A BILL FOR AN ACT

RELATING TO THE DIVISION OF CONSUMER ADVOCACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that a comprehensive management audit is necessary to evaluate the nature and effectiveness of the role of the division of consumer advocacy ("DCA") in representing, protecting, and advancing consumer and public interests in light of evolving clean energy and climate imperatives, consumer preferences, and utility regulatory priorities.

In 1975, a management audit of the Hawaii public utilities regulation found considerable confusion in the role of the DCA (then called the public utilities division or "PUD"), where the DCA acted as both staff for the public utilities commission ("PUC"), and a representative of consumers, resulting in the DCA effectively serving "two masters".

In 1989, another management audit found ambiguities and deficiencies in the PUC's and DCA's functions and duties, and that the agencies have been passive and reactive rather than proactive in defining and carrying out their separate roles.
A subsequent comprehensive evaluation of Hawaii energy utility regulation, conducted by Freedman and Lazar in 2003, expanded on these concerns. The report observed that, unlike most other states, the DCA in Hawaii has combined two functions. The first is an audit and litigation function, which involves traditional accounting review and litigation of utility ratemaking. In other states, this function is usually performed by internal PUC staff. The second function is a true consumer advocacy role. In other states, this has historically involved advocating as an agent of change for progressive initiatives in the consumers' interests.

The 1975 audit proposed placing the audit and litigation staff under the PUC, while creating a separate consumer advocate office. The subsequent legislative amendments in 1976, however, administratively separated the PUC and the office now called the DCA, but maintained the dual roles within the DCA.

Over the years, the PUC has built up its own internal, independent staff capacity and no longer needs to rely on the DCA for staff support. Nonetheless, the DCA continues to combine its two historical functions, acting as the lead or sole
public agency party in PUC proceedings, while retaining its specific title and function focused on consumers.

In 2004, another management audit was conducted on the PUC and DCA, finding that the agencies lacked strategic plans and a vision of Hawaii's regulatory future and their role in that process. Much of the agencies' daily operational work is mired in process and individual case details.

The 2004 audit also cited the planning and organization deficiencies found in the 1975 and the 1989 audits and concluded that since the time of those audits nearly thirty and fifteen years ago, respectively, that neither agency has planned strategies to correct the deficiencies and that many of the same serious problems persist.

Further, in the fifteen years since the 2004 audit, public utilities regulation and, more broadly, the electric services sector in Hawaii has significantly evolved. New technologies, consumer preferences, and environmental and climate imperatives have emerged. For example, distributed energy resources adoption has grown significantly, leading to a change in the fundamental role of Hawaii's ratepayers from primarily passive consumers of electricity to "prosumers", with the ability to
respond to price signals in a way that lowers costs for all ratepayers. Segments of the electric sector have increasingly opened up to market competition, thus creating lower costs to consumers and an increased range of energy services and choices.

Also, recent statutory changes such as the State's one hundred per cent renewable portfolio standard (Act 97, Session Law of Hawaii 2015), the Hawaii Ratepayer Protection Act (Act 5, Session Laws of Hawaii 2018), and carbon neutrality goal by 2045 (Act 15, Session Laws of Hawaii 2018) have been passed in light of the unprecedented crisis from climate change and the full-scale transition to renewable energy underway in the State and across the nation. The legislature finds that these statutory changes necessitate an expanded long-term and visionary perspective in utility regulation, including consumer advocacy to advance customer and public interests in clean energy transformation, reduced electrical costs, and environmental and climate concerns.

The legislature further finds that utility regulatory practice must change from its traditional focus on auditing utility costs and rates to a new vision of aligning utility incentives with a broader, modern view of the consumer and
public interests. The PUC has articulated this strategic vision in its landmark Inclinations documents in 2014. Further, in Act 5, Session Laws of Hawaii 2018, the legislature similarly enacted the nation's first mandate to break the direct link between utility investments and revenues.

The legislature has also enacted various amendments broadening and supplementing the PUC's mandate including but not limited to the requirement that the PUC consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation and explicitly consider the effect of the State's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The only similar amendment that has been made to the DCA's mandate thus far is the addition of general language in Act 132, Session Laws of Hawaii 2003, that requires the DCA to consider the long-term benefits of renewable resources in its role as consumer advocate.

Ensuring Hawaii's regulatory bodies and agencies are best positioned and equipped to navigate the transformation of Hawaii's energy sector is paramount. Recent audits have been
conducted on the PUC and the State Energy Office in 2018.

However, no audit has been conducted on the DCA in fifteen years, since 2004, despite the concerns raised in previous audits, the evolutionary changes in utility regulation, and the energy sector explained above, and the DCA's ongoing prominent role in the PCU's clean energy proceedings.

SECTION 2. (a) The state auditor shall conduct a comprehensive management audit for the division of consumer advocacy. The audit shall include but not be limited to:

1. Any updates of the findings in previous audits, including the inherent ambiguity and conflict in the DCA's roles and the lack of strategic vision;
2. The actions, initiatives, and performance of the division in promoting Hawaii's clean energy goals, including the State's one hundred per cent renewable mandate and greenhouse gas and climate commitments;
3. The actions, initiatives, and performance of the division to represent, protect, and advance the interests of all consumers pursuant to existing law, including the interests of consumers who adopt clean
energy resources such as distributed renewables and
ergy efficiency; and

(4) Recommended improvements, including proposed
legislation, to update, redefine, or realign the
division's mission and organization based on the
evolving needs of utility regulation and the consumer
and public interests.

(b) In conducting the audit pursuant to this Act, the
state auditor shall solicit comprehensive and confidential
feedback, if necessary, from the stakeholder community involved
in clean energy issues in Hawaii.

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

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

INTRODUCED BY:

[Signatures]
Report Title:
Public Utilities Commission; Division of Consumer Advocacy; Management Audit; State Auditor; Report

Description:
Requires the state auditor to conduct an audit of the division of consumer advocacy and submit a report of its findings.

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