

HB

78

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## 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 effectiveness of  
3 the department of commerce and consumer affair's division of  
4 consumer advocacy in representing, protecting, and advancing  
5 consumer and public interests in light of evolving clean energy  
6 and climate imperatives, consumer preferences, and utility  
7 regulatory priorities.

8           In 1975, a management audit of the Hawaii public utilities  
9 program found there to be "considerable confusion" with respect  
10 to the role of the division of consumer advocacy, at that time  
11 called the public utilities division. At the time, the division  
12 of consumer advocacy acted both as staff for the public  
13 utilities commission and as a representative of consumers,  
14 resulting in the division of consumer advocacy "serv[ing] two  
15 masters uncomfortably". The audit proposed placing the audit  
16 and litigation staff under the public utilities commission while  
17 creating a separate consumer advocate office. Legislative



1 amendments in 1976 administratively separated the public  
2 utilities commission and the office now called the division of  
3 consumer advocacy, but maintained the dual roles within the  
4 division of consumer advocacy.

5 In 1989, another management audit found that "ambiguities  
6 and deficiencies" in the functions and duties of the public  
7 utilities commission and the division of consumer advocacy  
8 "still exist" and the agencies "have been passive and reactive"  
9 rather than "pro-active in defining and carrying out their  
10 separate roles".

11 A 2003 comprehensive evaluation of Hawaii energy utility  
12 regulation expanded on these concerns. The report observed that  
13 unlike most states, the division of consumer advocacy combines  
14 two functions. The first is an "audit and litigation" function  
15 that involves traditional accounting review and litigation of  
16 utility ratemaking. In other states, this function is usually  
17 performed by internal public utilities commission staff. The  
18 second function is "true consumer advocacy", which is a role  
19 that in other states has historically involved advocating as a  
20 change agent for progressive initiatives in consumers'  
21 interests.



1 Over the years, the public utilities commission has built  
2 up its own internal, independent staff capacity and no longer  
3 needs to rely on the division of consumer advocacy for staff  
4 support. However, the division of consumer advocacy continues  
5 to combine its two historical functions by acting as the lead or  
6 sole public agency party in public utilities commission  
7 proceedings, while also retaining its specific title and  
8 function focused on consumers.

9 In 2004, another management audit conducted on the public  
10 utilities commission and the division of consumer advocacy found  
11 that the agencies lacked strategic plans and "a vision of  
12 Hawaii's regulatory future and [their] role in that process".  
13 Thus, the agencies "trudge through daily operational work mired  
14 in process and individual case details". The 2004 audit also  
15 cited the "planning and organization deficiencies" found in the  
16 1975 and 1989 audits, concluding that since the time of those  
17 audits, "neither agency has planned strategies to correct the  
18 deficiencies and many of the same serious problems persist".

19 Further, in the fifteen years since the 2004 audit, public  
20 utilities regulation and, more broadly, the electric services  
21 sector in Hawaii has evolved significantly. New technologies,



1 consumer preferences, and environmental and climate imperatives  
2 have emerged. For example, adoption of distributed energy  
3 resources has grown significantly, leading to a change in the  
4 fundamental role of Hawaii's ratepayers from primarily passive  
5 consumers of electricity to "prosumers" with the ability to  
6 respond to price signals in a way that lowers costs for all  
7 ratepayers. Segments of the electric sector have increasingly  
8 opened up to market competition, creating lower costs to  
9 consumers and an increased range of energy services and choices.

- 10 Also, recent statutory changes such as the State's:
- 11 (1) One hundred per cent renewable energy portfolio  
12 standard, enacted by Act 97, Session Laws of Hawaii  
13 2015;
  - 14 (2) Carbon neutrality by 2045 goal, enacted by Act 15,  
15 Session Laws of Hawaii 2018; and
  - 16 (3) Hawaii ratepayer protection act, enacted by Act 5,  
17 Session Laws of Hawaii 2018,

18 have passed during a time of an unprecedented climate change as  
19 well as movement toward full-scale transition to renewable  
20 energy in the State and across the nation. The legislature  
21 finds that these statutory changes necessitate an expanded,

1 long-term, and visionary perspective in utility regulation and  
2 consumer advocacy to advance customer and public interests in  
3 clean energy transformation and the reduced economic,  
4 environmental, and climate costs that it will provide.

5       The legislature also finds that utility regulatory practice  
6 must change from its traditional focus on auditing utility costs  
7 and rates to a new vision for aligning utility incentives with a  
8 broader, modern view of the consumer and public interests. The  
9 public utilities commission articulated this strategic vision in  
10 its landmark inclinations document in 2014, and in Act 5,  
11 Session Laws of Hawaii 2018, the legislature similarly enacted  
12 the nation's first mandate to "break the direct link" between  
13 utility investments and revenues.

14       The legislature also enacted various amendments broadening  
15 and supplementing the public utilities commission's mandate,  
16 including but not limited to the requirement that the public  
17 utilities commission "consider the need to reduce the State's  
18 reliance on fossil fuels through energy efficiency and increased  
19 renewable energy generation" and "explicitly consider . . . the  
20 effect of the State's reliance on fossil fuels on price  
21 volatility, export of funds for fuel imports, fuel supply



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1 reliability risk, and greenhouse gas emissions". The only  
2 similar amendment that has been made to the division of consumer  
3 advocacy's mandate is the addition of general language in Act  
4 132, Session Laws of Hawaii 2003, that the division of consumer  
5 advocate "consider the long-term benefits of renewable resources  
6 in the consumer advocate's role as consumer advocate".

7 The legislature finds that ensuring Hawaii's regulatory  
8 bodies and agencies are best positioned and equipped to navigate  
9 the transformation of Hawaii's energy sector is a paramount  
10 priority. It has been fifteen years since an audit has been  
11 conducted on the division of consumer advocacy, despite the  
12 concerns raised in previous audits, the changes in utility  
13 regulation and the energy sector, and the division of consumer  
14 advocacy's ongoing prominent role in the public utilities  
15 commission's clean energy proceedings.

16 Accordingly, the purpose of this Act is to require the  
17 auditor to conduct a comprehensive management audit of the  
18 division of consumer advocacy.

19 SECTION 2. (a) The state auditor shall conduct a  
20 comprehensive management audit of the department of commerce and



1 consumer affairs' division of consumer advocacy. The audit  
2 shall include but not be limited to:

- 3 (1) Any updates of the findings in previous audits,  
4 including the inherent ambiguity and conflict in the  
5 division of consumer advocacy's roles and lack of  
6 strategic vision;
- 7 (2) The actions, initiatives, and performance of the  
8 division of consumer advocacy in promoting Hawaii's  
9 clean energy goals, including the State's commitment  
10 to its one hundred per cent renewable mandate and  
11 other greenhouse gas and climate goals;
- 12 (3) The actions, initiatives, and performance of the  
13 division of consumer advocacy's statutory duty to  
14 represent, protect, and advance the interests of all  
15 consumers, including the interests of consumers who  
16 adopt clean energy resources such as distributed  
17 renewables and energy efficiency; and
- 18 (4) Any recommended improvements, including proposed  
19 legislation, to update, redefine, or realign the  
20 division of consumer advocacy's mission and





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1 organization based on the evolving needs of utility  
2 regulation as well as consumer and public interests.

3 (b) In conducting the audit, the auditor shall solicit  
4 comprehensive and, as necessary, confidential feedback from the  
5 State's clean energy stakeholder community.

6 (c) The auditor shall submit a report to the legislature  
7 of its findings and recommendations, including any proposed  
8 legislation, no later than twenty days prior to the convening of  
9 the regular session of 2020.

