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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. 369, 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, with proposed amendments, on this bill.

The purpose of this bill is to exempt a public utility from the required Public Utilities Commission (Commission) authorization when disposing of a fully depreciated asset or property with a zero net book value.

While the Department appreciates efforts for administrative efficiency, which may be the intent of this bill, the Department believes that the bill as written is contrary to the consumers' interests. If enacted, consumers may face higher than necessary rates and/or transactions could occur that are not in consumers' interests.

For instance, the proposed amendment would allow utilities and water carriers to dispose or transfer property or assets that may still serve the public interest and still has value. There are many instances where an asset may be fully depreciated but can still

be used by the regulated utility or water carrier. For example, the taxable depreciable life of an auto or truck is five years but the actual useful life of a vehicle is generally longer than five years. Allowing a regulated entity to dispose of such assets when its net book value is zero could mean that the regulated entity could then purchase a new vehicle even though it was not yet necessary to purchase a new vehicle. Such a practice would result in higher rates. Another example of how the proposed measure is contrary to consumers' interests is when the regulated entity may sell an asset that has a net book value of zero. As noted above, there may still be useful life in the asset and has market value greater than zero even though the net book value is zero. If the asset is sold at a profit without Commission approval and the gain on sale is not reflected as an offset to the regulated entity's costs, the profit on the asset – which has been paid for by consumers through Commission approved rates - will not accrue to the consumers' interests. A common issue related to this type of transaction is when a regulated entity transfers such an asset to an unregulated affiliate company at no cost even though the asset is still useful and allows the unregulated affiliate to be subsidized by regulated customers. Thus, while it might be assumed that allowing the proposed measure does not have an impact on consumers' interest, it would be incorrect to make such an assumption.

While the Department would prefer that the measure be held, if the Committee is inclined to pass this measure, the Department respectfully requests that an amendment to the proposed language include the addition of "and is no longer used or useful" to address the Department's concerns. So, the proposed 269-19 (a)(2), on page 1, lines 15-16, would read "The public utility is disposing a fully depreciated asset or property with a zero net book value and is no longer used or useful." and the proposed 271-G14 (b), on page 2, lines 17-19, would read, "...unless the water carrier is disposing a fully depreciated asset or property with a zero net book value and is no longer used or useful." This would prevent the regulated entity from disposing of assets or property that could still be used to serve customers or denying customers the possible benefit of any gain on sale from the disposition of an asset or property that has the net book value of zero.

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. 369

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION.

DESCRIPTION: Exempts a public utility from the required public utilities commission authorization when disposing of a fully depreciated asset or property with a zero net book value.

POSITION:

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

COMMENTS:

The Commission appreciates the intent of this measure to promote efficiency by exempting a public utility from the required Commission authorization when disposing of a fully depreciated asset or property with a zero net book value.

The Commission notes that when a public utility disposes of any asset or property, the public utility may potentially realize a gain if it were to sell that asset or property to another entity. In such a situation, the Commission would ordinarily determine how much of that potential gain, if any, must be shared with customers. By exempting public utilities from the required Commission authorization when disposing of a fully depreciated asset or property with zero net book value, this bill could result in public utilities realizing the entirety of any potential gains resulting from the sale of any fully depreciated assets or properties with zero net book value, given that the Commission would no longer have the authority to determine how much, if any, of that potential gain must be shared with its customers.

If the Legislature did not intend to preclude the Commission from determining how much, if any, of any potential gain realized by a public utility when disposing of a fully depreciated asset or property with a zero net book value must be shared with its customers, the Commission offers the following amendments to Sections 1 and 2 of this bill to clarify that this exemption only applies when the public utility does not realize any financial gain from the disposal of any fully depreciated asset or property with zero net book value.

SECTION 1. Section 269-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do, unless:

(1) The sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation is done in accordance with subsection (b); or

(2) The public utility is disposing at a loss or donating a fully depreciated asset or property with a zero net book value."

SECTION 2. Section 271G-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, unless the water carrier is disposing at a loss or donating a fully depreciated asset or property with a zero net book value. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation that requires authorization from the public utilities commission under this subsection and is made other than in accordance with an order of the commission authorizing the same shall be void."

Thank you for the opportunity to testify on this measure.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

H.B. 369

Relating to the Public Utilities Commission

Tuesday, February 28, 2023

2:00 pm

State Capitol, Conference Room 329 & Videoconference

James Abraham
Associate General Counsel, Legal Department
Hawaiian Electric

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

My name is James Abraham and I am testifying on behalf of Hawaiian Electric **in support** of H.B. 369.

This bill will allow public utilities to streamline the process of selling, donating, or otherwise disposing of property that is fully depreciated or has a zero net book value. Although these types of assets have fulfilled their usefulness with the utility, the utility may nevertheless be able to recover some value for the benefit of its customers. However, current law requires utilities to go through the administrative process before the Public Utilities Commission (PUC) to obtain approval for each asset or property it seeks to dispose of or donate. As these assets often have minimal remaining value, the benefit of going through a PUC proceeding may not be worth the time and resources required. This bill will allow utilities to efficiently transfer, donate, or dispose of these assets and decrease the workload for the PUC and Division of Consumer Advocacy, which currently must spend resources reviewing these generally routine and non-controversial transactions.

Accordingly, Hawaiian Electric supports H.B. 369. Thank you for this opportunity to testify.