity for all stakeholders to participate and careful examination and analysis of a public utility's ability, fitness, and willingness to serve, all of which requires more time the larger the public utility in question is. Additionally, for larger public utilities, many times an evidentiary hearing is conducted with all parties, intervenors, and participants.

The Commission is also concerned that the timeframes imposed on the Commission in this bill may not afford parties, intervenors, and participants in any dockets related to a merger, consolidation, acquisition, or other change of control adequate due process or a meaningful opportunity to be heard. All parties, intervenors, and participants in a docket have, to various degrees, the ability to conduct discovery and present statements of positions regarding the public utility's application. Applications related to a merger, consolidation, acquisition, or other change of control involving Hawaii's larger public utilities often attract numerous intervenors and participants from the community, and as the number of parties, intervenors, and participants rises so too does the amount of time necessary to ensure everyone has adequate due process and a meaningful opportunity to be heard.

The Commission is dedicated to completing its reviews of any applications seeking approval for a merger, consolidation, acquisition, or other change of control as timely as possible, without compromising the thorough and wide-ranging analysis that is necessary in making decisions of this nature. The Commission also remains committed to ensuring that all parties, intervenors, and participants in any such dockets are afforded adequate due process and a meaningful opportunity to be heard.

While the Commission does not believe this measure would be in the public interest, should the Legislature adopt the proposed timelines, the Commission suggests that it would be helpful to explain any situations in which a decision was not rendered within the requested timelines. The Commission proposes the addition of the following language for that purpose.

If a decision is rendered after the relevant nine- or twelve-month period, the Commission shall report in writing, on paper or electronically, the reasons therefor to the legislature within thirty days after rendering the decision.

Thank you for the opportunity to testify on this measure.



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## COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Mark M. Nakashima, Chair

Rep. Jackson D. Sayama, Vice Chair

DATE: Tuesday, February 28, 2023

TIME: 2:00 PM

PLACE: VIA VIDEOCONFERENCE & Conference Room 329

HB 370 RELATING TO PUBLIC UTILITIES COMMISSION

**OPPOSE**

Aloha Chair Nakashima, Vice Chair Sayama, and Committee Members

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 52 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.

HB 370 is a streamlining bill that, if enacted earlier, would have harmed the public interest and interfered with actual KIUC, HECO, Gas Company, and Hawaiian Telcom merger proceedings.

## Kauai Island Utility Cooperative (KIUC) Acquisition of Citizens Communications Company, Kauai Electric Division (KED)

HB 370 states: “With respect to mergers, consolidations, acquisitions, or other changes of control under subsection (a), the public utilities commission shall complete its review and issue a decision within nine months from the date that the public utility, other than an investor-owned electric utility company, files its completed application seeking an order of authorization.”

The second application was approved within nine months, but an amendment took additional time. Would this be allowed if HB 370 had been the law?

Year	Month	Day	Issue
2000	04	06	Application Filed (Docket No. 2000-0108)
2000	08	14	DECISION AND ORDER NO. 17970 - DENIED
2002	03	15	Application Filed (Docket No. <a href="#">2002-0060</a> )
2002	09	17	DECISION AND ORDER NO. 19658: Amended Agreement Approved
2002	10	22	<u>KIUC Motion to Reopen Docket</u> -- Movants believe that an amended D&O is necessary to permit KI UC to accept the RUS financing with a 25-year term instead of the 30-year term utilized in various KIUC financial projections that are part of the record in this Docket and approved in the D&O
2002	10	30	DECISION AND ORDER NO. 19755: Motion Granted
2004	04	30	ORDER NO. 20957 -- KIUC's proposed provision approved
2010	00	09	ORDER incorporating the modification to the annual patronage capital refund condition



## HECO's Proposed Merger into NextEra

HB 370 states: "With respect to mergers, consolidations, acquisitions, or other changes of control under subsection (a) for which an investor-owned electric utility company seeks an order of authorization from the public utilities commission, the commission shall complete its review and issue a decision within twelve months from the date that the investor-owned electric utility company files its completed application.

The merger proceeding included county, state, and federal intervenors and lasted 18 months.

