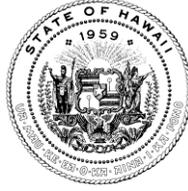


SB2649

Measure Title: RELATING TO THE PUBLIC UTILITIES COMMISSION.
Report Title: Public Utilities Commission; Adjudicatory Functions;
Sunshine Law; Open Deliberation
Description: Requires open deliberation of the adjudicatory functions of
the public utilities commission.
Companion:
Package: None
Current Referral: CPH, JDC
Introducer(s): BAKER, GABBARD, Galuteria, Kim, Nishihara, K. Rhoads



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Wednesday, February 7, 2018
10:00 A.M.

**TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE**

SENATE BILL NO. 2649 – RELATING TO PUBLIC UTILITIES COMMISSION.

DESCRIPTION:

This measure requires open deliberation of the adjudicatory functions of the Public Utilities Commission.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) offers the following comments on this bill.

COMMENTS:

The Consumer Advocate supports transparency in government in the belief that it engages the public and contributes to good decision making. The Consumer Advocate anticipates that applying Hawaii Revised Statutes (“HRS”) section 92 to the Public Utilities Commission to require open deliberation of its adjudicatory functions will necessarily entail the chapter’s requirements for notice deadlines and agendas, which may increase the Public Utilities Commission’s administrative workload and costs. Thus, the

Senate Bill No. 2649
February 7, 2018
Page 2

Consumere Advocate defers to the Commission as it relates to the quantification of the impacts of this measure if it passes.

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
February 7, 2018
10:00 a.m.

MEASURE: S.B. No. 2649

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION.

Chair Baker and Members of the Committee:

DESCRIPTION:

Requires open deliberation of the adjudicatory functions of the public utilities commission.

POSITION:

The Public Utilities Commission (“Commission”) **OPPOSES** this bill and offers the following comments for consideration.

COMMENTS:

The Commission is a quasi-judicial body that oversees more than 1,750 public utilities and other regulated businesses in the electricity, gas, telecommunications, water, wastewater, passenger and property transportation, and interisland shipping industries in Hawaii.

The Commission notes that quasi-judicial boards and commissions, with the exception of the land use commission, are exempt from the open deliberation requirements of HRS § 92. This allows quasi-judicial boards and commissions to efficiently exercise their duties under the law while allowing for a deliberative process to occur among the commissioners on the complex and technical matters subject to their jurisdiction.

During Fiscal Year 2017, the Commission issued 859 orders in 617 open dockets (on average, between 3 and 4 orders per business day). Requiring the Public Utilities Commission to hold public meetings for each of these decisions would severely impact

the operations of the Commission, resulting in substantial delays in completing the Commission's work.

Furthermore, certain proceedings before the Commission are subject to statutory timelines and deadlines for decision-making, which would be compromised by this legislation. For example, in a typical utility rate case, the Commission will issue a dozen or more decisions, including:

- Certifying the completeness of the application, after review of the comments of the Consumer Advocate
- Ruling on motions to intervene or participate
- Issuing protective orders to allow for filing of confidential information
- Establishing a schedule of proceedings
- Determining the statement of issues
- Resolving discovery or procedural disputes
- Establishing public hearing and evidentiary hearing dates
- Providing interim rate adjustments
- Ruling on tariff modifications
- Issuing a final decision

This legislation would significantly affect the Commission's ability to regulate utilities in the public interest and should be held.

Thank you for the opportunity to testify on this measure.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 7, 2018, 10:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2649
Relating to the Public Utilities Commission

Thank you for the opportunity to submit testimony on this bill, which would require the Public Utilities Commission (“PUC”) to follow the Sunshine Law, part I of chapter 92, HRS, when exercising its adjudicatory functions. The Office of Information Practices (“OIP”) believes **the question of whether to so require is ultimately a policy call** for the Legislature, and therefore **takes no position** but offers comments on this bill.

Section 92-6, HRS, sets out an exemption from the Sunshine Law for a board’s adjudicatory functions governed by contested case standards or similar statutory standards, except for the Land Use Commission, whose adjudicatory functions remain subject to the Sunshine Law. Thus, to the extent the PUC hears contested cases or otherwise has a quasi-judicial role, those proceedings would currently be exempt from the Sunshine Law. This bill would require the PUC to nonetheless follow the Sunshine Law’s requirements even when exercising an adjudicatory function, and as such would give greater clarity on the question of whether a given PUC proceeding could properly be closed to the public, since there would be no need to determine whether the proceeding was actually an adjudicatory

function exempt from the Sunshine Law. PUC proceedings would be subject to the Sunshine Law whether adjudicatory or not. OIP believes the Legislature should decide as a matter of public policy whether to require the PUC, like the Land Use Commission, to follow the Sunshine Law for its adjudicatory functions. For this reason, OIP takes no position on this bill.

Thank you for the opportunity to testify.

SB-2649

Submitted on: 2/7/2018 2:58:59 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------|---------------------|---------------------------|---------------------------|
| Javier Mendez-Alvarez | | Support | No |

Comments: