

JAN 19 2007

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. Hawaii's division of consumer advocacy, under
2 the department of commerce and consumer affairs, is required to
3 represent consumers in public utilities commission regulatory
4 proceedings. The division of consumer advocacy has no method to
5 determine what the consumers want and has never pooled or
6 sampled consumers. Audits in 1975, 1989, and 2003 found the
7 division of consumer advocacy to be passive rather than active,
8 getting involved with only one-fifth of the public utilities
9 commission regulatory proceedings, often at the request of the
10 public utilities commission rather than by their own initiative.
11 Often the division of consumer advocacy has been reduced to
12 representing one particular viewpoint.

13 By contrast, the public utilities commission is moving
14 aggressively to expand its staff, modernize its computer system,
15 and is exploring cutting edge technological developments in
16 telecommunications and energy. The public utilities commission
17 has opened up the regulatory process, allowing far greater



1 participation by the community, businesses, and trade
2 organizations. By allowing multiple perspectives into dockets,
3 the public utilities commission can choose the best approaches
4 to take to resolve issues.

5 The purpose of this Act is to eliminate the division of
6 consumer advocacy and make an appropriation for the hiring of
7 non-civil service employees by the public utilities commission.

8 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
9 amended by amending subsection (o) to read as follows:

10 "(o) Every person licensed under any chapter within the
11 jurisdiction of the department of commerce and consumer affairs
12 and every person licensed subject to chapter 485 shall pay upon
13 issuance of a license, permit, certificate, or registration a
14 fee and a subsequent annual fee to be determined by the director
15 and adjusted from time to time to ensure that the proceeds,
16 together with all other fines, income, and penalties collected
17 under this section, do not surpass the annual operating costs of
18 conducting compliance resolution activities required under this
19 section. The fees may be collected biennially or pursuant to
20 rules adopted under chapter 91, and shall be deposited into the
21 special fund established under this subsection. Every filing
22 pursuant to chapter 514E or section 485-6(15) shall be assessed,



1 upon initial filing and at each renewal period in which a
2 renewal is required, a fee that shall be prescribed by rules
3 adopted under chapter 91, and that shall be deposited into the
4 special fund established under this subsection. Any unpaid fee
5 shall be paid by the licensed person, upon application for
6 renewal, restoration, reactivation, or reinstatement of a
7 license, and by the person responsible for the renewal,
8 restoration, reactivation, or reinstatement of a license, upon
9 the application for renewal, restoration, reactivation, or
10 reinstatement of the license. If the fees are not paid, the
11 director may deny renewal, restoration, reactivation, or
12 reinstatement of the license. The director may establish,
13 increase, decrease, or repeal the fees when necessary pursuant
14 to rules adopted under chapter 91. The director may also
15 increase or decrease the fees pursuant to section 92-28.

16 There is created in the state treasury a special fund to be
17 known as the compliance resolution fund to be expended by the
18 director's designated representatives as provided by this
19 subsection. Notwithstanding any law to the contrary, all
20 revenues, fees, and fines collected by the department shall be
21 deposited into the compliance resolution fund. Unencumbered
22 balances existing on June 30, 1999, in the cable television fund



1 under chapter 440G, [~~the division of consumer advocacy fund~~
2 ~~under chapter 269,~~] the financial institution examiners'
3 revolving fund, section 412:2-109, the special handling fund,
4 section 414-13, and unencumbered balances existing on
5 June 30, 2002, in the insurance regulation fund, section 431:2-
6 215, shall be deposited into the compliance resolution fund.
7 This provision shall not apply to the drivers education fund
8 underwriters fee, section 431:10C-115, insurance premium taxes
9 and revenues, revenues of the workers' compensation special
10 compensation fund, section 386-151, the captive insurance
11 administrative fund, section 431:19-101.8, the insurance
12 commissioner's education and training fund, section 431:2-214,
13 the medical malpractice patients' compensation fund as
14 administered under section 5 of Act 232, Session Laws of Hawaii
15 1984, and fees collected for deposit in the office of consumer
16 protection restitution fund, section 487-14, the real estate
17 appraisers fund, section 466K-1, the real estate recovery fund,
18 section 467-16, the real estate education fund, section 467-19,
19 the contractors recovery fund, section 444-26, the contractors
20 education fund, section 444-29, and the condominium education
21 trust fund, section 514B-71. Any law to the contrary
22 notwithstanding, the director may use the moneys in the fund to



1 employ, without regard to chapter 76, hearings officers and
2 attorneys. All other employees may be employed in accordance
3 with chapter 76. Any law to the contrary notwithstanding, the
4 moneys in the fund shall be used to fund the operations of the
5 department. The moneys in the fund may be used to train
6 personnel as the director deems necessary and for any other
7 activity related to compliance resolution.

8 As used in this subsection, unless otherwise required by
9 the context, "compliance resolution" means a determination of
10 whether:

- 11 (1) Any licensee or applicant under any chapter subject to
12 the jurisdiction of the department of commerce and
13 consumer affairs has complied with that chapter;
- 14 (2) Any person subject to chapter 485 has complied with
15 that chapter;
- 16 (3) Any person submitting any filing required by chapter
17 514E or section 485-6(15) has complied with chapter
18 514E or section 485-6(15); or
- 19 (4) Any person has complied with the prohibitions against
20 unfair and deceptive acts or practices in trade or
21 commerce;



1 and includes work involved in or supporting the above functions,
2 licensing, or registration of individuals or companies regulated
3 by the department, consumer protection, and other activities of
4 the department.

5 The director shall prepare and submit an annual report to
6 the governor and the legislature on the use of the compliance
7 resolution fund. The report shall describe expenditures made
8 from the fund including non-payroll operating expenses."

9 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) No department of the State other than the attorney
12 general may employ or retain any attorney, by contract or
13 otherwise, for the purpose of representing the State or the
14 department in any litigation, rendering legal counsel to the
15 department, or drafting legal documents for the department;
16 provided that the foregoing provision shall not apply to the
17 employment or retention of attorneys:

18 (1) By the public utilities commission, the labor and
19 industrial relations appeals board, and the Hawaii
20 labor relations board;

21 (2) By any court or judicial or legislative office of the
22 State;



- 1 (3) By the legislative reference bureau;
- 2 (4) By any compilation commission that may be constituted
- 3 from time to time;
- 4 (5) By the real estate commission for any action involving
- 5 the real estate recovery fund;
- 6 (6) By the contractors license board for any action
- 7 involving the contractors recovery fund;
- 8 (7) By the trustees for any action involving the travel
- 9 agency recovery fund;
- 10 (8) By the office of Hawaiian affairs;
- 11 (9) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and 485;
- 13 (10) As grand jury counsel;
- 14 (11) By the Hawaiian home lands trust individual claims
- 15 review panel;
- 16 (12) By the Hawaii health systems corporation or any of its
- 17 facilities;
- 18 (13) By the auditor;
- 19 (14) By the office of ombudsman;
- 20 (15) By the insurance division;
- 21 (16) By the University of Hawaii;
- 22 (17) By the Kahoolawe island reserve commission;



1 ~~[(18) By the division of consumer advocacy,~~
2 ~~(19)]~~ (18) By the office of elections;
3 ~~[(20)]~~ (19) By the campaign spending commission;
4 ~~[(21)]~~ (20) By the Hawaii tourism authority, as provided in
5 section 201B-2.5; or
6 ~~[(22)]~~ (21) By a department, in the event the attorney
7 general, for reasons deemed by the attorney general
8 good and sufficient, declines, to employ or retain an
9 attorney for a department; provided that the governor
10 thereupon waives the provision of this section."

11 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) Every attorney employed by any department on a full-
14 time basis, except an attorney employed by the public utilities
15 commission, the labor and industrial relations appeals board,
16 the Hawaii labor relations board, the office of Hawaiian
17 affairs, the Hawaii health systems corporation, the department
18 of commerce and consumer affairs in prosecution of consumer
19 complaints, insurance division, ~~[the division of consumer~~
20 ~~advocacy,~~] the University of Hawaii, the Hawaii tourism
21 authority as provided in section 201B-2.5, the Hawaiian home



1 lands trust individual claims review panel, or as grand jury
2 counsel, shall be a deputy attorney general."

