

JAN 27 2021

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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 finds that ensuring Hawaii's regulatory  
15 bodies and agencies are best positioned and equipped to navigate  
16 the transformation of Hawaii's energy sector is a paramount  
17 priority. It has been fifteen years since an audit has been  
18 conducted on the division of consumer advocacy, despite the  
19 concerns raised in previous audits, the changes in utility  
20 regulation and the energy sector, and the division of consumer



1 advocacy's ongoing prominent role in the public utilities  
2 commission's clean energy proceedings.

3 Accordingly, the purpose of this Act is to require the  
4 auditor to conduct a comprehensive management audit of the  
5 division of consumer advocacy.

6 SECTION 2. (a) The state auditor shall conduct a  
7 comprehensive management audit of the department of commerce and  
8 consumer affairs' division of consumer advocacy. The audit  
9 shall include but not be limited to:

10 (1) Any updates of the findings in previous audits,  
11 including the inherent ambiguity and conflict in the  
12 division of consumer advocacy's roles and lack of  
13 strategic vision;

14 (2) The actions, initiatives, and performance of the  
15 division of consumer advocacy in promoting Hawaii's  
16 clean energy goals, including the State's commitment  
17 to its one hundred per cent renewable mandate and  
18 other greenhouse gas and climate goals;

19 (3) The actions, initiatives, and performance of the  
20 division of consumer advocacy's statutory duty to  
21 represent, protect, and advance the interests of all



# S.B. NO. 1314

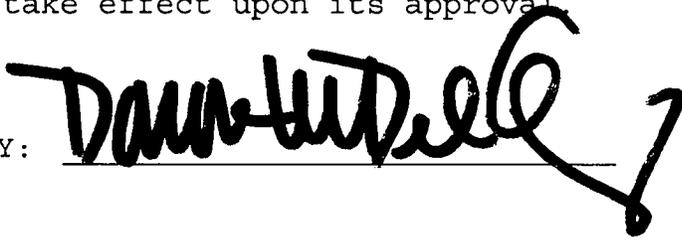
1 consumers, including the interests of consumers who  
2 adopt clean energy resources such as distributed  
3 renewables and energy efficiency; and

4 (4) Any recommended improvements, including proposed  
5 legislation, to update, redefine, or realign the  
6 division of consumer advocacy's mission and  
7 organization based on the evolving needs of utility  
8 regulation as well as consumer and public interests.

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

12 (c) The auditor shall submit a report of its findings and  
13 recommendations, including any proposed legislation, to the  
14 legislature no later than twenty days prior to the convening of  
15 the regular session of 2022.

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

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INTRODUCED BY: 

# S.B. NO. 1314

**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.

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