Year	Month	Day	Issue
2015	01	29	Application Filed. (Docket. No 2015-0022) Applicant: HECO, MECO, HELCO, NextEra. Party: Division of Consumer Advocacy
2015	03	02	<b>ORDER NO. 32695 ADDRESSING [28] INTERVENTION REQUESTS</b> -- grants motions to intervene: AES, Blue Planet, COH, COM, DBEDT, FOL, Hawaii Gas, HIEC, HINA, HPVC, HREA, HSEA, HWSC, HBWS, IBEW, KIUC, KLMA, LOL, Planning Office, Paniolo, Puna Pono, REACH, Sierra Club, SunEdison, SunPower, Tahwiri, and Ulupono. Conditionally grants the motion to intervene of TASC.
2016	07	15	ORDER NO. 33795 DISMISSING APPLICATION

Acquisition of Hawaii Gas Parent Company by Argo Infrastructure Partners LP

Year	Month	Day	Issue
2021	07	07	Application filed. (Docket No. 2021-0098). HRS §§ 269-7 and 269-19. Applicants: THE GAS COMPANY dba HAWAII GAS, MACQUARIE INFRASTRUCTURE CORPORATION, and AMF HAWAII HOLDINGS. Party: Division of Consumer Advocacy.
2021	10	08	ORDER NO. 38015. Motions Granted re Intervenor Life of the Land & Participant Hawaii State Energy Office
2022	06	29	DECISION AND ORDER NO. 38478

JOINT APPLICATION FOR APPROVAL TO TRANSFER INDIRECT CONTROL OF HAWAIIAN TELCOM, INC., HAWAIIAN TELCOM SERVICES COMPANY, INC. AND WAVECOM SOLUTIONS CORPORATION TO RED FIBER PARENT LLC.

Year	Month	Day	Issue
2020	05	15	Joint Application filed (Docket No. 2020-0080)
2020	07	29	ORDER NO. 37238 re Participant Status Granted to IBEW & Charter (Time Warner Cable Information Services (Hawaii), Time Warner Cable Business, Spectrum Mobile, and Spectrum Oceanic)
2021	05	03	DECISION AND ORDER NO. 37757
2021	05	13	Charter Motion for Partial Reconsideration of Decision and Order No. 37757
2021	06	25	Charter Notice of Withdrawal of Motion for Partial Reconsideration

Mahalo,

Henry Curtis,  
Executive Director

Written Statement of  
**Jeannine Souki**  
Senior Manager – Government & Regulatory Affairs

**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

February 28, 2023, 2:00 p.m.  
State Capitol, Conference Room 329, Videoconference

**SUPPORT FOR:**

**H.B. 370 – RELATING TO PUBLIC UTILITIES COMMISSION**

To: Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
Members of the House Committee on Finance

Re: Testimony providing support for HB 370

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to provide testimony in support of HB 370, which requires the Hawai'i Public Utilities Commission ("PUC") to complete its review and issue a decision within nine months from the date that a public utility, other than an investor-owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control.

Hawaiian Telcom supports this measure which will help to ensure that change of control and merger applications will be processed in a timely manner. In 2009, the Hawai'i State Legislature recognized the competitiveness of the telecommunications market by declaring retail telecommunications services as fully competitive. The telecommunications market is highly competitive both in terms of consumer and business service offerings and workforce talent. There are currently more than 200 companies authorized by the PUC to provide telecommunications services in Hawai'i.

While our preference would be for a shorter approval time, we believe nine months is reasonable to ensure a thorough review of these applications by the Commission and intervenors, especially for companies in highly competitive industries like telecommunications, where there are many services providers and not just a single monopoly utility service provider. Greater certainty on the maximum length of time it will take to process change of control or merger applications will be extremely valuable so that we do not lose customers or employees.

Hawaiian Telcom stands ready to work with your Committee, the PUC, Office of Consumer Advocacy, other regulated companies, and stakeholders to address any concerns with this legislation.

Hawaiian Telcom supports HB 370 and respectfully requests your Committee to pass this measure.

# CHAMPCLINICS™

*We're here for you, because we're here with you.*

2/8/2023

To Whom it may concern:

My name is Natasha Silva and I've been employed at CHAMP Clinic as an intake coordinator and counselor for one year. In this short time, I have seen hundreds of clients walk through our doors. The current location for CHAMP Clinic is important because it services Chinatown and its surrounding areas. This area is home to many of our housed and unhoused clients.

This location is not only a convenient location for them to receive methadone dosing, but the clinic is also located near major bus lines, three area hospitals, courthouses, probation offices, and other social service agencies our clientele must have access to. Moving locations is not an option, as it would displace our clients, and leave them at a disadvantage should they need to access these agencies. Our population also requires routine to keep up with their daily dosing. They do not need a reason to discontinue use or abandon their required dosing maintenance.

CHAMP Clinic continues to uphold measures to ensure the area around the clinic is safe. This includes security cameras around the perimeter of the clinic, as well as having a security guard stationed across the street at the middle school. I have a close friend who is employed at the middle school, who wasn't aware we were located across the street until I informed her. CHAMP Clinic didn't bring problems to the neighborhood, there were already issues present. Our current location is vital for the healing of our stigmatized community members.