3 SECTION 5. Section 196-1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§196-1 Findings and declaration of necessity. The
6 legislature finds that:

7 (1) The global demand for petroleum and its derivatives
8 has caused severe economic hardships throughout the
9 State and threatens to impair the public health,
10 safety and welfare.

11 The State of Hawaii, with its total dependence on
12 imported fossil fuel, is particularly vulnerable to
13 dislocations in the global energy market. This is an
14 anomalous situation, as there are few places in the
15 world so generously endowed with natural energy:
16 geothermal, solar radiation, ocean temperature
17 differential, wind, waves, and currents--all potential
18 non-polluting power sources;

19 (2) There is a real need for strategic comprehensive
20 planning in the effort towards achieving full
21 utilization of Hawaii's energy resource programs and
22 the most effective allocation of energy resources



1 throughout the State. Planning is necessary and
2 desirable in order that the State may recognize and
3 declare the major problems and opportunities in the
4 field of energy resources. Both short-range and long-
5 range planning will permit the articulation of:

6 (A) Broad policies, goals, and objectives;

7 (B) Criteria for measuring and evaluating
8 accomplishments of objectives;

9 (C) Identification and implementation of programs
10 that will carry out such objectives; and

11 (D) A determination of requirements necessary for the
12 optimum development of Hawaii's energy resources.

13 Such planning efforts will identify present conditions
14 and major problems relating to energy resources, their
15 exploration, development, production, and
16 distribution. It will show the projected nature of
17 the situation and rate of change and present
18 conditions for the foreseeable future based on a
19 projection of current trends in the development of
20 energy resources in Hawaii;

21 (3) There are many agencies of the federal, state, and
22 county governments in Hawaii, as well as many private



1 agencies, engaged in, or expressing an interest in,
2 various aspects of the exploration, research,
3 distribution, conservation, and production of all
4 forms of energy resources in Hawaii. Some of these
5 agencies include the University of Hawaii, the
6 department of land and natural resources, the
7 department of business, economic development, and
8 tourism, [~~the division of consumer advocacy,~~] the
9 federal energy office, and various county agencies, as
10 well as the oil companies, gas stations, and other
11 private enterprises; and

- 12 (4) There is immediate need to coordinate the efforts of
13 all these agencies, establish and coordinate programs
14 to effectuate the conservation of fuel, to provide for
15 the equitable distribution thereof, and to formulate
16 plans for the development and use of alternative
17 energy sources. There is a need for such coordination
18 so that there will be maximum conservation and
19 utilization of energy resources in the State."

20 SECTION 6. Section 269-27.6, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Notwithstanding any law to the contrary, whenever a
2 public utility applies to the public utilities commission for
3 approval to place, construct, erect, or otherwise build a new
4 forty-six kilovolt or greater high-voltage electric transmission
5 system, either above or below the surface of the ground, the
6 public utilities commission shall determine whether the electric
7 transmission system shall be placed, constructed, erected, or
8 built above or below the surface of the ground; provided that in
9 its determination, the public utilities commission shall
10 consider:

- 11 (1) Whether a benefit exists that outweighs the costs of
12 placing the electric transmission system underground;
- 13 (2) Whether there is a governmental public policy
14 requiring the electric transmission system to be
15 placed, constructed, erected, or built underground,
16 and the governmental agency establishing the policy
17 commits funds for the additional costs of
18 undergrounding;
- 19 (3) Whether any governmental agency or other parties are
20 willing to pay for the additional costs of
21 undergrounding;



1 (4) The recommendation of [~~the division of consumer~~
2 ~~advocacy of~~] the department of commerce and consumer
3 affairs, which shall be based on an evaluation of the
4 factors set forth under this subsection; and

5 (5) Any other relevant factors."

