

JAN 17 2020

A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1 SECTION 1. The legislature finds that the public utilities
2 commission regulates all chartered, franchised, certificated,
3 and registered public utility companies operating in the State
4 with the purpose of balancing the interests of consumers against
5 the interests of regulated companies. Regulated companies and
6 utilities tend to have significant resources to advocate for
7 their interests before the public utilities commission, but few
8 organizations or individuals have a similar capacity to advocate
9 for the interests of consumers.

10 The legislature further finds that in many other states,
11 organized and well-funded community advocacy organizations exist
12 to ensure the interests of consumers are represented in major
13 decisions made by those states' public utilities commissions.
14 However, there are very few organizations in Hawaii dedicated to
15 advocating for the interest of consumers, and most intervenors
16 in public utilities commission proceedings tend to participate



1 to pursue their own agendas, which only sometimes overlap with
2 public interests.

3 While Hawaii's consumer advocate has a broad mission and is
4 directed to act on behalf of individual consumers, the consumer
5 advocate must also represent the interests of large industrial
6 consumers and commercial entities. This can potentially limit
7 advocacy on behalf of individual consumers when their interests
8 conflict with those of the larger entities the consumer advocate
9 also represents.

10 The legislature further finds that to encourage meaningful
11 advocacy on behalf of the interests of the public, seven states
12 currently allow intervenors to receive reimbursement for their
13 costs when they make a substantial contribution to a public
14 utilities commission proceeding that produces a clear benefit
15 for consumers.

16 The California Intervenor Compensation Program, enacted in
17 1981, has successfully encouraged advocacy on behalf of
18 consumers that resulted in reduced rate hikes by utilities.
19 This advocacy saved California consumers billions of dollars.
20 A 2013 audit found that the Intervenor Compensation Program was
21 well-managed and that, between 2008 and 2012, it had received



1 three hundred and seventy-seven claims from intervenors and
2 awarded \$25,500,000. Some of those intervenors include the
3 Utility Reform Network, Utility Consumers' Action Network,
4 Disability Rights Advocates, Aglet Consumer Alliance, The
5 Greenlining Institute, Center for Biological Diversity, Consumer
6 Federation of California, Green Power Institute, and Rancho
7 Penasquitos Concerned Citizens.

8 The purpose of this Act is to establish an intervenor
9 compensation program, based on other existing state models, that
10 compensates intervenors who make a substantial contribution to a
11 public utilities commission proceeding and that produces a
12 positive result or savings for consumers.

13 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 "PART . INTERVENOR COMPENSATION PROGRAM

17 §269- Definitions. As used in this part, unless the
18 context requires otherwise:

19 "Commission" means the public utilities commission.

20 "Compensation" means payment for all or part, as determined
21 by the commission, of reasonable advocate's fees, reasonable



1 expert witness fees, and other reasonable costs of preparation
2 for and participation in a proceeding, and includes the fees and
3 costs of obtaining an award under this section and of obtaining
4 judicial review, if any.

5 "Expert witness fees" means recorded or billed costs
6 incurred by an intervenor for an expert witness.

7 "Intervenor" means a person or organization that has been
8 admitted as an intervenor or participant in a commission
9 proceeding.

10 "Intervenor compensation special fund" means the intervenor
11 compensation special fund established in this part.

12 "Notice of intent to claim intervenor compensation" means a
13 standardized document available on the commission website.

14 "Other reasonable costs" means reasonable out-of-pocket
15 expenses directly incurred by an intervenor that are directly
16 related to the contentions or recommendations made by the
17 customer that resulted in a substantial contribution.

18 "Proceeding" means an application, complaint, or
19 investigation; rulemaking; alternative dispute resolution
20 procedures in lieu of formal proceedings as may be sponsored or



1 endorsed by the commission; or other formal proceeding before
2 the commission.

3 "Request for an award of compensation" means a standardized
4 document available on the commission website.

5 "Substantial contribution" means that, in the judgment of
6 the commission, the intervenor's presentation has substantially
7 assisted the commission in making its order or decision because
8 the order or decision has adopted in whole or in part one or
9 more factual contentions, legal contentions, or specific policy
10 or procedural recommendations presented by the intervenor.

11 "Substantial contribution" includes evidence or argument that
12 supports part of the decision, even if the commission does not
13 adopt a party's position in total.