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

11

INTRODUCED BY:

*T. F. F.*

*R. DeChing*

JAN 17 2019



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**Report Title:**

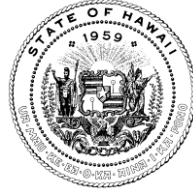
DCCA; Division of Consumer Advocacy; Auditor; Audit

**Description:**

Requires the Auditor to conduct a comprehensive management audit of the Department of Commerce and Consumer Affairs' Division of Consumer Advocacy.

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





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

**Before the  
House Committee on Consumer Protection and Commerce  
Thursday, February 7, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 78, RELATING TO THE DIVISION OF CONSUMER ADVOCACY**

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 or DCA). The Department opposes this measure.

The purpose of this bill is to require the State Auditor to conduct a comprehensive management audit of the DCA that includes, but is not limited to: any updates from previous audit findings; Division actions to promote Hawaii clean energy goals; Division actions to represent, protect, and advance the interests of all consumers, including those who adopt clean energy resources; and recommended improvements to update, redefine, or realign the Division's mission and organization based on the evolving needs of utility regulation and the interests of consumers and the public.

The DCA represents, protects, and advances the interests of consumers of utility and transportation services before regulatory agencies, primarily the Public Utilities Commission (Commission) and the Federal Communications Commission. At the heart

of the Division's mission is ensuring that Hawaii's consumers receive safe and reliable services at reasonable and just rates, while also ensuring customer and environmental protections and the use of renewable resources. To adequately represent the interests of all consumers, the Division must balance a variety of competing interests.

Respectfully, this measure seems to suggest that the DCA's recommendations may not be adequately representing customers who adopt clean energy resources, such as energy efficiency and distributed energy resources. On the contrary, the Division has consistently supported access to cost-effective clean energy resources, including energy efficiency measures and renewable energy distributed resources. The Division has also been working with the Department of Business, Economic Development, and Tourism to explore the cataloging of state land and facilities' rooftops under a reverse auction process to help reduce the development risk for independent power producers and reduce costs for renewable energy projects. In addition, in the latest Maui Electric Company rate case, the Division pursued changes to existing tariffs to allow customers who adopted energy efficiency measures to benefit from those measures sooner than if the tariff changes were not made. Due to these efforts, the utility agreed to make changes to help customers who adopted energy efficiency measures. Finally, on numerous occasions, the DCA created and expedited changes to tariffs and procedures to facilitate the adoption of renewable energy and energy efficiency by customers who could afford to pursue those technologies.

In trying to balance the interests of all customers, the Division encourages the adoption of cost-effective technologies and seeks to mitigate the subsidization of customers, such as low- and fixed-income customers, in these programs. Certain parties who have advocated for higher compensation for these programs may believe the DCA has not represented their interests well; nevertheless, as part of the migration to the clean energy industry, the Division believes it is important to advocate for cost-effective solutions that do not exacerbate the divide between the "haves" and "have-nots." Moreover, if certain interests believe that higher compensation is reasonable, these parties may seek intervention and/or participation in Commission proceedings to make their points directly to the Commission. The Commission also

allows public comments in any proceeding; as such, a party unwilling to engage in the regulatory process may raise concerns in that forum.

The DCA is continuously striving to improve its processes to best represent, protect, and advance the interests of all Hawaii consumers. The Division has considered and pursued several changes in its organizational structure to improve its operations, its ability to attract and retain employees, and to address consumer concerns relating to the regulated industries. For example, the DCA created an education specialist position to address its need to help consumers understand their competitive telecommunications options. The DCA has ongoing efforts to reorganize the division to address recruitment and workload issues and is currently requesting the Legislature's funding of additional positions. The Division welcomes suggestions that would help improve its processes. However, given the commitment of time and resources imposed upon an agency when a comprehensive management audit is conducted, the DCA's current workload, and its constrained staff resources, the proposed audit would severely impair the Division's ability to perform its duties to represent, protect, and advance the interests of consumers.

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 7, 2019  
2:00 p.m.

Chair Takumi and Members of the Committee:

**MEASURE:** H.B. No. 78

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

**DESCRIPTION:** Requires the Auditor to conduct a comprehensive management audit of the Department of Commerce and Consumer Affairs' Division of Consumer Advocacy.

**POSITION:**

The Public Utilities Commission is **opposed** to HB 78 in its current form.

**COMMENTS:**

The Public Utilities Commission ("Commission") believes this measure is unnecessary and will have the opposite effect of the purpose stated in the preamble.

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 Consumer Advocate in reviewing a wide range of utility applications and other docketed matters.

The Commission understands that the Consumer Advocate is undergoing an internal restructuring, including re-describing several positions that have been difficult to fill, and has requested an increase of its appropriation ceiling to hire additional staff. The participation of the Consumer Advocate in the review of matters before the Commission is essential to developing a sound record and assisting the Commission in making decisions that are in the public interest. Requiring an audit concurrently with restructuring will unnecessarily burden the Consumer Advocate's staff, resulting in reduced ability for

the Consumer Advocate to participate in Commission proceedings and hinder the Commission's decision-making.

The Commission respectfully recommends that rather than requiring an audit of the Consumer Advocate, 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.



**Hawaii Solar Energy Association**  
*Serving Hawaii Since 1977*

**TESTIMONY OF THE HAWAII SOLAR ENERGY ASSOCIATION  
IN REGARD TO HB 78, RELATING TO DIVISION OF CONSUMER  
ADVOCACY  
BEFORE THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
THURSDAY, FEBRUARY 7, 2018**

Chair Takumi, Vice-Chair Ichiyama, and members of the committee, my name is Will Giese and I represent the Hawaii Solar Energy Association, Inc. (HSEA)

HSEA **supports HB 78**. The measure requires the Auditor to conduct a comprehensive management audit of the Department of Commerce and Consumer Affairs' Division of Consumer Advocacy.

The HSEA was founded in 1977 to further solar energy and related arts, sciences and technologies with concern for the ecologic, social and economic fabric of the Hawaiian Islands. Our membership includes the vast majority of locally owned and operated solar installers, contractors, distributors, manufacturers, and inspectors across all islands.

As Hawaii's oldest and largest renewable energy trade group, the HSEA is extensively involved in a variety of proceedings at the public utilities commission and with the state. These proceedings include, but are not limited to, power supply improvement plan, integrated grid planning, performance based regulation, community based energy, and distributed energy resources. We have been a stakeholder intervenor on a variety of PUC proceedings for over 40 years.

Additionally, not only do we represent the majority of the solar workforce in Hawaii, but we also represent solar consumers, homeowners who utilize solar, and folks who are interested in solar technology. As a stakeholder of record for the solar industry we frequently interact with the Consumer Advocate's office on these and other proceedings. We have a unique view of the Consumer Advocate's work in these proceedings and in the development of clean energy policy in Hawaii.

As this measure points out, the CA has a perplexing "dual mandate" of 1) audit and litigation of utility accounting and ratemaking and 2) traditional consumer advocacy. An effective consumer advocate is one whose mission is entirely focused on protecting and fighting for consumers in manner that gives deference to the end use consumer of electricity, rather than to both the consumer and the producer (the utility). Because of these two mandates, the CA may be forced to conserve resources to meet one mandate over the other, limiting its capacity to do either effectively.





## **Hawaii Solar Energy Association**

*Serving Hawaii Since 1977*

A comprehensive management audit of the Consumer Advocate might reveal the limitations of this outmoded dual mandate and could empower the agency to be a “change agent” for the consumer as the preamble to this measure suggests. Other Consumer Advocates, such as the Department of Consumer Affairs in California or the Consumer Finance Protection Bureau, have a strong track record of pushing consumer interests first, rather than serving as a double accountant for the PUC.

Hawai'i's unique energy landscape requires strong agency leadership, and consumers should not only have to rely on non-profit organizations like the HSEA to fight for their interests, but also the state. This audit is necessary to refocus and galvanize the CA to act with one interest: those of the consumer.

We **support** HB78 and we urge this committee to pass this measure.

Thank you for the opportunity to testify.