6 SECTION 7. Section 269-33, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) There is established in the state treasury a public
9 utilities commission special fund to be administered by the
10 public utilities commission. The proceeds of the fund shall be
11 used by the public utilities commission [~~and the division of~~
12 ~~consumer advocacy of the department of commerce and consumer~~
13 ~~affairs~~] for all expenses incurred in the administration of
14 chapters 269, 271, 271G, 269E, and 486J; provided that the
15 expenditures of the public utilities commission shall be in
16 accordance with legislative appropriations. [~~On a quarterly~~
17 ~~basis, an amount not exceeding thirty per cent of the proceeds~~
18 ~~remaining in the fund after the deduction for central service~~
19 ~~expenses, pursuant to section 36-27, shall be allocated by the~~
20 ~~public utilities commission to the division of consumer advocacy~~
21 ~~and deposited in the compliance resolution fund established~~
22 ~~pursuant to section 26-9(e); provided that all moneys allocated~~



1 ~~by the public utilities commission from the fund to the division~~
2 ~~of consumer advocacy shall be in accordance with legislative~~
3 ~~appropriations.] "~~

4 SECTION 8. Section 269E-4, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The commission shall establish a one call center
7 advisory committee as a governmental entity as defined under
8 chapter 662D to advise the commission in implementing this
9 chapter. The committee shall consist of seventeen voting
10 members and one ex officio nonvoting member. Of the voting
11 members:

12 (1) Eleven shall be appointed by the commission to serve
13 until successors are appointed by the commission. The
14 appointments shall be as follows:

- 15 (A) One from the gas utility industry;
- 16 (B) One from the electric utility industry;
- 17 (C) One from the telecommunications utility industry;
- 18 (D) One from the pipeline operator industry;
- 19 (E) Two from the General Contractors Association of
20 Hawaii;
- 21 (F) Two from the Building Industry Association of
22 Hawaii;



- 1 (G) One from the cable service industry;
- 2 (H) One from the water utility industry; and
- 3
- 4 (I) One from the wastewater industry;
- 5
- 6 (2) One shall be the representative of the city and county
- 7 of Honolulu designated by the mayor of the city and
- 8 county of Honolulu;
- 9 (3) One shall be the representative of the county of
- 10 Hawaii designated by the mayor of the county of
- 11 Hawaii;
- 12 (4) One shall be the representative of the county of Maui
- 13 designated by the mayor of the county of Maui;
- 14 (5) One shall be the representative of the county of Kauai
- 15 designated by the mayor of the county of Kauai;
- 16 (6) One shall be the director of the state department of
- 17 transportation, or the director's representative; and
- 18 (7) One shall be the [executive] director of [~~the division~~
- 19 ~~of consumer advocacy, department of~~] commerce and
- 20 consumer affairs, or the [executive] director's
- 21 representative.

22 A representative of the center shall serve as an ex officio
23 nonvoting member of the committee."



1 SECTION 9. Part II of Chapter 269, Hawaii Revised
2 Statutes, is repealed.

3 SECTION 10. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$2,000,000, or so
5 much thereof as may be necessary for fiscal year 2007-2008 to be
6 deposited into the public utilities special fund and used for
7 the hiring of employees, to be exempt from the requirements of
8 chapter 76, Hawaii Revised Statutes, by the public utilities
9 commission.

10 SECTION 11. There is appropriated out of the public
11 utilities special fund, created under section 269-33, Hawaii
12 Revised Statutes, the sum of \$2,000,000, or so much thereof as
13 may be necessary for fiscal year 2007-2008, for the hiring of
14 employees, to be exempt from the requirements of chapter 76,
15 Hawaii Revised Statutes, by the public utilities commission.

16 The sum appropriated by this Act shall be expended by the
17 department of budget and finance for the purposes of this Act.

18 SECTION 12. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 13. This Act shall take effect on July 1, 2007;
21 provided that the amendments made in section 26-9(o) by section
22 2 of this Act shall not be affected by section 3 of Act 229,



1 Session Laws of Hawaii 2006; provided further that the
2 amendments made to section 28-8.3(a) and (c) by sections 3 and 4
3 of this Act shall not be affected by section 14 of Act 58,
4 Session Laws of Hawaii 2004, as amended by section 50 of Act 22,
5 Session Laws of Hawaii 2005, as amended by section 1 of Act 306,
6 Session Laws of Hawaii 2006; provided further that amendments
7 made to section 269-33(a) by section 6 of this Act shall not be
8 repealed by section 7 of Act 141, Session Laws of Hawaii 2004,
9 as amended by section 51 of Act 22, Session Laws of Hawaii 2005.

10

INTRODUCED BY:  **By Request**



Report Title:

Public Utilities Commission

Description:

Eliminates the department of commerce and consumer affairs' division of consumer advocacy. Appropriates funds to the public utilities commission.