14 **§269- Intervenor compensation program; established. (a)**

15 There is established an intervenor compensation program to
16 provide compensation for reasonable advocate's fees, reasonable
17 expert witness fees, and other reasonable costs to an intervenor
18 who makes a substantial contribution to a proceeding resulting
19 in a decision favorable to the interests of consumers. The
20 commission shall not be legally required to reimburse an
21 intervenor for any estimated or claimed expenses. The

1 commission shall undertake a detailed review of the
2 reasonableness of the actual claimed costs when it reviews an
3 intervenor compensation claim.

4 (b) The provisions of this part shall apply to all formal
5 proceedings of the commission involving electric, gas, water,
6 wastewater, and transportation, and shall be administered in a
7 manner that encourages the effective and efficient participation
8 of all groups that have a stake in the public utility regulation
9 process.

10 (c) The process for finding eligibility for intervenor
11 compensation shall be streamlined, whereby the preliminary
12 showing by an intervenor shall be of issues, budget, and costs.

13 (d) Intervenors shall be compensated for making a
14 substantial contribution to proceedings of the commission, as
15 determined by the commission in its orders and decisions.

16 (e) Intervenor compensation shall be awarded to eligible
17 intervenors in a timely manner, within a reasonable period after
18 the intervenor has made the substantial contribution to a
19 proceeding that is the basis for the compensation award.

20 (f) This part shall be administered in a manner that
21 avoids unproductive or unnecessary participation that duplicates



1 the participation of similar interests otherwise adequately
2 represented or participation that is not necessary for a fair
3 determination of the proceeding.

4 (g) Participation by an intervenor that materially
5 supplements, complements, or contributes to the presentation of
6 another party or the commission staff, may be fully eligible for
7 compensation if the participation makes a substantial
8 contribution to a commission order or decision.

9 **§269- Intervenor compensation program; awarding. (a)**

10 An intervenor who intends to seek an award for compensation
11 under this part shall, at the earliest reasonable time, file a
12 notice of intent to claim intervenor compensation with the
13 commission. The intervenor shall include within the filing a
14 statement of the nature and extent of the intervenor's planned
15 participation, an itemized estimate of the compensation that the
16 customer expects to request, including anticipated expert
17 witness fees and other reasonable costs, and a statement
18 explaining the intervenor's significant financial hardship.

19 (b) An intervenor who has made a substantial contribution
20 to a commission decision or order may file a request for an
21 award of compensation within sixty days after the decision or



1 order is issued, or within thirty days of the closing of the
2 proceeding.

3 (c) Any computer model that is the basis for any
4 intervenor compensation shall be available to, and subject to
5 verification by, the commission and parties to the hearing or
6 proceedings to the extent necessary for cross-examination or
7 rebuttal.

8 (d) The computation of compensation awarded shall take
9 into consideration the market rates paid to persons of
10 comparable training and experience who offer similar services.
11 The compensation awarded may not, in any case, exceed the
12 comparable market rate for services paid by the commission or
13 the public utility, whichever is greater, to persons of
14 comparable training and experience who are offering similar
15 services.

16 (e) The commission may audit the records and books of the
17 intervenor to the extent necessary to verify the basis for the
18 award.

19 (f) The commission shall deny any award to any intervenor
20 who attempts to delay or obstruct the orderly and timely
21 fulfillment of the commission's responsibilities.



1 (g) The commission may require public utilities to pay
2 into the intervenor compensation special fund or from the public
3 benefits fee.

4 (h) The award shall be paid out of the intervenor
5 compensation special fund.

6 **§269- Intervenor compensation special fund.** There is
7 established the intervenor compensation special fund within the
8 department of commerce and consumer affairs for administrative
9 purposes, into which shall be deposited any funds so designated
10 by the commission, and from which awards for intervenor
11 compensation under this part may be paid.

12 **§269- Rules.** The commission shall adopt rules pursuant
13 to chapter 91 as necessary to implement this part."

14 SECTION 3. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so much
16 thereof as may be necessary for fiscal year 2020-2021 for the
17 purposes of this Act.







18 The sum appropriated shall be expended by the department of
19 commerce and consumer affairs for the purposes of this Act.



1 SECTION 4. This Act shall take effect on July 1, 2020.

2

INTRODUCED BY:



S.B. NO. 2733

Report Title:

PUC; Intervenor Compensation; Appropriation

Description:

Establishes an intervenor compensation program to provide compensation to intervenors who make a substantial contribution to a Public Utilities Commission proceeding that produces a positive result or savings for consumers. Appropriates funds.

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

