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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1           SECTION 1. Through Act 2 of the first special session of  
2 2007, the legislature created the Hawaii broadband task force to  
3 provide recommendations on how to advance Hawaii's broadband  
4 capabilities and use. The legislature finds that advanced  
5 broadband services are essential infrastructure for an  
6 innovation economy and a knowledge society in the twenty-first  
7 century. High-speed broadband services at affordable prices are  
8 essential for the advancement of education, health, public  
9 safety, research and innovation, civic participation,  
10 e-government, economic development and diversification, and  
11 public safety and services. The legislature also recognizes the  
12 evolution in the manner in which communications and information  
13 services are delivered to the consumer, including by wireline,  
14 wireless, cable television, and satellite infrastructures, and  
15 that the voice, video, and data services provided over these  
16 infrastructures are converging. In order to position Hawaii for

1 global competitiveness in the twenty-first century, this Act  
2 promotes the following goals:

3 (1) Access to broadband communications to all households,  
4 businesses, and organizations throughout the State by  
5 2012 at speeds and prices comparable to the average  
6 speeds and prices available in the top three  
7 performing countries in the world;

8 (2) Availability of advanced broadband communications  
9 service on a competitive basis to reduce prices,  
10 increase service penetration, and improve service to  
11 all persons in the State;

12 (3) Increased broadband availability at affordable costs  
13 to low income and other disadvantaged groups,  
14 including by making low-cost, broadband-capable  
15 computers available to eligible recipients;

16 (4) Increased sharing of the infrastructure used to deploy  
17 broadband in order to speed up implementation, reduce  
18 costs to providers, reduce underlying costs to  
19 providers through incentives rather than eminent  
20 domain procedures, ease deployment of broadband, and  
21 ease entry into a competitive broadband marketplace;

1 (5) Increased, flexible, timely, and responsible access to  
2 public rights-of-way and public facilities for  
3 broadband service providers; and

4 (6) A more streamlined permit approval process that  
5 reduces the time and cost of infrastructure  
6 deployment, to be created jointly by disparate  
7 permitting agencies, stakeholders, and other  
8 interested parties.

9 SECTION 2. The purpose of this Act is to establish the  
10 Hawaii broadband commissioner as an independent agency that is  
11 attached to the department of commerce and consumer affairs for  
12 administrative purposes only and require the commissioner to:

13 (1) Investigate, promote, and ensure the growth and  
14 development of broadband infrastructure within the  
15 State in accordance with the aforementioned goals;

16 (2) Champion the State's broadband, telecommunications,  
17 and video programming services interests before the  
18 federal government, including the United States  
19 Congress, the executive branch of the United States,  
20 and the Federal Communications Commission; and state  
21 and local agencies, including the governor, the state  
22 legislature, and municipal and county governments;

- 1           (3) Maintain close working relationships with community  
2           groups, civic associations, industry trade  
3           organizations, industry leaders, and other  
4           stakeholders to ensure that the State's interests and  
5           concerns are understood;
- 6           (4) Develop state policies relating to the provision of  
7           broadband communications services and interstate and  
8           international communications services and facilities  
9           serving or transiting the State of Hawaii;
- 10          (5) Facilitate the construction of shared  
11          telecommunications and broadband infrastructure and  
12          expand the introduction and capabilities of advanced  
13          broadband communications services;
- 14          (6) Consolidate the regulation of telecommunications  
15          carriers currently regulated by the public utilities  
16          commission and cable operators currently regulated by  
17          the director of commerce and consumer affairs,  
18          creating a "one stop shop" to allow businesses  
19          providing broadband, telecommunications, and video  
20          programming services to make their services more  
21          readily available to the public;

- 1 (7) Promptly examine rate regulation for
- 2 telecommunications carriers, including alternatives
- 3 such as price cap regulation; and
- 4 (8) Investigate the implementation of incentive regulation
- 5 for telecommunications carriers to increase investment
- 6 in broadband infrastructure within the State.

7 SECTION 3. The Hawaii Revised Statutes is amended by  
 8 adding a new chapter to be appropriately designated and to read  
 9 as follows:

10 **"CHAPTER**

11 **HAWAII BROADBAND COMMISSIONER**

12 **PART I. GENERAL PROVISIONS**

13 **§ -1 Definitions.** As used in this chapter, unless the  
 14 context otherwise requires:

15 "Access organization" means any nonprofit organization  
 16 designated by the commissioner to oversee the development,  
 17 operation, supervision, management, production, or broadcasting  
 18 of programs for any channels obtained under section -67, and  
 19 any officers, agents, and employees of an organization with  
 20 respect to matters within the course and scope of their  
 21 employment by the access organization.

1 "Applicant" means a person who initiates an application or  
2 proposal.

3 "Application" means an unsolicited filing.

4 "Basic cable service" means any service tier that includes  
5 the retransmission of local television broadcast signals.

6 "Broadband" means an "always on" data networking service  
7 that enables end users to access the Internet and use a variety  
8 of applications, at minimum speeds set by the commissioner.

9 "Cable franchise" means a nonexclusive initial  
10 authorization or renewal thereof issued pursuant to this  
11 chapter, whether the authorization is designated as a franchise,  
12 permit, order, contract, agreement, or otherwise, which  
13 authorizes the construction or operation of a cable system.

14 "Cable operator" means any person or group of persons who:

- 15 (1) Provides cable service over a cable system and  
16 directly or through one or more affiliates owns a  
17 significant interest in the cable system; or  
18 (2) Otherwise controls or is responsible for, through any  
19 arrangement, the management and operation of a cable  
20 system.

21 "Cable service" means:

- 1 (1) The one-way transmission to subscribers of video  
2 programming or other programming service; and  
3 (2) Subscriber interaction, if any, which is required for  
4 the selection of video programming or other  
5 programming service.

6 "Cable system" means any facility within this State  
7 consisting of a set of closed transmission paths and associated  
8 signal generation, reception, and control equipment that is  
9 designed to provide cable service which includes video  
10 programming and which is provided to multiple subscribers within  
11 a community, but does not include a facility:

- 12 (1) That serves only to retransmit the television signals  
13 of one or more television broadcast stations;  
14 (2) That serves only subscribers in one or more multiple  
15 unit dwellings under common ownership, control, or  
16 management, unless that facility or facilities uses  
17 any public right-of-way; or  
18 (3) Of a telecommunications carrier subject in whole or in  
19 part to the provisions of part II of this chapter,  
20 except to the extent that those facilities provide  
21 video programming directly to subscribers.

1 "Carrier of last resort" means a telecommunications carrier  
2 designated by the commissioner to provide universal service in a  
3 given local exchange service area determined to be lacking in  
4 effective competition.

5 "Department" means the department of commerce and consumer  
6 affairs.

7 "Designated local exchange service area" means an area as  
8 determined by the commissioner to be best served by designating  
9 a carrier of last resort pursuant to section -43.

10 "Director" means the director of commerce and consumer  
11 affairs.

12 "Facility" includes all real property, antenna, poles,  
13 supporting structures, wires, cables, conduits, amplifiers,  
14 instruments, appliances, fixtures, and other personal property  
15 used by a cable operator in providing service to its  
16 subscribers.

17 "Hawaii broadband commissioner" or "commissioner" has the  
18 same meaning as in section -2.

19 "Institution of higher education" means an academic college  
20 or university accredited by the Western Association of Schools  
21 and Colleges.



1 "Other programming service" means information that a cable  
2 operator makes available to all subscribers generally.

3 "Person" means an individual, partnership, association,  
4 joint stock company, trust, corporation, or governmental agency.

5 "Proposal" means a filing solicited by the commissioner.

6 "Public, educational, or governmental access facilities" or  
7 "PEG access facility" means:

8 (1) Channel capacity designated for public, educational,  
9 or governmental uses; and

10 (2) Facilities and equipment for the use of that channel  
11 capacity.

12 "Public, educational, or governmental access organization"  
13 or "PEG access organization" means any person or entity that  
14 provides public, educational, or governmental access services.

15 "Public place" includes any property, building, structure,  
16 or body of water to which the public has a right of access and  
17 use.

18 "School" means an academic and non-college type regular or  
19 special education institution of learning established and  
20 maintained by the department of education or licensed and  
21 supervised by that department.

1 "Service area" means the geographic area for which a cable  
2 operator has been issued a cable franchise.

3 "Telecommunications carrier" or "telecommunications common  
4 carrier" means any person that owns, operates, manages, or  
5 controls any facility used to furnish telecommunications  
6 services for profit to the public, or to classes of users as to  
7 be effectively available to the public, engaged in the provision  
8 of services, such as voice, data, image, graphics, and video  
9 services, that make use of all or part of their transmission  
10 facilities, switches, broadcast equipment, signaling, or control  
11 devices.

12 "Telecommunications service" or "telecommunications" means  
13 the offering of transmission between or among points specified  
14 by a user, of information of the user's choosing, including  
15 voice, data, image, graphics, and video without change in the  
16 form or content of the information, as sent and received, by  
17 means of electromagnetic transmission, or other similarly  
18 capable means of transmission, with or without benefit of any  
19 closed transmission medium, and does not include cable service  
20 as defined in this section.

1 "Video programming" means programming provided by, or  
2 generally considered comparable to programming provided by, a  
3 television broadcast station.

4 § -2 **Hawaii broadband commissioner.** There shall be  
5 established the Hawaii broadband commissioner as an independent  
6 agency that is attached to the department of commerce and  
7 consumer affairs for administrative purposes only. The  
8 implementation of this chapter shall be placed under the  
9 supervision and control of the Hawaii broadband commissioner,  
10 who shall be exempt from chapter 76 and shall be appointed by  
11 the governor, with the advice and consent of the senate.

12 § -3 **Deputy commissioner.** The commissioner may appoint  
13 a deputy commissioner, who shall be exempt from chapter 76. The  
14 commissioner may, at pleasure, dismiss the deputy commissioner.  
15 The deputy commissioner shall have the power to perform any act  
16 or duty assigned by the commissioner and shall be acting  
17 commissioner if, for any reason, the commissioner is unable to  
18 perform the duties of commissioner, until a new commissioner is  
19 appointed.

20 § -4 **Employment of assistants.** (a) The commissioner  
21 may appoint and employ clerks, stenographers, agents, engineers,

1 accountants, and other assistants, with or without regard to  
2 chapter 76; provided that:

3 (1) The commissioner may employ utility and cable analysts  
4 exempt from chapter 76; and

5 (2) Each analyst shall possess at least the minimum  
6 qualifications required of comparable experts in the  
7 relevant industry.

8 (b) The commissioner may appoint and, at pleasure, dismiss  
9 hearings officers as may be necessary, with or without regard to  
10 chapter 76.

11 (c) The commissioner may, with the consent of the  
12 director, utilize staff including clerks, stenographers, agents,  
13 engineers, accountants, hearings officers, and other assistants  
14 from the department, as the commissioner finds necessary for the  
15 performance of the commissioner's functions, and define their  
16 powers and duties.

17 (d) The commissioner may appoint one or more attorneys  
18 independent of the attorney general who shall act as attorney(s)  
19 for the commissioner and shall be exempt from chapter 76. The  
20 commissioner shall define their powers and duties and fix their  
21 compensation.

1 (e) With the consent of the director, the commissioner may  
2 utilize from the department, one or more attorneys independent  
3 of the attorney general who shall act as attorney(s) for the  
4 commissioner and shall be exempt from chapter 76. The  
5 commissioner shall define the powers and duties of the attorneys  
6 and fix their compensation.

7 § -5 **Terms.** The commissioner shall be appointed for a  
8 term of six years and shall not serve more than twelve  
9 consecutive years. Each commissioner shall hold office until  
10 the commissioner's successor is appointed and confirmed.  
11 Section 26-34 shall not apply insofar as it relates to the  
12 number of terms and consecutive number of years a commissioner  
13 may serve.

14 § -6 **Salary.** The salary of the commissioner shall be  
15 set equal to that of the chairperson of the public utilities  
16 commission pursuant to section 269-2.

17 § -7 **General powers and duties.** (a) The commissioner  
18 shall have the authority expressly conferred upon the  
19 commissioner by, or reasonably implied from, the provisions of  
20 this chapter.

21 (b) The commissioner shall have general supervision over  
22 all telecommunications carriers and cable operators and shall

1 perform the duties and exercise the powers imposed or conferred  
2 upon it by this chapter.

3 (c) The commissioner has the authority to adopt rules  
4 pursuant to chapter 91 necessary for the purposes of this  
5 chapter.

6 (d) The commissioner shall have general supervision over  
7 public, educational, or governmental access facilities and  
8 public, educational, or governmental access organizations.

9 § -8 **Telecommunications development duties.** (a) The  
10 commissioner shall ensure that all consumers are provided with  
11 nondiscriminatory, reasonable, and equitable access to high  
12 quality telecommunications network facilities and capabilities  
13 that provide subscribers with sufficient network capacity to  
14 access information services that provide a combination of voice,  
15 data, image, and video, and that are available at just,  
16 reasonable, and nondiscriminatory rates.

17 (b) No later than July 1, 2011, the commissioner shall  
18 study and develop a comprehensive policy to further deploy  
19 broadband communications, including internet access, in the  
20 State. The study shall include consideration of communications  
21 by wire and radio, including satellite and wireless services.

22 The commissioner shall develop plans and strategies to increase

1 broadband affordability, penetration, and competitive  
2 availability in the State. The plans may include making  
3 low-cost, broadband-capable computers available to eligible  
4 recipients. The commissioner shall regularly update and revise  
5 the commissioner's studies and findings to ensure that the  
6 State's policies and initiatives remain effective in promoting  
7 the State's interests.

8 (c) The commissioner shall develop programs and  
9 initiatives intended to facilitate the deployment of broadband  
10 communications services in the State and access to those  
11 services by users in the State. The commissioner shall fund  
12 these programs and initiatives using funds collected pursuant to  
13 section -51 and deposited in the commissioner special fund  
14 pursuant to section -20. In conjunction with the funds, or  
15 alternatively, the commissioner may seek appropriations of funds  
16 from the State.

17 (d) The commissioner shall develop, and routinely update,  
18 a state policy and formulate positions to be taken before  
19 federal agencies regarding areas outside its jurisdiction. The  
20 commissioner shall advocate on behalf of the State's broadband,  
21 telecommunications, and video programming distribution interests  
22 before the United States Congress, the executive branch of the

1 United States, and the Federal Communications Commission, and  
2 locally before the governor, the state legislature, and  
3 municipal and county governments. The commissioner shall also  
4 maintain close working relationships with community groups,  
5 civic associations, industry trade associations, industry  
6 leaders, and other stakeholders to ensure that the State's  
7 interests and concerns are understood.

8       §   -9 **Investigative powers.** (a) The commissioner shall  
9 have power to examine the condition of each telecommunications  
10 carrier, cable operator, and PEG access organization; the manner  
11 in which each telecommunications carrier, cable operator, and  
12 PEG access organization is operated with reference to the safety  
13 or accommodation of the public; the safety, working hours, and  
14 wages of employees of each telecommunications carrier, cable  
15 operator, and PEG access organization; the fares and rates  
16 charged by each telecommunications carrier, cable operator, and  
17 PEG access organization; the value of the physical property of  
18 each telecommunications carrier, cable operator, and PEG access  
19 organization; the issuance by each telecommunications carrier,  
20 cable operator, and PEG access organization of stocks and bonds,  
21 and the disposition of the proceeds thereof; the amount and  
22 disposition of income of each telecommunications carrier, cable



1 operator, and PEG access organization; and all financial  
2 transactions of each telecommunications carrier, cable operator,  
3 and PEG access organization; business relations of each  
4 telecommunications carrier, cable operator, and PEG access  
5 organization with other persons, companies, or corporations;  
6 compliance of each telecommunications carrier, cable operator,  
7 and PEG access organization with all applicable state and  
8 federal laws and with the provisions of its franchise, charter,  
9 and articles of association, if any; and classifications, rules,  
10 regulations, practices, and service, and all matters of every  
11 nature affecting the relations and transactions between each  
12 telecommunications carrier, cable operator, and PEG access  
13 organization and the public or persons or corporations.

14 (b) The commissioner may investigate any person acting in  
15 the capacity of or engaging in the business of a  
16 telecommunications carrier within the State of Hawaii without  
17 having a certificate of public convenience and necessity or  
18 other authority previously obtained under and in compliance with  
19 this chapter or the rules adopted under this chapter or chapter  
20 269.

21 (c) Any investigation may be made by the commissioner on  
22 the commissioner's own motion, and shall be made when requested

1 by the telecommunications carrier, cable operator, or PEG access  
2 organization to be investigated, or by any person upon a sworn  
3 written complaint to the commissioner, setting forth any prima  
4 facie cause of complaint.

5       §   -10   **Delegating powers.** Any power, duty, or function  
6 vested in the commissioner by this chapter may be exercised,  
7 discharged, or performed by any employee of the commissioner  
8 employed pursuant to section   -4(a),   -4(b), or   -4(d)  
9 acting in the name and by the delegated authority of the  
10 commissioner. Any power, duty, or function vested in the  
11 commissioner by this chapter may be exercised, discharged, or  
12 performed by any employee of the department utilized pursuant to  
13 section   -4(c) or   -4(e) acting in the name and by the  
14 delegated authority of the commissioner, with the approval of  
15 the director.

16       §   -11   **Annual report and register of orders.** The  
17 commissioner shall prepare and present to the governor, through  
18 the director, in the month of January in each year a report  
19 respecting the commissioner's actions during the preceding  
20 fiscal year. This report shall include summary information and  
21 analytical, comparative, and trend data concerning major  
22 regulatory issues acted upon and pending before the

1 commissioner; cases processed by the commissioner, including  
2 their dispositions; telecommunications carrier and cable  
3 operator operations, capital improvements, and rates;  
4 telecommunications carrier and cable operator performance in  
5 terms of efficiency and quality of services rendered;  
6 environmental matters having a significant impact upon  
7 telecommunications carriers and cable operators; actions of the  
8 federal government affecting the regulation of  
9 telecommunications carriers and cable operators in the State;  
10 long- and short-range plans and objectives of the commissioner;  
11 and the commissioner's recommendations respecting legislation  
12 and other matters requiring executive and legislative  
13 consideration. Copies of the annual reports shall be furnished  
14 by the governor to the legislature. In addition, the  
15 commissioner shall establish and maintain a register of all of  
16 the commissioner's orders and decisions, which shall be open and  
17 readily available for public inspection.

18 § -12 **Commissioner's investigative authorities.** In all  
19 investigations made by the commissioner, and in all proceedings  
20 before the commissioner, the commissioner shall have the same  
21 powers respecting administering of oaths, compelling the  
22 attendance of witnesses and the production of documentary

1 evidence, examining witnesses, and punishing for contempt, as  
2 are possessed by circuit courts. In case of disobedience by any  
3 person to any order of the commissioner, or any subpoena issued  
4 by the commissioner, or of the refusal of any witness to testify  
5 to any matter regarding which the witness may be questioned  
6 lawfully, any circuit court, on application by the commissioner,  
7 shall compel obedience as in case of disobedience of the  
8 requirements of a subpoena issued from a circuit court or a  
9 refusal to testify therein. No person shall be excused from  
10 testifying or from producing any book, waybill, document, paper,  
11 electronic record, or account in any investigation or inquiry by  
12 a hearing before the commissioner when ordered to do so, upon  
13 the ground that the testimony or evidence, book, waybill,  
14 document, paper, electronic record, or account required of the  
15 person may tend to incriminate the person or subject the person  
16 to penalty or forfeiture; but no person shall be prosecuted for  
17 any crime, punished for any crime, or subjected to any criminal  
18 penalty or criminal forfeiture for or on account of any act,  
19 transaction, matter, or thing concerning a matter about which  
20 the person has testified under oath or produced documentary  
21 evidence pursuant to a subpoena. Nothing herein shall be  
22 construed as in any manner giving to any telecommunications

1 carrier, cable operator, PEG access organization, or any person,  
2 immunity of any kind. The fees and traveling expenses of  
3 witnesses, when mandated to appear, shall be the same as allowed  
4 witnesses in the circuit courts and shall be paid by the State  
5 out of any appropriation available for the expenses of the  
6 commissioner.

7       **§ -13 Notices.** Whenever an investigation is undertaken  
8 and a hearing is scheduled by the commissioner, reasonable  
9 notice in writing of such fact and of the subject or subjects to  
10 be investigated shall be given to the telecommunications  
11 carrier, cable operator, PEG access organization, or the person  
12 concerned, and when based upon complaints made to the  
13 commissioner as prescribed section -9, a copy of the  
14 complaint, and a notice in writing of the date and place fixed  
15 by the commissioner for beginning the investigation, shall be  
16 served upon the telecommunications carrier, cable operator, PEG  
17 access organization, or the person concerned, or other  
18 respondent and the complainant not less than two weeks before  
19 the date designated for the hearing.

20       **§ -14 Right to be represented by counsel.** At any  
21 investigation by or proceeding before the commissioner, the  
22 telecommunications carrier, cable operator, PEG access

1 organization, or the person concerned, or other respondent or  
2 party and any complainant or permitted intervenor shall have the  
3 right to be present and represented by counsel, to present any  
4 evidence desired, and to cross-examine any witness who may be  
5 called.

6       §   -15   **Commissioner may institute proceedings to enforce**  
7 **chapter.** (a) If the commissioner is of the opinion that any  
8 telecommunications carrier, cable operator, PEG access  
9 organization, or any person is violating or neglecting to comply  
10 with any provision of this chapter or of any rule, regulation,  
11 order, or other requirement of the commissioner, or of any  
12 provisions of its certificate of public convenience and  
13 necessity, franchise, charter, contract, or articles of  
14 association, if any, or that changes, additions, extensions, or  
15 repairs are desirable in its plant or service to meet the  
16 reasonable convenience or necessity of the public, or to ensure  
17 greater safety or security, or that any rates, fares,  
18 classifications, charges, or rules are unreasonable or  
19 unreasonably discriminatory, or that in any way it is doing what  
20 it ought not to do, or not doing what it ought to do, the  
21 commissioner shall in writing inform the telecommunications  
22 carrier, cable operator, PEG access organization, or the person

1 and may institute proceedings before it as may be necessary to  
2 require the telecommunications carrier, cable operator, PEG  
3 access organization, or the person to correct any deficiency.  
4 In that event, the commissioner may by order direct the consumer  
5 advocate to appear in the proceeding, to carry out the purposes  
6 of this section. The commissioner may examine into any of the  
7 matters referred to in section -9, notwithstanding that the  
8 same may be within the jurisdiction of any court or other body;  
9 provided that this section shall not be construed as in any  
10 manner limiting or otherwise affecting the jurisdiction of any  
11 court or other body. The commissioner may also revoke or amend  
12 any provision of a certificate of public convenience and  
13 necessity, franchise, charter, or articles of association, if  
14 any, pursuant to section -31 or -68.

15 (b) In addition to any other available remedy, the  
16 commissioner or its enforcement officer may issue citations to  
17 any person acting in the capacity of or engaging in the business  
18 of a telecommunications carrier or cable operator within the  
19 State, without having a certificate of public convenience and  
20 necessity, franchise, or other authority previously obtained  
21 under and in compliance with this chapter or the rules adopted

1 thereunder. Citations issued and persons cited pursuant to this  
2 subsection shall be subject to the following:

3 (1) The citation may contain an order of abatement and an  
4 assessment of civil penalties as provided in section  
5 -23. All penalties collected under this subsection  
6 shall be deposited in the treasury of the State.  
7 Service of a citation issued under this subsection  
8 shall be made by personal service whenever possible,  
9 or by certified mail, restricted delivery, sent to the  
10 last known business or residence address of the person  
11 cited;

12 (2) Any person served with a citation under this  
13 subsection may submit a written request to the  
14 commissioner for a hearing, within twenty days from  
15 the receipt of the citation, with respect to the  
16 violations alleged, the scope of the order of  
17 abatement, and the amount of civil penalties assessed.  
18 If the person cited under this subsection timely  
19 notifies the commissioner of the request for a  
20 hearing, the commissioner shall afford an opportunity  
21 for a hearing under chapter 91. The hearing shall be



1 conducted by the commissioner or the commissioner may  
2 designate a hearings officer to hold the hearing;

- 3 (3) If the person cited under this subsection does not  
4 submit a written request to the commissioner for a  
5 hearing within twenty days from the receipt of the  
6 citation, the citation shall be deemed a final order  
7 of the commissioner. The commissioner may apply to  
8 the appropriate court for a judgment to enforce the  
9 provisions of any final order, issued by the  
10 commissioner or designated hearings officer pursuant  
11 to this subsection, including the provisions for  
12 abatement and civil penalties imposed. In any  
13 proceeding to enforce the provisions of the final  
14 order of the commissioner or designated hearings  
15 officer, the commissioner need only show that the  
16 notice was given, that a hearing was held or the time  
17 granted for requesting the hearing has run without a  
18 request, and a certified copy of the final order of  
19 the commissioner or designated hearings officer; and
- 20 (4) If any party is aggrieved by the decision of the  
21 commissioner or the designated hearings officer, the  
22 party may appeal to the intermediate appellate court,

1 in the manner provided for in chapter 602; provided  
2 that the operation of an abatement order shall not be  
3 stayed on appeal unless specifically ordered by the  
4 intermediate appellate court after applying the stay  
5 criteria enumerated in section 91-14(c). The  
6 sanctions and disposition authorized under this  
7 subsection shall be separate and in addition to all  
8 other remedies either civil or criminal provided in  
9 any other applicable statutory provision. The  
10 commissioner may adopt rules under chapter 91 as may  
11 be necessary to fully effectuate this subsection.

12 § -16 **Appeals.** An appeal from an order of the  
13 commissioner under this chapter shall lie, in the manner  
14 provided for in chapter 602. Only a person aggrieved in a  
15 contested case proceeding provided for in this chapter may  
16 appeal from a final order, or a preliminary order if it is of  
17 the nature defined by section 91-14(a). The commissioner may  
18 elect to be a party to all matters, from which an order of the  
19 commissioner is appealed or any action in any court of law  
20 seeking a mandamus, or injunctive or other relief to compel  
21 compliance with this chapter, or any rule or order adopted  
22 thereunder, or to restrain or otherwise prevent or prohibit any

1 illegal or unauthorized conduct in connection therewith, and  
2 file appropriate responsive briefs or pleadings. If there is no  
3 adverse party to the appeal, the commissioner shall be a party  
4 and shall file responsive briefs or pleadings in defending all  
5 orders. The appearance of the commissioner as a party in  
6 judicial proceedings in no way limits the participation of  
7 persons otherwise qualified to be parties on appeal. The appeal  
8 shall not of itself stay the operation of the order appealed  
9 from, but the appellate court may stay the order after a hearing  
10 upon a motion therefor and may impose conditions it deems  
11 proper, including but not limited to requiring a bond, requiring  
12 that accounts be kept, or requiring that other measures be taken  
13 as ordered to secure restitution of the excess charges, if any,  
14 made during the pendency of the appeal, in case the order  
15 appealed from is sustained, reversed, or modified in whole or in  
16 part.

17       §   -17 **Alternative dispute resolution.** The commissioner  
18 may require the parties in any matter before the commissioner to  
19 participate in nonbinding arbitration, mediation, or other  
20 alternative dispute resolution process prior to the hearing.

21       §   -18 **Perjury.** Any person who wilfully and knowingly  
22 makes under oath any false statement in connection with any

1 investigation by or proceeding before the commissioner shall be  
2 guilty of perjury and, upon conviction, shall be subject to the  
3 penalty prescribed by law for the offense.

4       **§ -19 Telecommunications carriers, cable operators, and**  
5 **PEG access organizations, to furnish information.** Every  
6 telecommunications carrier, cable operator, PEG access  
7 organization, or other person subject to investigation by the  
8 commissioner, shall at all times, upon request, furnish to the  
9 commissioner all information that the commissioner may require  
10 respecting any of the matters concerning which the commissioner  
11 is given power to investigate, and shall permit the examination  
12 of its books, records, contracts, maps, and other documents by  
13 the commissioner or any person authorized by the commissioner in  
14 writing to make the examination, and shall furnish the  
15 commissioner with a complete inventory of property under its  
16 control or management in the form as the commissioner may  
17 direct.

18       **§ -20 Commissioner special fund.** (a) There is  
19 established in the state treasury a commissioner special fund to  
20 be administered by the commissioner. The proceeds of the fund  
21 shall be used by the commissioner and the division of consumer  
22 advocacy of the department for all expenses incurred in the

1 administration of this chapter, including, without limitation,  
2 the operation of programs developed by the commissioner to  
3 promote universal availability of communications services. The  
4 expenditures of the commissioner shall be in accordance with  
5 legislative appropriations. On a quarterly basis an amount not  
6 to exceed thirty per cent of the proceeds remaining in the fund  
7 shall be allocated to the division of consumer advocacy and  
8 deposited in the compliance resolution fund established pursuant  
9 to section 26-9(o).

10 (b) All moneys appropriated to, received, and collected by  
11 the commissioner that are not otherwise pledged, obligated, or  
12 required by law to be placed in any other special fund or  
13 expended for any other purpose shall be deposited into the  
14 commissioner special fund including, but not limited to, all  
15 moneys received and collected by the commissioner pursuant to  
16 sections -23, -51, and 92-21.

17 (c) The commissioner shall submit a report to the  
18 legislature detailing all funds received and all moneys  
19 disbursed out of the fund prior to the convening of each regular  
20 session.

21 § -21 **Consumer advocate.** As the director serves as the  
22 consumer advocate to the public utilities commission pursuant to

1 sections 269-51 through 269-55, the commissioner shall recognize  
2 the director as the consumer advocate in hearings and  
3 proceedings before the commissioner.

4       §   -22   **Communications advisory committee.**  There is  
5 established the communications advisory committee.  The  
6 committee shall consist of five members appointed by the  
7 governor as provided in section 26-34.  The committee shall  
8 advise the commissioner, telecommunications carriers, and cable  
9 operators on matters within the jurisdiction of this chapter at  
10 the request of the commissioner or any telecommunications  
11 carrier or cable operator.  The members of the committee shall  
12 serve without pay but shall be entitled to reimbursement for  
13 necessary expenses, including travel expenses, while attending  
14 meetings and while in discharge of their duties.

15       §   -23   **Penalties.**  (a)  Any telecommunications carrier,  
16 cable operator, or PEG access organization violating,  
17 neglecting, or failing in any particular way to conform to or  
18 comply with this chapter or any lawful order of the  
19 commissioner, including, but not limited to the grounds  
20 specified in section       -68 for cable operators and PEG access  
21 organizations, shall be subject to a civil penalty not to exceed  
22 \$25,000 for each day the violation, neglect, or failure

1 continues, to be assessed by the commissioner after a hearing in  
2 accordance with chapter 91. The commissioner may order the  
3 telecommunications carrier or cable operator to cease carrying  
4 on its business while the violation, neglect, or failure  
5 continues.

6 (b) Notwithstanding subsection (a), any person acting in  
7 the capacity of or engaging in the business of a  
8 telecommunications carrier or a cable operator in the State  
9 without having a certificate of public convenience and  
10 necessity, franchise, or other authority previously obtained  
11 under and in compliance with this chapter and the rules adopted  
12 thereunder may be subject to a civil penalty not to exceed  
13 \$5,000 for each offense, and, in the case of a continuing  
14 violation, \$5,000 for each day that uncertified activity  
15 continues.

16 (c) Upon written application filed within fifteen days  
17 after service of an order imposing a civil penalty pursuant to  
18 this section, the commissioner may remit or mitigate the penalty  
19 upon terms as it deems proper.

20 (d) If any civil penalty imposed pursuant to this section  
21 is not paid within the period as the commissioner may direct,

1 the attorney general shall institute a civil action for recovery  
2 of the same in circuit court.

3 (e) Any penalty assessed under this section shall be in  
4 addition to any other costs, expenses, or payments for which the  
5 telecommunications carrier, cable operator, or PEG access  
6 organization is responsible under this chapter.

7 **PART II. TELECOMMUNICATIONS**

8 **§ -31 Certificates of public convenience and necessity.**

9 (a) No telecommunications carrier, as defined in section -1,  
10 shall commence its business without first having obtained from  
11 the commissioner a certificate of public convenience and  
12 necessity. Applications for certificates shall be made in  
13 writing to the commissioner and shall comply with the  
14 requirements prescribed in the commissioner's rules. The  
15 application for a certificate of public convenience and  
16 necessity shall include the type of service to be performed, the  
17 geographical scope of the operation, the type of equipment to be  
18 employed in the service, the names of competing  
19 telecommunications carriers for the proposed service, a  
20 statement of the applicant's financial ability to render the  
21 proposed service, a current financial statement of the



1 applicant, and the rates or charges proposed to be charged,  
2 including the rules governing the proposed service.

3 (b) A certificate shall be issued to any qualified  
4 applicant, authorizing the whole or any part of the operations  
5 covered by the application, if it is found that the applicant is  
6 fit, willing, and able to properly perform the proposed services  
7 and to conform to the terms, conditions, and rules adopted by  
8 the commissioner, and that the proposed service is, or will be,  
9 required by the present or future public convenience and  
10 necessity; otherwise the application shall be denied. Any  
11 certificate issued shall specify the service to be rendered and  
12 there shall be attached to the exercise of the privileges  
13 granted by the certificate at the time of issuance and from time  
14 to time thereafter, reasonable conditions and limitations as a  
15 public convenience and necessity may require. The  
16 reasonableness of the rates, charges, and tariff rules proposed  
17 by the applicant shall be determined by the commissioner during  
18 the same proceeding examining the present and future  
19 conveniences and needs of the public and qualifications of the  
20 applicant, in accordance with the standards set forth in section  
21 -38.

1 (c) No telecommunications carrier that, as of July 1,  
2 2009, holds a valid certificate of public convenience and  
3 necessity, franchise, or charter enacted or granted by the  
4 legislative or executive authority of the State or its  
5 predecessor governments, or has a bona fide operation as a  
6 telecommunications carrier recognized by the public utilities  
7 commission, shall be required to obtain, as a result of the  
8 enactment of this Act, a new certificate of public convenience  
9 and necessity under this section.

10 (d) Any certificate, upon application of the holder and at  
11 the discretion of the commissioner, may be amended, suspended,  
12 or revoked, in whole or in part. The commissioner after notice  
13 and hearing may suspend, amend, or revoke any certificate in  
14 part or in whole, if the holder is found to be in wilful  
15 violation of any of the provisions of this chapter or with any  
16 lawful order or rule of the commissioner adopted thereunder, or  
17 with any term, condition, or limitation of the certificate.

18 § -32 **Location of records.** A telecommunications carrier  
19 shall keep and maintain records, books, papers, accounts, and  
20 other documents as the commissioner may determine are necessary  
21 to effectively regulate the telecommunications carrier, that can  
22 be made immediately accessible when requested by the

1 commissioner; provided that the original copies are made  
2 available when requested by the commissioner.

3       §    **-33 Annual financial reports.** Each annual financial  
4 report required to be filed with the commissioner by  
5 telecommunications carriers shall include a certification that  
6 the report conforms with the applicable uniform system of  
7 accounts adopted by the commissioner. The commissioner shall  
8 adopt a uniform system of accounts for this purpose.

9       §    **-34 Telecommunications providers and services.** (a)  
10 Notwithstanding any provision of this chapter to the contrary,  
11 the commissioner, upon the commissioner's own motion or upon the  
12 application of any person, and upon notice and hearing, may  
13 exempt a telecommunications carrier or a telecommunications  
14 service from any or all of the provisions of this chapter,  
15 except the requirements of section       -36, upon a determination  
16 that the exemption is in the public interest. In determining  
17 whether an exemption is in the public interest, the commissioner  
18 shall consider whether the exemption promotes state policies in  
19 telecommunications, the development, maintenance, and operation  
20 of effective and economically efficient telecommunications  
21 services, and the furnishing of telecommunications services at  
22 just and reasonable rates and in a fair manner in view of the

1 needs of the various customer segments of the telecommunications  
2 industry. Among the specific factors the commissioner may  
3 consider are:

4 (1) The responsiveness of the exemption to changes in the  
5 structure and technology of the State's  
6 telecommunications industry;

7 (2) The benefits accruing to the customers and users of  
8 the exempt telecommunications carrier or service;

9 (3) The impact of the exemption on the quality,  
10 efficiency, and availability of telecommunications  
11 services;

12 (4) The impact of the exemption on the maintenance of  
13 fair, just, and reasonable rates for  
14 telecommunications services;

15 (5) The likelihood of prejudice or disadvantage to  
16 ratepayers of basic local exchange service resulting  
17 from the exemption;

18 (6) The effect of the exemption on the preservation and  
19 promotion of affordable, universal, basic  
20 telecommunications services as those services are  
21 determined by the commissioner;

- 1 (7) The resulting subsidization, if any, of the exempt  
2 telecommunications service or provider by nonexempt  
3 services;
- 4 (8) The impact of the exemption on the availability of  
5 diversity in the supply of telecommunications services  
6 throughout the State of Hawaii;
- 7 (9) The improvements in the regulatory system to be gained  
8 from the exemption, including the reduction in  
9 regulatory delays and costs;
- 10 (10) The impact of the exemption on promoting innovations  
11 in telecommunications services;
- 12 (11) The opportunity provided by the exemption for  
13 telecommunications carriers to respond to competition;
- 14 (12) The potential for the exercise of substantial market  
15 power by the exempt provider or by a provider of the  
16 exempt telecommunications service; and
- 17 (13) The impact of the exemption on the competitive  
18 availability and affordability of broadband and other  
19 advanced services to consumers.
- 20 (b) The commissioner shall expedite, where practicable,  
21 the regulatory process with respect to exemptions and shall

1 adopt guidelines under which each provider of an exempted  
2 service shall be subject to similar terms and conditions.

3 (c) The commissioner may condition or limit any exemption  
4 as the commissioner deems necessary in the public interest. The  
5 commissioner may provide a trial period for any exemption and  
6 may terminate the exemption or continue it for a period and  
7 under conditions and limitations as the commissioner deems  
8 appropriate.

9 (d) The commissioner may require a telecommunications  
10 provider to apply for a certificate of public convenience and  
11 necessity pursuant to section -31; provided that the  
12 commissioner may waive any application requirement whenever it  
13 deems the waiver to be in furtherance of the purposes of this  
14 section. The exemptions under this section may be granted in a  
15 proceeding for certification or in a separate proceeding.

16 (e) The commissioner may waive other regulatory  
17 requirements under this chapter applicable to telecommunications  
18 carriers when it determines that competition will serve the same  
19 purpose as public interest regulation.

20 (f) If any provider of an exempt telecommunications  
21 service or any exempt telecommunications carrier elects to  
22 terminate its service, it shall provide notice of this to its

1 customers, the commissioner, and every telecommunications  
2 carrier providing basic local exchange service in this State.  
3 The notice shall be in writing and given not less than six  
4 months before the intended termination date. Upon termination  
5 of service by a provider of an exempt service or by an exempt  
6 provider, the appropriate telecommunications carrier providing  
7 basic local exchange service shall ensure that all customers  
8 affected by the termination receive basic local exchange  
9 service. The commissioner, upon notice and hearing or by rule,  
10 shall determine the party or parties who shall bear the cost, if  
11 any, of access to the basic local exchange service by the  
12 customers of the terminated exempt service.

13 (g) Upon the petition of any person or upon the  
14 commissioner's own motion, the commissioner may rescind any  
15 exemption or waiver granted under this section if, after notice  
16 and hearing, the commissioner finds that the conditions  
17 prompting the granting of the exemption or waiver no longer  
18 apply, or that the exemption or waiver is no longer in the  
19 public interest, or that the telecommunications carrier has  
20 failed to comply with one or more of the conditions of the  
21 exemption or applicable statutory or regulatory requirements.

1           (h) For the purposes of this section, the commissioner,  
2 upon determination that any area of the State has less than  
3 adequate telecommunications service, shall require the existing  
4 telecommunications carrier to show cause as to why the  
5 commissioner should not authorize an alternative  
6 telecommunications carrier for that area under the terms and  
7 conditions of this section.

8           §   -35   **Application of this chapter.** This chapter shall  
9 not apply to commerce with foreign nations, or commerce with the  
10 several states of the United States, except insofar as the same  
11 may be permitted under the Constitution and laws of the United  
12 States; nor shall it apply to telecommunications carriers owned  
13 and operated by the State.

14          §   -36   **Obligations of telecommunications carriers.** In  
15 accordance with conditions and guidelines established by the  
16 commissioner to facilitate the introduction of competition into  
17 the State's telecommunications marketplace, each  
18 telecommunications carrier, upon bona fide request, shall  
19 provide services or information services, on reasonable terms  
20 and conditions, to an entity seeking to provide intrastate  
21 telecommunications, including:



- 1           (1) Interconnection to the telecommunications carrier's  
2           telecommunications facilities at any technically  
3           feasible and economically reasonable point within the  
4           telecommunications carrier's network so that the  
5           networks are fully interoperable;
- 6           (2) The current interstate tariff used as the access rate  
7           until such time that the commissioner may adopt a new  
8           intrastate local service interconnection tariff  
9           pursuant to section     -37;
- 10          (3) Nondiscriminatory and equal access to any  
11          telecommunications carrier's telecommunications  
12          facilities, functions, and the information necessary  
13          to the transmission and routing of any  
14          telecommunications service and the interoperability of  
15          both carriers' networks;
- 16          (4) Nondiscriminatory access among all telecommunications  
17          carriers, where technically feasible and economically  
18          reasonable, and where safety or the provision of  
19          existing electrical service is not at risk, to the  
20          poles, ducts, conduits, and rights-of-way owned or  
21          controlled by the telecommunications carrier, or the  
22          commissioner shall authorize access to electric

- 1 utilities' poles as provided by the joint pole  
2 agreement, tariffs, rules, orders, or Federal  
3 Communications Commission rules and regulations;
- 4 (5) Nondiscriminatory access to the network functions of  
5 the telecommunications carrier's telecommunications  
6 network, which shall be offered on an unbundled,  
7 competitively neutral, and cost-based basis;
- 8 (6) Telecommunications services and network functions  
9 without unreasonable restrictions on the resale or  
10 sharing of those services and functions; and
- 11 (7) Nondiscriminatory access of customers to the  
12 telecommunications carrier of their choice without the  
13 need to dial additional digits or access codes, where  
14 technically feasible. The commissioner shall  
15 determine the equitable distribution of costs among  
16 the authorized telecommunications carriers that will  
17 use such access and shall establish rules to ensure  
18 access.

19 Where possible, telecommunications carriers shall enter  
20 into negotiations to agree on the provision of services or  
21 information services without requiring intervention by the  
22 commissioner; provided that any agreement shall be subject to

1 review by the commissioner to ensure compliance with the  
2 requirements of this section.

3       **§ -37 Compensation agreements.** The commissioner shall  
4 ensure that telecommunications carriers are compensated on a  
5 fair basis for termination of telecommunications services on  
6 each other's networks, taking into account, among other things,  
7 reasonable and necessary costs to each telecommunications  
8 carrier of providing the services in question.  
9 Telecommunications carriers may negotiate compensation  
10 arrangements, which may include "bill and keep", mutual and  
11 equal compensation, or any other reasonable division of revenues  
12 pending tariff access rates to be set by the commissioner. Upon  
13 failure of the negotiations, the commissioner shall determine  
14 the proper methodology and amount of compensation.

15       **§ -38 Regulation of telecommunications carrier rates;**  
16 **ratemaking procedures.** (a) Notwithstanding any law to the  
17 contrary, except for the rates, fares, and charges applicable  
18 for intrastate switched and special access with respect to  
19 wholesale customers, this chapter shall not apply to the rates,  
20 fares, and charges of the telecommunications carrier, and the  
21 classifications, rules, and practices implementing such rates,  
22 fares, and charges. The telecommunications carrier shall not be

1 required to obtain approval or provide any cost support or other  
2 information to establish or otherwise modify in any manner its  
3 rates, fares, and charges or to bundle any service offerings  
4 into a single or combined pricing package. Notwithstanding the  
5 above, all rates, fares, charges, and bundled service offerings  
6 shall be filed with the public utilities commission for  
7 informational purposes only and become effective immediately  
8 upon filing, while providing for a six month transition period  
9 for incumbent local exchange carrier regulation by the public  
10 utilities commission to assist the transfer to the Hawaii  
11 broadband commissioner.

12 (b) All rates, fares, charges, classifications, schedules,  
13 rules, and practices made, charged, or observed by any  
14 telecommunications carrier or by two or more telecommunications  
15 carriers jointly for intrastate switched and special access with  
16 respect to wholesale customers, shall be just and reasonable and  
17 shall be filed with the commissioner.

18 § -39 **Cross-subsidies.** (a) The commissioner shall  
19 ensure that noncompetitive services shall not cross-subsidize  
20 competitive services. Cross-subsidization shall be deemed to  
21 have occurred:

1 (1) If any competitive service is priced below the total  
2 service long-run incremental cost of providing the  
3 service as determined by the commissioner in  
4 subsection (b); or

5 (2) If competitive services, taken as a whole, fail to  
6 cover their direct and allocated joint and common  
7 costs as determined by the commissioner.

8 (b) The commissioner shall determine the methodology and  
9 frequency with which telecommunications carriers calculate total  
10 service long-run incremental cost and fully allocated joint and  
11 common costs. The total service long-run incremental cost of a  
12 service shall include an imputation of an amount equal to the  
13 contribution that the telecommunications carrier receives from  
14 noncompetitive inputs used by alternative providers in providing  
15 the same or equivalent service.

16 § -40 **Separate affiliate audits.** The commissioner shall  
17 receive the results of joint federal and state audits required  
18 for companies to operate separate affiliates, and obtain and pay  
19 for a joint federal and state audit every two years from an  
20 independent auditor pursuant to title 47 United States Code  
21 section 272(d). The commissioner shall make the results of  
22 joint federal and state audits available for public inspection.

1           §    **-41 Unfair or deceptive acts or practices.** The  
2 commissioner shall adopt rules prohibiting unfair or deceptive  
3 acts or practices by telecommunications carriers and  
4 telecommunications service providers including resellers and  
5 aggregators of telecommunications services. Unfair or deceptive  
6 acts or practices may include unauthorized changes in subscriber  
7 carrier selections.

8           §    **-42 Lifeline telephone rates.** (a) The commissioner  
9 shall implement a program to achieve lifeline telephone rates  
10 for residential telephone users. The commissioner may achieve  
11 lifeline telephone rates by using funds collected pursuant to  
12 section     -51 and deposited in the commissioner special fund  
13 pursuant to section     -20. In conjunction with such funds, or  
14 alternatively, the commissioner may seek appropriations of funds  
15 from the State.

16           (b) For the purposes of this section, "lifeline telephone  
17 rate" means a discounted rate for residential telephone users  
18 identified as elders with limited income and the handicapped  
19 with limited income as designated by the commissioner.

20           (c) The commissioner shall require every  
21 telecommunications carrier providing local telephone service to

1 file a schedule of rates and charges providing a rate for  
2 lifeline telephone subscribers.

3 (d) Nothing in this section shall preclude the  
4 commissioner from changing any rate established pursuant to  
5 subsection (a) either specifically or pursuant to any general  
6 restructuring of all telephone rates, charges, and  
7 classifications.

8 § -43 **Carriers of last resort.** (a) The commissioner  
9 may define and designate local exchange service areas where the  
10 commissioner has determined that a single provider will be the  
11 most appropriate way to ensure service for these areas.

12 (b) The commissioner shall determine the level of service  
13 that is appropriate for each designated local exchange service  
14 area and shall invite telecommunications providers to bid for a  
15 level of service that is appropriate. The successful bidder  
16 shall be designated as the carrier of last resort for the  
17 designated local exchange service area for a period of time and  
18 upon conditions set by the commissioner. In determining the  
19 successful bidder, the commissioner shall take into  
20 consideration the level of service to be provided, the  
21 investment commitment, and the length of the agreement, in  
22 addition to the other qualifications of the bidder.

1 (c) The commissioner shall adopt rules pursuant to  
2 chapter 91 to carry out this section or adopt the rules provided  
3 in chapter 81 of the Hawaii Administrative Rules, which were in  
4 effect on July 1, 2009.

5 § -44 **Telecommunications relay services for the deaf,**  
6 **persons with hearing disabilities, and persons with speech**  
7 **disabilities.** (a) The commissioner shall implement intrastate  
8 telecommunications relay services for the deaf, persons with  
9 hearing disabilities, and persons with speech disabilities.

10 (b) The commissioner shall investigate the availability of  
11 experienced providers of quality telecommunications relay  
12 services for the deaf, persons with hearing disabilities, and  
13 persons with speech disabilities. The provision of these  
14 telecommunications relay services to be rendered on or after  
15 July 1, 1992, shall be awarded by the commissioner to the  
16 provider or providers the commissioner determines to be best  
17 qualified to provide these services. In reviewing the  
18 qualifications of the provider or providers, the commissioner  
19 shall consider the factors of cost, quality of services, and  
20 experience, and other factors as the commissioner deems  
21 appropriate.



1 (c) If the commissioner determines that the  
2 telecommunications relay service can be provided in a cost-  
3 effective manner by a service provider or service providers, the  
4 commissioner may require every intrastate telecommunications  
5 carrier to contract with the provider or providers for the  
6 provision of the telecommunications relay service under the  
7 terms established by the commissioner.

8 (d) The commissioner may establish a surcharge to collect  
9 customer contributions for telecommunications relay services  
10 required under this section.

11 (e) The commissioner may adopt rules to establish a  
12 mechanism to recover the costs of administering and providing  
13 telecommunications relay services required under this section.

14 (f) The commissioner shall require every intrastate  
15 telecommunications carrier to file a schedule of rates and  
16 charges and every provider of telecommunications relay service  
17 to maintain a separate accounting for the costs of providing  
18 telecommunications relay services for the deaf, persons with  
19 hearing disabilities, and persons with speech disabilities.

20 (g) Nothing in this section shall preclude the  
21 commissioner from changing any rate established pursuant to this  
22 section either specifically or pursuant to any general

1 restructuring of all telephone rates, charges, and  
2 classifications.

3 (h) As used in this section:

4 "Telecommunications relay services" means telephone  
5 transmission services that provide an individual who has a  
6 hearing or speech disability, the ability to engage in  
7 communication by wire or radio with a hearing individual in a  
8 manner that is functionally equivalent to the ability of an  
9 individual who does not have a hearing or speech disability to  
10 communicate using wire or radio voice communication services.

11 "Telecommunications relay services" includes services that  
12 enable two-way communication using text telephones or other  
13 non-voice terminal devices, speech-to-speech services, video  
14 relay services, and non-English relay services.

15 § -45 **Telecommunications number portability.** The  
16 commissioner shall ensure that telecommunications number  
17 portability within an exchange is available, upon request, as  
18 soon as technically feasible and economically reasonable. An  
19 impartial entity shall administer telecommunications numbering  
20 and make the numbers available on an equitable basis.

21 § -46 **Emergency telephone service; capital costs;**  
22 **ratemaking.** (a) A telecommunications carrier providing local

1 exchange telecommunications services may recover the capital  
2 cost and associated operating expenses of providing a statewide  
3 enhanced 911 emergency telephone service in the public switched  
4 telephone network, through a telephone line surcharge.

5 (b) The commissioner shall require every  
6 telecommunications carrier providing statewide enhanced 911  
7 emergency telephone service to maintain a separate accounting of  
8 the costs of providing an enhanced 911 emergency service and the  
9 revenues received from related surcharges. The commissioner  
10 shall further require that every telecommunications carrier  
11 imposing a surcharge shall identify on all customer billing  
12 statements the separate line item for enhanced 911 emergency  
13 service.

14 (c) This section shall not preclude the commissioner from  
15 changing any rate, established pursuant to this section, either  
16 specifically or pursuant to any general restructuring of all  
17 telephone rates, charges, and classifications.

18 § -47 **Issuance of securities.** A telecommunications  
19 carrier corporation may, on securing the prior approval of the  
20 commissioner, and not otherwise, issue stocks and stock  
21 certificates, bonds, notes, and other evidences of indebtedness,

1 payable at periods of more than twelve months after the date  
2 thereof, for the following purposes and no other, namely:

- 3 (1) For the acquisition of property;
- 4 (2) For the construction, completion, extension, or  
5 improvement of or addition to its facilities or  
6 service;
- 7 (3) For the discharge or lawful refunding of its  
8 obligations;
- 9 (4) For the reimbursement of moneys actually expended from  
10 income or from any other moneys in its treasury not  
11 secured by or obtained from the issue of its stocks or  
12 stock certificates, or bonds, notes, or other  
13 evidences of indebtedness; and
- 14 (5) For any of the aforesaid purposes except maintenance  
15 of service, replacements, and substitutions not  
16 constituting capital expenditure in cases where the  
17 corporation has kept its accounts for such  
18 expenditures in such manner as to enable the  
19 commissioner to ascertain the amount of moneys so  
20 expended and the purposes for which the expenditures  
21 were made, and the sources of the funds in its  
22 treasury applied to the expenditures.

1           As used in this section, "property" and "facilities", mean  
2 property and facilities used in all operations of a  
3 telecommunications carrier corporation whether or not included  
4 in its operations or rate base. A telecommunications carrier  
5 corporation may not issue securities to acquire property or to  
6 construct, complete, extend, improve, or add to its facilities  
7 or service if the commissioner determines that the proposed  
8 purpose will have a materially adverse effect on its  
9 telecommunications carrier operations.

10           All stocks and every stock certificate, bond, note, or  
11 other evidence of indebtedness of a telecommunications carrier  
12 corporation not payable within twelve months, issued without an  
13 order of the commissioner authorizing the same, then in effect,  
14 shall be void.

15           §    -48   **Issuance of voting stock; restrictions.**   (a) For  
16 the purposes of this section:

17           "Foreign corporation" means a foreign corporation as  
18 defined in section 235-1 or a corporation in which a majority of  
19 the voting stock is held by a single foreign corporation as  
20 defined in section 235-1.

1 "Nonresident alien" means a person not a citizen of the  
2 United States who is not defined as a resident alien by the  
3 United States Citizenship and Immigration Services.

4 (b) No more than twenty-five per cent of the issued and  
5 outstanding voting stock of a corporation that is organized  
6 under the laws of the State and that owns, controls, operates,  
7 or manages any plant or equipment, or any part thereof, as a  
8 telecommunications carrier within the definition set forth in  
9 section -1 shall be held, whether directly or indirectly, by  
10 any single foreign corporation or any single nonresident alien,  
11 or held by any person, unless prior written approval is obtained  
12 from the commissioner, or unless a transaction is exempt. An  
13 exempt transaction is:

- 14 (1) Any purchase or sale by an underwriter; or  
15 (2) A transaction to acquire shares of a corporation with  
16 less than one hundred shareholders and less than  
17 \$1,000,000 in assets.

18 Every assignment, transfer, contract, or agreement for  
19 assignment or transfer of any shares in violation of this  
20 section shall be void and of no effect; and no such transfer  
21 shall be made on the books of the corporation. Nothing in this

1 section shall be construed to make illegal the holding of stock  
2 lawfully held, directly or indirectly, prior to June 4, 1977.

3       §    -49   **Acquirement of stock of another telecommunications**  
4 **carrier.** No person or entity shall purchase or acquire, take or  
5 hold, any part of the capital stock of any telecommunications  
6 carrier corporation, organized or existing under or by virtue of  
7 the laws of the State, without having been first authorized to  
8 do so by the order of the commissioner. Every assignment,  
9 transfer, contract, or agreement for assignment or transfer of  
10 any stock by or through any person or corporation to any  
11 corporation or otherwise in violation of this section shall be  
12 void and of no effect; and no such transfer shall be made on the  
13 books of any telecommunications carrier. Nothing in this  
14 section shall be construed to make illegal the holding of stock  
15 lawfully acquired before July 1, 1933.

16       §    -50   **Merger and consolidation of telecommunications**  
17 **carriers.** No telecommunications carrier corporation shall sell,  
18 lease, assign, mortgage, or otherwise dispose of or encumber the  
19 whole or any part of its road, line, plant, system, or other  
20 property necessary or useful in the performance of its duties to  
21 the public, or any franchise or permit, or any right thereunder,  
22 nor by any means, directly or indirectly, merge or consolidate

1 with any other person or entity without first having secured  
2 from the commissioner an order authorizing it so to do. Every  
3 sale, lease, assignment, mortgage, disposition, encumbrance,  
4 merger, or consolidation, made other than in accordance with the  
5 order of the commissioner shall be void.

6 § -51 **Finances; regulatory fee.** (a) There shall be  
7 paid to the commissioner in the months of July and December of  
8 each year, by each telecommunications carrier subject to this  
9 chapter, a fee set by the commissioner not to exceed three-  
10 tenths of one per cent of the gross income from the  
11 telecommunications carrier's business during the preceding year,  
12 or the sum of \$30, whichever is greater. The commissioner shall  
13 set the fee amount based on its projected budget for the year to  
14 administer and enforce this chapter. This fee shall be  
15 deposited with the director of finance to the credit of the  
16 commissioner special fund created pursuant to section -20.

17 (b) Each telecommunications carrier paying a fee under  
18 subsection (a) may impose a surcharge to recover the amount paid  
19 above one-eighth of one per cent of gross income. The surcharge  
20 imposed shall not be subject to the notice, hearing, and  
21 approval requirements of this chapter; provided that the



1 surcharge may be imposed by the telecommunications carrier only  
2 after thirty days' notice to the commissioner.

3 (c) The commissioner may, in its discretion, impose  
4 additional fees on telecommunications carriers, including to  
5 facilitate deployment of broadband communications services in  
6 the State, and the fees shall be deposited with the director of  
7 finance to the credit of the commissioner special fund created  
8 pursuant to section -20.

9 § -52 **Injury to carrier property.** Any person who  
10 injures or destroys, through want of proper care, any necessary  
11 or useful facility, equipment, or property of any  
12 telecommunications carrier shall be liable to the  
13 telecommunications carrier for all damages sustained thereby.  
14 The measure of damages to the facility, equipment, or property  
15 injured or destroyed shall be the cost to repair or replace the  
16 property injured or destroyed including direct and allocated  
17 costs for labor, materials, supervision, supplies, tools, taxes,  
18 transportation, administrative and general expense, and other  
19 indirect or overhead expenses, less credit, if any, for salvage.  
20 The specifying of the measure of damages for the facility,  
21 equipment, or property shall not preclude the recovery of other  
22 damages occasioned thereby as may be authorized by law.



1 result of the enactment of this Act, a new franchise under this  
2 section.

3       §   -63   **Application or proposal for cable franchise; fee;**  
4 **certain requirements.** (a) No cable franchise shall be issued  
5 except upon written application or proposal therefor to the  
6 commissioner, accompanied by a fee set by the commissioner.

7       (b) An application for issuance of a cable franchise shall  
8 be made in a form prescribed by the commissioner. The  
9 application shall set forth the facts as required by the  
10 commissioner to determine in accordance with section   -65  
11 whether a cable franchise should be issued, including facts as  
12 to:

- 13       (1) The citizenship and character of the applicant;
- 14       (2) The financial, technical, and other qualifications of  
15       the applicant;
- 16       (3) The principals and ultimate beneficial owners of the  
17       applicant;
- 18       (4) The public interest to be served by the requested  
19       issuance of a cable franchise; and
- 20       (5) Any other matters deemed appropriate and necessary by  
21       the commissioner including, but not limited to, the  
22       proposed plans and schedule of expenditures for or in

1 support of the use of public, educational, and  
2 governmental access facilities, and the competitive  
3 availability and affordability of broadband and other  
4 advanced services to consumers.

5 (c) A proposal for issuance of a cable franchise shall be  
6 accepted for filing in accordance with section -64 only when  
7 made in response to the written request of the commissioner for  
8 the submission of proposals.

9 § -64 **Cable franchise application or proposal procedure;**  
10 **public hearing; notice.** An application or proposal for a cable  
11 franchise shall be processed as follows:

12 (1) After the application or proposal and required fee are  
13 received by the commissioner and within a time frame  
14 established by rule, the commissioner shall notify the  
15 applicant in writing of the acceptance or  
16 non-acceptance for filing of the application or  
17 proposal for issuance of a cable franchise required by  
18 this chapter;

19 (2) After the issuance of a notice of acceptance for  
20 filing and within a time frame established by rule,  
21 the commissioner shall hold a public hearing on the  
22 application or proposal to afford interested persons

1 the opportunity to submit data, views, or arguments,  
2 orally or in writing. Notice thereof shall be given  
3 to the governing council and mayor of the county and  
4 to any telephone or other utility and cable company in  
5 the county in which the proposed service area is  
6 located. The commissioner shall also give public  
7 notice of the application and hearing at least once in  
8 each of two successive weeks in the county in which  
9 the proposed service area is located. The last notice  
10 shall be given at least fifteen days prior to the date  
11 of the hearing;

- 12 (3) After holding a public hearing, the commissioner shall  
13 approve the application or proposal in whole or in  
14 part, with or without conditions or modifications, or  
15 shall deny the application or proposal, with reasons  
16 for denial sent in writing to the applicant. If the  
17 commissioner does not take final action after the  
18 issuance of a notice of acceptance for filing and  
19 within a time frame established by rule, the  
20 application or proposal shall be deemed denied; and
- 21 (4) The time limit for final action may be extended, on  
22 the commissioner's approval of the applicant's request

1           and justification in writing for an extension of time  
2           to the commissioner at least two weeks in advance of  
3           the requested effective date of the extension, or by  
4           mutual agreement.

5           §   -65   **Issuance of cable franchise authority; criteria;**

6   **content.**   (a)   The commissioner is empowered to issue a cable  
7   franchise to construct or operate facilities for a cable system  
8   upon the terms and conditions provided in this chapter.

9           (b)   The commissioner, after a public hearing as provided  
10   in this chapter, shall issue a cable franchise to the applicant  
11   when the commissioner is convinced that it is in the public  
12   interest to do so.   In determining whether a cable franchise  
13   shall be issued, the commissioner shall take into consideration,  
14   among other things, the content of the application or proposal,  
15   the public need for the proposed service, the ability of the  
16   applicant to offer safe, adequate, and reliable service at a  
17   reasonable cost to the subscribers, the suitability of the  
18   applicant, the financial responsibility of the applicant, the  
19   technical and operational ability of the applicant to perform  
20   efficiently the service for which authority is requested, any  
21   objections arising from the public hearing, the communications  
22   advisory committee established by this chapter, or elsewhere,

1 and any other matters as the commissioner deems appropriate in  
2 the circumstances.

3 (c) In determining the area that is to be serviced by the  
4 applicant, the commissioner shall take into account the  
5 geography and topography of the proposed service area, and the  
6 present, planned, and potential expansion in facilities or cable  
7 services of the applicant's proposed cable system and existing  
8 cable systems.

9 (d) In issuing a cable franchise under this chapter, the  
10 commissioner is not restricted to approving or disapproving the  
11 application or proposal but may issue it for only partial  
12 exercise of the privilege sought or may attach to the exercise  
13 of the right granted by the cable franchise terms, limitations,  
14 and conditions which the commissioner deems the public interest  
15 may require. The cable franchise shall be nonexclusive, shall  
16 include a description of the service area in which the cable  
17 system is to be constructed, extended, or operated and the  
18 approximate date on which the service is to commence and shall  
19 authorize the cable operator to provide service for a term of  
20 fifteen years or any other term that the commissioner determines  
21 to be appropriate.

1           §    -66   **Requirement for adequate service; terms and**  
2   **conditions of service.**   (a)   Every cable operator shall provide  
3   safe, adequate, and reliable service in accordance with  
4   applicable laws, rules, franchise requirements, and its filed  
5   schedule of terms and conditions of service.

6           (b)   The commissioner shall require each cable operator to  
7   submit a schedule of all terms and conditions of service in the  
8   form and with the notice that the commissioner may prescribe.

9           (c)   The commissioner shall ensure that the terms and  
10   conditions upon which cable service is provided are fair both to  
11   the public and to the cable operator, taking into account the  
12   geographic, topographic, and economic characteristics of the  
13   service area and the economics of providing cable service to  
14   subscribers in the service area.

15          §    -67   **Cable system installation, construction,**  
16   **operation, removal; general provisions.**   (a)   A cable franchise  
17   shall be construed to authorize the construction or operation of  
18   a cable system within the service area above, below, on, in, or  
19   along any highway or other public place and through easements  
20   that have been dedicated for compatible purposes.



1 (b) The technical specifications, general routes of the  
2 distribution system, and the schedule for construction of the  
3 cable system shall be subject to the commissioner's approval.

4 (c) In installing, operating, and maintaining facilities,  
5 the cable operator shall avoid all unnecessary damage and injury  
6 to any trees, structures, and improvements in and along the  
7 routes authorized by the commissioner.

8 (d) The cable operator shall indemnify and hold the State  
9 and the county harmless at all times from any and all claims for  
10 injury and damage to persons or property, both real and  
11 personal, caused by the installation, operation, or maintenance  
12 of its cable system, notwithstanding any negligence on the part  
13 of the State or county, or their employees or agents. Upon  
14 receipt of notice in writing from the State or county, the cable  
15 operator shall, at its own expense, defend any action or  
16 proceeding against the State or county in which it is claimed  
17 that personal injury or property damage was caused by activities  
18 of the cable operator in the installation, operation, or  
19 maintenance of its cable system.

20 (e) The cable operator shall install and provide basic  
21 cable television service at no cost to any school or institution  
22 of higher education within its service area as determined by the

1 commissioner; provided that service is actually being delivered  
2 within a reasonable distance from the school or institution of  
3 higher education which may request service.

4 (f) The cable operator shall designate five or more  
5 channels for public, educational, or governmental use, and this  
6 designation shall be re-evaluated every other year based on  
7 input solicited from the public, PEG access organizations, and  
8 cable franchise holders on how best to configure public,  
9 educational, or governmental capacity in order to maximize the  
10 achievement of the objectives of public, educational, and  
11 government access in a changing environment.

12 The Hawaii broadband commissioner shall have the authority  
13 to designate the PEG access organization consistent with  
14 administrative rules that shall be adopted by the commissioner.  
15 These administrative rules shall be adopted with input from the  
16 public and with recognition of the First Amendment rights of  
17 individuals who utilize these PEG access services. Board of  
18 director positions on these PEG access organizations will be  
19 managed by each designated PEG access organization, including  
20 but not limited to the selection of directors, length of terms,  
21 and number of directors.

1 PEG assets include, but are not limited to equipment,  
2 facilities, cash, financial assets and instruments, land, and  
3 buildings. These assets will be available to the PEG access  
4 organization designated by the Hawaii broadband commissioner to  
5 provide PEG services in a particular service area. If the  
6 contract between Hawaii broadband commissioner and a PEG access  
7 organization is terminated or cancelled, these PEG assets will  
8 be held in trust for the benefit of PEG services until a new PEG  
9 access organization is designated by the Hawaii broadband  
10 commissioner.

11 (g) Upon termination of the period of the cable franchise  
12 or permit or of any renewal thereof, by passage of time or  
13 otherwise, the cable operator shall remove its facilities from  
14 the highways and other public places in, on, over, under, or  
15 along which they are installed if so ordered by the commissioner  
16 and shall restore the areas to their original or other  
17 acceptable condition, or otherwise dispose of same. If removal  
18 is not completed within six months of the termination, any  
19 property not removed shall be deemed to have been abandoned and  
20 the cable operator shall be liable for the cost of its removal.

21 (h) The use of public highways within the meaning of  
22 section 264-1 and other public places shall be subject to:

- 1           (1) All applicable state statutes and all applicable rules  
2           and orders of the public utilities commission and the  
3           commissioner governing the construction, maintenance,  
4           and removal of overhead and underground facilities of  
5           public utilities;
- 6           (2) For county highways, all applicable public welfare  
7           rules adopted by the governing body of the county in  
8           which the county highways are situated;
- 9           (3) For state or federal-aid highways, all public welfare  
10          rules adopted by the director of transportation; and
- 11          (4) For the relocation of cable facilities, the provisions  
12          of section 264-33 concerning the allocation of  
13          expenses for the relocation of utility facilities.
- 14          (i) In the use of easements dedicated to compatible  
15 purposes, the cable operator shall ensure:
- 16          (1) That the safety, functioning, and appearance of the  
17          property and the convenience and safety of other  
18          persons are not adversely affected by the installation  
19          or construction of facilities necessary for a cable  
20          system;
- 21          (2) That the cost of the installation, construction,  
22          operation, or removal of facilities is borne by the

1 cable operator or subscribers, or a combination of  
2 both; and

3 (3) That the owner of the property is justly compensated  
4 by the cable operator for any damages caused by the  
5 installation, construction, operation, or removal of  
6 facilities by the cable operator.

7 § -68 **Complaints; violations; revocation, alteration, or**  
8 **suspension of cable franchise.** (a) Subscriber complaints  
9 regarding the operation of a cable system may be made orally or  
10 in writing to the commissioner. The commissioner shall resolve  
11 complaints informally when possible.

12 (b) Any cable franchise issued hereunder after hearing in  
13 accordance with chapter 91 may be revoked, altered, or suspended  
14 by the commissioner as the commissioner deems necessary on any  
15 of the following grounds:

16 (1) For making material false or misleading statements in,  
17 or for material omissions from, any application or  
18 proposal or other filing made with the commissioner;

19 (2) For failure to maintain signal quality under the  
20 standards prescribed by the commissioner;

- 1 (3) For any sale, lease, assignment, or other transfer of  
2 its cable franchise without consent of the  
3 commissioner;
- 4 (4) Except when commercially impracticable, for  
5 unreasonable delay in construction or operation or for  
6 unreasonable withholding of the extension of cable  
7 service to any person in a service area;
- 8 (5) For violation of the terms of its cable franchise;
- 9 (6) For failure to comply with this chapter or any rules  
10 or orders prescribed by the commissioner;
- 11 (7) For violation of its filed schedule of terms and  
12 conditions of service; and
- 13 (8) For engaging in any unfair or deceptive act or  
14 practice as prohibited by section 480-2.

15 § -69 **Renewal of cable franchise.** Any cable franchise  
16 issued pursuant to this chapter may be renewed by the  
17 commissioner upon approval of a cable operator's application or  
18 proposal therefor. The form of the application or proposal  
19 shall be prescribed by the commissioner. The periods of renewal  
20 shall be not less than five nor more than fifteen years each.  
21 The commissioner shall require of the applicant full disclosure,  
22 including the proposed plans and schedule of expenditures for or

1 in support of the use of public, educational, or governmental  
2 access facilities and broadband facilities.

3       §    -70   **Transfer of cable franchise.**   (a) No cable  
4 franchise, including the rights, privileges, and obligations  
5 thereof, may be assigned, sold, leased, encumbered, or otherwise  
6 transferred, voluntarily or involuntarily, directly or  
7 indirectly, including by transfer of control of any cable  
8 system, whether by change in ownership or otherwise, except upon  
9 written application to and approval by the commissioner. The  
10 form of the application shall be prescribed by the commissioner.

11       (b) Sections   -64 and   -65 shall apply to the transfer  
12 of cable franchises.

13       §    -71   **Rate, filed with the commissioner; approval.**   (a)  
14 The commissioner shall require each cable operator to file a  
15 schedule of its rates of service on a form and with the notice  
16 that the commissioner may prescribe.

17       (b) To the extent permitted by federal law, the  
18 commissioner shall regulate rates to ensure that they are fair  
19 both to the public and to the cable operator.

20       §    -72   **Reports.** Each cable operator shall file with the  
21 commissioner reports of its financial, technical, and  
22 operational condition and its ownership. The reports shall be

1 made in a form and on the time schedule prescribed by the  
2 commissioner and shall be kept on file open to the public.

3       §    **-73 Annual fees.** (a) Each cable operator shall pay  
4 an annual fee to be determined by the commissioner. The fees so  
5 collected under this section shall be deposited into the  
6 commissioner special fund established under section    -20.

7       (b) The commissioner shall adjust the fees assessed under  
8 this section, as necessary from time to time, pursuant to rules  
9 adopted in accordance with chapter 91.

10       §    **-74 Criminal and civil liability.** Nothing in this  
11 chapter shall be deemed to affect the criminal and civil  
12 liability of cable programmers, cable operators, or public,  
13 educational, or governmental access organizations pursuant to  
14 the federal, state, or local laws regarding libel, slander,  
15 obscenity, incitement, invasions of privacy, false or misleading  
16 advertising, or other similar laws, except that no public,  
17 educational, or governmental access organization shall incur any  
18 liability arising from, based on, or related to any program not  
19 created by the public, educational, or governmental access  
20 organization, which is broadcast on any channel obtained under  
21 section    -65, or under similar arrangements."



1 SECTION 4. Section 26-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (o) to read as follows:

3 "(o) Every person licensed under any chapter within the  
4 jurisdiction of the department of commerce and consumer affairs  
5 and every person licensed subject to chapter 485A or registered  
6 under chapter 467B shall pay upon issuance of a license, permit,  
7 certificate, or registration a fee and a subsequent annual fee  
8 to be determined by the director and adjusted from time to time  
9 to ensure that the proceeds, together with all other fines,  
10 income, and penalties collected under this section, do not  
11 surpass the annual operating costs of conducting compliance  
12 resolution activities required under this section. The fees may  
13 be collected biennially or pursuant to rules adopted under  
14 chapter 91, and shall be deposited into the special fund  
15 established under this subsection. Every filing pursuant to  
16 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
17 initial filing and at each renewal period in which a renewal is  
18 required, a fee that shall be prescribed by rules adopted under  
19 chapter 91, and that shall be deposited into the special fund  
20 established under this subsection. Any unpaid fee shall be paid  
21 by the licensed person, upon application for renewal,  
22 restoration, reactivation, or reinstatement of a license, and by

1 the person responsible for the renewal, restoration,  
2 reactivation, or reinstatement of a license, upon the  
3 application for renewal, restoration, reactivation, or  
4 reinstatement of the license. If the fees are not paid, the  
5 director may deny renewal, restoration, reactivation, or  
6 reinstatement of the license. The director may establish,  
7 increase, decrease, or repeal the fees when necessary pursuant  
8 to rules adopted under chapter 91. The director may also  
9 increase or decrease the fees pursuant to section 92-28.

10 There is created in the state treasury a special fund to be  
11 known as the compliance resolution fund to be expended by the  
12 director's designated representatives as provided by this  
13 subsection. Notwithstanding any law to the contrary, all  
14 revenues, fees, and fines collected by the department shall be  
15 deposited into the compliance resolution fund. Unencumbered  
16 balances existing on June 30, 1999, in the cable television fund  
17 under chapter 440G, the division of consumer advocacy fund under  
18 chapter 269, the financial institution examiners' revolving  
19 fund, section 412:2-109, the special handling fund, section  
20 414-13, and unencumbered balances existing on June 30, 2002, in  
21 the insurance regulation fund, section 431:2-215, shall be  
22 deposited into the compliance resolution fund. This provision

1 shall not apply to any fee imposed by the Hawaii broadband  
2 commissioner pursuant to chapter \_\_\_\_\_, including the regulatory  
3 fee in section \_\_\_\_\_-51, the drivers education fund underwriters  
4 fee, section 431:10C-115, insurance premium taxes and revenues,  
5 revenues of the workers' compensation special compensation fund,  
6 section 386-151, the captive insurance administrative fund,  
7 section 431:19-101.8, the insurance commissioner's education and  
8 training fund, section 431:2-214, the medical malpractice  
9 patients' compensation fund as administered under section 5 of  
10 Act 232, Session Laws of Hawaii 1984, and fees collected for  
11 deposit in the office of consumer protection restitution fund,  
12 section 487-14, the real estate appraisers fund, section 466K-1,  
13 the real estate recovery fund, section 467-16, the real estate  
14 education fund, section 467-19, the contractors recovery fund,  
15 section 444-26, the contractors education fund, section 444-29,  
16 the condominium management education fund, section 514A-131, and  
17 the condominium education trust fund, section 514B-71. Any law  
18 to the contrary notwithstanding, the director may use the moneys  
19 in the fund to employ, without regard to chapter 76, hearings  
20 officers and attorneys. All other employees may be employed in  
21 accordance with chapter 76. Any law to the contrary  
22 notwithstanding, the moneys in the fund shall be used to fund

1 the operations of the department. The moneys in the fund may be  
2 used to train personnel as the director deems necessary and for  
3 any other activity related to compliance resolution.

4 As used in this subsection, unless otherwise required by  
5 the context, "compliance resolution" means a determination of  
6 whether:

- 7 (1) Any licensee or applicant under any chapter subject to  
8 the jurisdiction of the department of commerce and  
9 consumer affairs has complied with that chapter;
- 10 (2) Any person subject to chapter 485A has complied with  
11 that chapter;
- 12 (3) Any person submitting any filing required by chapter  
13 514E or section 485A-202(a)(26) has complied with  
14 chapter 514E or section 485A-202(a)(26);
- 15 (4) Any person has complied with the prohibitions against  
16 unfair and deceptive acts or practices in trade or  
17 commerce; or
- 18 (5) Any person subject to chapter 467B has complied with  
19 that chapter;

20 and includes work involved in or supporting the above functions,  
21 licensing, or registration of individuals or companies regulated

1 by the department, consumer protection, and other activities of  
2 the department.

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

7 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsection (a) to read:

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

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

20 (2) By any court or judicial or legislative office of the  
21 State; provided that if the attorney general is  
22 requested to provide representation to a court or

- 1           judicial office by the chief justice or the chief  
2           justice's designee, or to a legislative office by the  
3           speaker of the house of representatives and the  
4           president of the senate jointly, and the attorney  
5           general declines to provide such representation on the  
6           grounds of conflict of interest, the attorney general  
7           shall retain an attorney for the court, judicial, or  
8           legislative office, subject to approval by the court,  
9           judicial, or legislative office;
- 10          (3) By the legislative reference bureau;
- 11          (4) By any compilation commission that may be constituted  
12             from time to time;
- 13          (5) By the real estate commission for any action involving  
14             the real estate recovery fund;
- 15          (6) By the contractors license board for any action  
16             involving the contractors recovery fund;
- 17          (7) By the trustees for any action involving the travel  
18             agency recovery fund;
- 19          (8) By the office of Hawaiian affairs;
- 20          (9) By the department of commerce and consumer affairs for  
21             the enforcement of violations of chapters 480 and  
22             485A;

- 1 (10) As grand jury counsel;
- 2 (11) By the Hawaiian home lands trust individual claims  
3 review panel;
- 4 (12) By the Hawaii health systems corporation, or its  
5 regional system boards, or any of their facilities;
- 6 (13) By the auditor;
- 7 (14) By the office of ombudsman;
- 8 (15) By the insurance division;
- 9 (16) By the University of Hawaii;
- 10 (17) By the Kahoolawe island reserve commission;
- 11 (18) By the division of consumer advocacy;
- 12 (19) By the office of elections;
- 13 (20) By the campaign spending commission;
- 14 (21) By the Hawaii tourism authority, as provided in  
15 section 201B-2.5; [~~or~~]
- 16 (22) By the Hawaii broadband commissioner; or
- 17 [~~(22)~~] (23) By a department, in the event the attorney  
18 general, for reasons deemed by the attorney general  
19 good and sufficient, declines to employ or retain an  
20 attorney for a department; provided that the governor  
21 thereupon waives the provision of this section."

22 2. By amending subsection (c) to read:

1           "(c) Every attorney employed by any department on a  
2 full-time basis, except an attorney employed by the public  
3 utilities commission, the Hawaii broadband commissioner, the  
4 labor and industrial relations appeals board, the Hawaii labor  
5 relations board, the office of Hawaiian affairs, the Hawaii  
6 health systems corporation or its regional system boards, the  
7 department of commerce and consumer affairs in prosecution of  
8 consumer complaints, insurance division, the division of  
9 consumer advocacy, the University of Hawaii, the Hawaii tourism  
10 authority as provided in section 201B-2.5, the Hawaiian home  
11 lands trust individual claims review panel, or as grand jury  
12 counsel, shall be a deputy attorney general."

13           SECTION 6. Section 46-15, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15           "(a) The mayor of each county, after holding a public  
16 hearing on the matter and receiving the approval of the  
17 respective council, shall be empowered to designate areas of  
18 land for experimental and demonstration housing projects, the  
19 purposes of which are to research and develop ideas that would  
20 reduce the cost of housing in the State. Except as hereinafter  
21 provided, the experimental and demonstration housing projects  
22 shall be exempt from all statutes, ordinances, charter



1 provisions, and rules or regulations of any governmental agency  
2 or public utility relating to planning, zoning, construction  
3 standards for subdivisions, development and improvement of land,  
4 and the construction and sale of homes thereon; provided that  
5 the experimental and demonstration housing projects shall not  
6 affect the safety standards or tariffs approved by the public  
7 utility commissions or the Hawaii broadband commissioner for  
8 such public utility.

9       The mayor of each county with the approval of the  
10 respective council may designate a county agency or official who  
11 shall have the power to review all plans and specifications for  
12 the subdivisions, development and improvement of the land  
13 involved, and the construction and sale of homes thereon. The  
14 county agency or official shall have the power to approve or  
15 disapprove or to make modifications to all or any portion of the  
16 plans and specifications.

17       The county agency or official shall submit preliminary  
18 plans and specifications to the legislative body of the  
19 respective county for its approval or disapproval. The final  
20 plans and specifications for the project shall be deemed  
21 approved by the legislative body if the final plans and  
22 specifications do not substantially deviate from the approved

1 preliminary plans and specifications. The final plans and  
2 specifications shall constitute the standards for the particular  
3 project.

4 No action shall be prosecuted or maintained against any  
5 county, its officials or employees, on account of actions taken  
6 in reviewing, approving, or disapproving such plans and  
7 specifications.

8 Any experimental or demonstration housing project for the  
9 purposes hereinabove mentioned may be sponsored by any state or  
10 county agency or any person as defined in section 1-19.

11 The county agency or official shall apply to the state land  
12 use commission for an appropriate land use district  
13 classification change, except where a proposed project is  
14 located on land within an urban district established by the  
15 state land use commission. Notwithstanding any law, rule, or  
16 regulation to the contrary, the state land use commission may  
17 approve the application at any time after a public hearing held  
18 in the county where the land is located upon notice of the time  
19 and place of the hearing being published in the same manner as  
20 the notice required for a public hearing by the planning  
21 commission of the appropriate county."

1 SECTION 7. Section 91-13.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (f) to read as follows:

3 "(f) This section shall not apply to:

4 (1) Any proceedings of the public utilities commission;

5 [~~or~~]

6 (2) Any county or county agency that is exempted by county  
7 ordinance from this section[~~or~~]; or

8 (3) Any proceedings of the Hawaii broadband commissioner."

9 SECTION 8. Section 92-21, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§92-21 Copies of records; other costs and fees.** Except  
12 as otherwise provided by law, a copy of any government record,  
13 including any map, plan, diagram, photograph, photostat, or  
14 geographic information system digital data file, which is open  
15 to the inspection of the public, shall be furnished to any  
16 person applying for the same by the public officer having charge  
17 or control thereof upon the payment of the reasonable cost of  
18 reproducing [~~such~~] the copy. Except as provided in section  
19 91-2.5, the cost of reproducing any government record, except  
20 geographic information system digital data, shall not be less  
21 than 5 cents per page, sheet, or fraction thereof. The cost of  
22 reproducing geographic information system digital data shall be

1 in accordance with rules adopted by the agency having charge or  
2 control of that data. [~~Such~~] The reproduction cost shall  
3 include but shall not be limited to labor cost for search and  
4 actual time for reproducing, material cost, including  
5 electricity cost, equipment cost, including rental cost, cost  
6 for certification, and other related costs. All fees shall be  
7 paid in by the public officer receiving or collecting the same  
8 to the state director of finance, the county director of  
9 finance, or to the agency or department by which the officer is  
10 employed, as government realizations; provided that fees  
11 collected by the public utilities commission pursuant to this  
12 section shall be deposited in the public utilities commission  
13 special fund established under section 269-33[~~7~~], and fees  
14 collected by the Hawaii broadband commissioner shall be  
15 deposited in the commissioner special fund established under  
16 section -20."

17 SECTION 9. Section 101-43, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§101-43 Requirements prior to exercise of power.** Any  
20 corporation having the power of eminent domain under section  
21 101-41 may continue to exercise the power, provided that prior  
22 to the exercise of the power:

1 (1) The corporation submits to the public utilities  
2 commission or, in the case of telecommunications  
3 carriers or telecommunications common carriers, to the  
4 Hawaii broadband commissioner, its intention to  
5 exercise the power, with a description of the property  
6 to be condemned; and

7 (2) The public utilities commission or the Hawaii  
8 broadband commissioner, as the case may be, finds that  
9 the proposed condemnation is in the public interest,  
10 that the proposed condemnation is necessary, and that  
11 the corporation will use the property for its  
12 operations as a public utility."

13 SECTION 10. Section 163D-6, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) If the corporation acquires the assets of a private  
16 or other corporation, then, notwithstanding any law to the  
17 contrary:

18 (1) Neither the corporation nor any subsidiary corporation  
19 vested with the assets shall be subject to chapter 91  
20 with respect to the assets;

21 (2) Employees retained to operate the assets shall not be  
22 subject to chapter 76;

- 1 (3) Assets constituting real property interest shall not  
2 be subject to chapter 171;
- 3 (4) No investment, loan, or use of funds by the  
4 corporation or a subsidiary corporation vested with  
5 the assets shall be subject to chapter 42F or 103; and
- 6 (5) Neither the corporation nor a subsidiary corporation  
7 vested with the assets shall constitute a public  
8 utility or be subject to the jurisdiction of the  
9 public utilities commission under chapter 269[-] or  
10 the Hawaii broadband commissioner under chapter \_\_\_\_."

11 SECTION 11. Section 166-4, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§166-4 Park development.** Except as herein provided, the  
14 department may develop, on behalf of the State or in partnership  
15 with a federal agency, a county, or a private party,  
16 agricultural parks which, at the option of the board, shall be  
17 exempt from all statutes, ordinances, charter provisions, and  
18 rules of any governmental agency relating to planning, zoning,  
19 construction standards for subdivisions, development and  
20 improvement of land, and the construction of buildings thereon;  
21 provided that:

1 (1) The board finds the agricultural park is consistent  
2 with the purpose and intent of this chapter, and meets  
3 minimum requirements of health and safety;

4 (2) The development of the proposed agricultural park does  
5 not contravene any safety standards or tariffs  
6 approved for public utilities by the public utilities  
7 commission [~~for public utilities;~~] or the Hawaii  
8 broadband commissioner;

9 (3) The legislative body of the county in which the  
10 agricultural park is to be situated shall have  
11 approved the agricultural park.

12 (A) The legislative body shall approve or disapprove  
13 the agricultural park within forty-five days  
14 after the department has submitted the  
15 preliminary plans and specifications for the  
16 agricultural park to the legislative body. If  
17 after the forty-fifth day an agricultural park is  
18 not disapproved, it shall be deemed approved by  
19 the legislative body.

20 (B) No action shall be prosecuted or maintained  
21 against any county, its officials, or employees,  
22 on account of actions taken by them in reviewing,

1           approving, or disapproving the plans and  
2           specifications.

3           (C) The final plans and specifications for the  
4           agricultural park shall be deemed approved by the  
5           legislative body if the final plans and  
6           specifications do not substantially deviate from  
7           the preliminary plans and specifications. The  
8           final plans and specifications for the project  
9           shall constitute the planning, zoning, building,  
10          construction, and subdivision standards for that  
11          agricultural park. For purposes of sections  
12          501-85 and 502-17, the chairperson of the board  
13          of agriculture or the responsible county official  
14          may certify maps and plans of lands connected  
15          with the agricultural park as having complied  
16          with applicable laws and ordinances relating to  
17          consolidation and subdivision of lands, and such  
18          maps and plans shall be accepted for registration  
19          or recordation by the land court and registrar;  
20          and

21          (4) The State shall assume the responsibility of  
22          maintaining all roads within the agricultural park if



1 the roads are developed exempt from applicable county  
2 ordinances, charter provisions, and rules regarding  
3 roads."

4 SECTION 12. Section 166E-10, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~§~~166E-10~~]~~ **Non-agricultural park land development.**

7 On behalf of the State or in partnership with a federal agency,  
8 a county, or a private party and except as provided in this  
9 section, the department may develop non-agricultural park lands  
10 that, at the option of the board, may be exempt from all  
11 statutes, ordinances, charter provisions, and rules of any  
12 governmental agency relating to planning, zoning, construction  
13 standards for subdivisions, development and improvement of land,  
14 and construction of buildings thereon; provided that:

15 (1) The board finds the development is consistent with the  
16 public purpose and intent of this chapter and meets  
17 minimum health and safety requirements;

18 (2) The development of the proposed non-agricultural park  
19 land does not contravene any safety standards or  
20 tariffs approved for public utilities by the public  
21 utilities commission [~~for public utilities,~~] or the  
22 Hawaii broadband commissioner;

- 1           (3) The county in which the non-agricultural park  
2           development is proposed shall approve the  
3           non-agricultural park development; and provided  
4           further that:
- 5           (A) The county shall approve or disapprove the  
6           development within forty-five days after the  
7           department submits preliminary plans and  
8           specifications for the development to the county.  
9           If the county does not disapprove the development  
10          after the forty-fifth day, the development shall  
11          be deemed approved;
- 12          (B) No action shall be prosecuted or maintained  
13          against any county, its officials, or employees,  
14          on any actions taken by them in reviewing,  
15          approving, or disapproving the plans and  
16          specifications; and
- 17          (C) The final plans and specifications for the  
18          development shall be deemed approved by the  
19          county if the final plans and specifications do  
20          not substantially deviate from the preliminary  
21          plans and specifications. The final plans and  
22          specifications for the project shall constitute

1 the planning, zoning, building, construction, and  
2 subdivision standards for that development. For  
3 purposes of sections 501-85 and 502-17, the  
4 chairperson of the board or the responsible  
5 county official may certify maps and plans of  
6 lands connected with the development as having  
7 complied with applicable laws and ordinances  
8 relating to consolidation and subdivision of  
9 lands, and the maps and plans shall be accepted  
10 for registration or recordation by the land court  
11 and registrar; and

12 (4) The State shall assume the responsibility of  
13 maintaining all roads and infrastructure improvements  
14 within the boundaries if the improvements are  
15 developed exempt from applicable county ordinances,  
16 charter provisions, and rules regarding development."

17 SECTION 13. Section 171-134, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) At the option of the board, the development of an  
20 industrial park shall be exempt from all statutes, ordinances,  
21 charter provisions, and rules of any governmental agency  
22 relating to planning, zoning, construction standards for

1 subdivision development and improvement of land, and the  
2 construction of buildings thereon; provided that:

3 (1) The board finds that the industrial park meets the  
4 minimum requirements of health and safety;

5 (2) The development of the industrial park does not  
6 contravene any safety standards or tariffs approved  
7 for public utilities by the public utilities  
8 commission [~~for public utilities,~~] or the Hawaii  
9 broadband commissioner;

10 (3) The legislative body of the county in which the  
11 industrial park is proposed to be situated approves  
12 the industrial park[~~;~~] in accordance with the  
13 following:

14 (A) The legislative body shall approve or disapprove  
15 the industrial park within forty-five days after  
16 the department has submitted preliminary plans  
17 and specifications for the industrial park to the  
18 legislative body. If after the forty-fifth day,  
19 an industrial park is not disapproved, it shall  
20 be deemed approved by the legislative body[~~;~~];

21 (B) No action shall be prosecuted or maintained  
22 against any county, its officials, or employees,

1 on account of actions taken by them in reviewing,  
2 approving, or disapproving the plans and  
3 specifications~~[ ]~~; and

4 (C) The final plans and specifications for the  
5 industrial park shall be deemed approved by the  
6 legislative body if the final plans and  
7 specifications for the industrial park do not  
8 substantially deviate from the preliminary plans  
9 and specifications. The determination that the  
10 final plans and specifications do not  
11 substantially deviate from the preliminary plans  
12 and specifications of the industrial park shall  
13 rest with the board. The final plans and  
14 specifications for the park shall constitute the  
15 planning, zoning, building, improvement,  
16 construction, and subdivision standards for that  
17 industrial park. For the purposes of sections  
18 501-85 and 502-17, the chairperson of the board  
19 or the responsible county official may certify  
20 maps and plans of land connected with the  
21 industrial park as having complied with  
22 applicable laws and ordinances relating to

1 consolidation and subdivision of lands, and such  
2 maps and plans shall be accepted for registration  
3 or recordation by the land court and registrar;  
4 and

5 (4) The board shall assume the responsibility of all  
6 infrastructure within the industrial park, if the  
7 infrastructure developed is exempt from applicable  
8 county ordinances, charter provisions, and rules."

9 SECTION 14. Section 196D-10, Hawaii Revised Statutes, is  
10 amended by amending subsection (c) to read as follows:

11 "(c) This section shall not apply to any permit issued by  
12 the public utilities commission under chapter 269[~~-~~] or the  
13 Hawaii broadband commissioner under chapter ."

14 SECTION 15. Section 201H-13, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[~~+~~]**\$201H-13[+]** **Eminent domain, exchange or use of public**  
17 **property.** The corporation may acquire any real property,  
18 including fixtures and improvements, or interest therein:  
19 through voluntary negotiation; through exchange of land in  
20 accordance with section 171-50, provided that the public land to  
21 be exchanged need not be of like use to that of the private  
22 land; or by the exercise of the power of eminent domain which it

1 deems necessary by the adoption of a resolution declaring that  
2 the acquisition of the property described therein is in the  
3 public interest and required for public use. The corporation  
4 shall exercise the power of eminent domain granted by this  
5 section in the same manner and procedure as is provided by  
6 chapter 101 and otherwise in accordance with all applicable  
7 provisions of the general laws of the State; provided that  
8 condemnation of parcels greater than fifteen acres shall be  
9 subject to legislative disapproval expressed in a concurrent  
10 resolution adopted by majority vote of the senate and the house  
11 of representatives in the first regular or special session  
12 following the date of condemnation.

13 The corporation may acquire by the exercise of the power of  
14 eminent domain property already devoted to a public use;  
15 provided that no property belonging to any government may be  
16 acquired without its consent, and that no property belonging to  
17 a public utility corporation may be acquired without the  
18 approval of the public utilities commission<sup>[7]</sup> or, in the case  
19 of telecommunications carriers or telecommunications common  
20 carriers, the Hawaii broadband commissioner, and subject to  
21 legislative disapproval expressed in a concurrent resolution  
22 adopted by majority vote of the senate and the house of

1 representatives in the first regular or special session  
2 following the date of condemnation."

3 SECTION 16. Section 201H-33, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) The corporation shall adopt, pursuant to chapter 91,  
6 rules on health, safety, building, planning, zoning, and land  
7 use that relate to the development, subdivision, and  
8 construction of dwelling units in housing projects in which the  
9 State, through the corporation, shall participate. The rules  
10 shall not contravene any safety standards or tariffs approved by  
11 the public utilities commission~~[7]~~ or the Hawaii broadband  
12 commissioner, and shall follow existing law as closely as is  
13 consistent with the production of lower cost housing with  
14 standards that meet minimum requirements of good design,  
15 pleasant amenities, health, safety, and coordinated development.

16 When adopted, the rules shall have the force and effect of  
17 law and shall supersede, for all housing projects in which the  
18 State, through the corporation, shall participate, all other  
19 inconsistent laws, ordinances, and rules relating to the use,  
20 zoning, planning, and development of land, and the construction  
21 of dwelling units thereon. The rules, before becoming  
22 effective, shall be presented to the legislative body of each



1 county in which they will be effective and the legislative body  
2 of any county may within forty-five days approve or disapprove,  
3 for that county, any or all of the rules by a majority vote of  
4 its members. On the forty-sixth day after submission, any rules  
5 not disapproved shall be deemed to have been approved by the  
6 county."

7 SECTION 17. Section 201H-38, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) The corporation may develop on behalf of the State or  
10 with an eligible developer, or may assist under a government  
11 assistance program in the development of, housing projects that  
12 shall be exempt from all statutes, ordinances, charter  
13 provisions, and rules of any government agency relating to  
14 planning, zoning, construction standards for subdivisions,  
15 development and improvement of land, and the construction of  
16 dwelling units thereon; provided that:

17 (1) The corporation finds the housing project is  
18 consistent with the purpose and intent of this  
19 chapter, and meets minimum requirements of health and  
20 safety;

21 (2) The development of the proposed housing project does  
22 not contravene any safety standards, tariffs, or rates

1 and fees approved for public utilities by the public  
2 utilities commission [~~for public utilities~~] or the  
3 Hawaii broadband commissioner or of the various boards  
4 of water supply authorized under chapter 54;

5 (3) The legislative body of the county in which the  
6 housing project is to be situated shall have approved  
7 the project with or without modifications:

8 (A) The legislative body shall approve, approve with  
9 modification, or disapprove the project by  
10 resolution within forty-five days after the  
11 corporation has submitted the preliminary plans  
12 and specifications for the project to the  
13 legislative body. If on the forty-sixth day a  
14 project is not disapproved, it shall be deemed  
15 approved by the legislative body;

16 (B) No action shall be prosecuted or maintained  
17 against any county, its officials, or employees  
18 on account of actions taken by them in reviewing,  
19 approving, modifying, or disapproving the plans  
20 and specifications; and

21 (C) The final plans and specifications for the  
22 project shall be deemed approved by the

1 legislative body if the final plans and  
2 specifications do not substantially deviate from  
3 the preliminary plans and specifications. The  
4 final plans and specifications for the project  
5 shall constitute the zoning, building,  
6 construction, and subdivision standards for that  
7 project. For purposes of sections 501-85 and  
8 502-17, the executive director of the corporation  
9 or the responsible county official may certify  
10 maps and plans of lands connected with the  
11 project as having complied with applicable laws  
12 and ordinances relating to consolidation and  
13 subdivision of lands, and the maps and plans  
14 shall be accepted for registration or recordation  
15 by the land court and registrar; and

16 (4) The land use commission shall approve, approve with  
17 modification, or disapprove a boundary change within  
18 forty-five days after the corporation has submitted a  
19 petition to the commission as provided in section  
20 205-4. If, on the forty-sixth day, the petition is  
21 not disapproved, it shall be deemed approved by the  
22 commission."

1 SECTION 18. Section 205A-46, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) A variance may be granted for a structure or activity  
4 otherwise prohibited in this part if the authority finds in  
5 writing, based on the record presented, that the proposed  
6 structure or activity is necessary for or ancillary to:

7 (1) Cultivation of crops;

8 (2) Aquaculture;

9 (3) Landscaping; provided that the authority finds that  
10 the proposed structure or activity will not adversely  
11 affect beach processes and will not artificially fix  
12 the shoreline;

13 (4) Drainage;

14 (5) Boating, maritime, or watersports recreational  
15 facilities;

16 (6) Facilities or improvements by public agencies or  
17 public utilities regulated under chapter 269[+] or  
18 chapter \_\_\_\_\_ ;

19 (7) Private facilities or improvements that are clearly in  
20 the public interest;

21 (8) Private facilities or improvements which will neither  
22 adversely affect beach processes nor artificially fix

1 the shoreline; provided that the authority also finds  
2 that hardship will result to the applicant if the  
3 facilities or improvements are not allowed within the  
4 shoreline area;

5 (9) Private facilities or improvements that may  
6 artificially fix the shoreline; provided that the  
7 authority also finds that shoreline erosion is likely  
8 to cause hardship to the applicant if the facilities  
9 or improvements are not allowed within the shoreline  
10 area, and the authority imposes conditions to prohibit  
11 any structure seaward of the existing shoreline unless  
12 it is clearly in the public interest; or

13 (10) Moving of sand from one location seaward of the  
14 shoreline to another location seaward of the  
15 shoreline; provided that the authority also finds that  
16 moving of sand will not adversely affect beach  
17 processes, will not diminish the size of a public  
18 beach, and will be necessary to stabilize an eroding  
19 shoreline."

20 SECTION 19. Section 239-6.5, Hawaii Revised Statutes, is  
21 amended to read as follows:

1            "[~~+~~§239-6.5~~+~~] **Tax credit for lifeline telephone service**  
2 **subsidy.** A telephone public utility subject to this chapter  
3 that has been authorized to establish lifeline telephone service  
4 rates by the public utilities commission before July 1, 2009, or  
5 by the Hawaii broadband commissioner on or after July 1, 2009,  
6 shall be allowed a tax credit, equal to the lifeline telephone  
7 service costs incurred by the utility, to be applied against the  
8 utility's tax imposed by this chapter. The amount of this  
9 credit shall be determined and certified annually by the [~~public~~  
10 ~~utilities commission.~~] Hawaii broadband commissioner. The tax  
11 liability for a telephone public utility claiming the credit  
12 shall be calculated in the manner prescribed in section 239-5;  
13 provided that the amount of tax due from the utility shall be  
14 net of the lifeline service credit."

15            SECTION 20. Section 264-20, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17            "(b) Any other law to the contrary notwithstanding, any  
18 decision by the State, the department of transportation, a  
19 county, or any officers, employees, or agents of the State, the  
20 department of transportation, or a county to select or apply  
21 flexibility in highway design pursuant to this section and  
22 consistent with the practices used by the Federal Highway

1 Administration and the American Association of State Highway and  
2 Transportation Officials shall not give rise to a cause of  
3 action or claim against:

4 (1) The State;

5 (2) The department of transportation;

6 (3) The counties;

7 (4) Any public utility regulated under chapter 269 or  
8 chapter \_\_\_\_\_ that places its facilities within the  
9 highway right-of-way; or

10 (5) Any officer, employee, or agent of an entity listed in  
11 paragraphs (1) to (4)."

12 SECTION 21. Section 269-1, Hawaii Revised Statutes, is  
13 amended as follows:

14 1. By repealing the definitions of "carrier of last  
15 resort" and "designated local exchange service area":

16 [~~"Carrier of last resort" means a telecommunications~~  
17 ~~carrier designated by the commission to provide universal~~  
18 ~~service in a given local exchange service area determined to be~~  
19 ~~lacking in effective competition.~~

20 ~~"Designated local exchange service area" means an area as~~  
21 ~~determined by the commission to be best served by designating a~~  
22 ~~carrier of last resort pursuant to section 269-43."]~~

1           2. By amending the definition of "public utility" to read:

2           ""Public utility":

3           (1) Includes every person who may own, control, operate,  
4                     or manage as owner, lessee, trustee, receiver, or  
5                     otherwise, whether under a franchise, charter,  
6                     license, articles of association, or otherwise, any  
7                     plant or equipment, or any part thereof, directly or  
8                     indirectly for public use, for the transportation of  
9                     passengers or freight, or the conveyance or  
10                    transmission of telecommunications messages, or the  
11                    furnishing of facilities for the transmission of  
12                    intelligence by electricity by land or water or air  
13                    within the State, or between points within the State,  
14                    or for the production, conveyance, transmission,  
15                    delivery, or furnishing of light, power, heat, cold,  
16                    water, gas, or oil, or for the storage or warehousing  
17                    of goods, or the disposal of sewage; provided that the  
18                    term shall include:

19           (A) Any person insofar as that person owns or  
20                     operates a private sewer company or sewer  
21                     facility; and



- 1 (B) Any telecommunications carrier or  
2 telecommunications common carrier;
- 3 (2) Shall not include:
- 4 (A) Any person insofar as that person owns or  
5 operates an aerial transportation enterprise;
- 6 (B) Persons owning or operating taxicabs, as defined  
7 in this section;
- 8 (C) Common carriers transporting only freight on the  
9 public highways, unless operating within  
10 localities or along routes or between points that  
11 the public utilities commission finds to be  
12 inadequately serviced without regulation under  
13 this chapter;
- 14 (D) Persons engaged in the business of warehousing or  
15 storage unless the commission finds that  
16 regulation thereof is necessary in the public  
17 interest;
- 18 (E) The business of any carrier by water to the  
19 extent that the carrier enters into private  
20 contracts for towage, salvage, hauling, or  
21 carriage between points within the State and the  
22 carriage is not pursuant to either an established

- 1 schedule or an undertaking to perform carriage  
2 services on behalf of the public generally;
- 3 (F) The business of any carrier by water,  
4 substantially engaged in interstate or foreign  
5 commerce, transporting passengers on luxury  
6 cruises between points within the State or on  
7 luxury round-trip cruises returning to the point  
8 of departure;
- 9 (G) Any person who:
- 10 (i) Controls, operates, or manages plants or  
11 facilities for the production, transmission,  
12 or furnishing of power primarily or entirely  
13 from nonfossil fuel sources; and
- 14 (ii) Provides, sells, or transmits all of that  
15 power, except such power as is used in its  
16 own internal operations, directly to a  
17 public utility for transmission to the  
18 public;
- 19 (H) A telecommunications provider only to the extent  
20 determined by the [~~commission~~] Hawaii broadband  
21 commissioner pursuant to section [~~269-16.97~~]

- 1 (I) Any person who controls, operates, or manages  
2 plants or facilities developed pursuant to  
3 chapter 167 for conveying, distributing, and  
4 transmitting water for irrigation and such other  
5 purposes that shall be held for public use and  
6 purpose;
- 7 (J) Any person who owns, controls, operates, or  
8 manages plants or facilities for the reclamation  
9 of wastewater; provided that:
- 10 (i) The services of the facility shall be  
11 provided pursuant to a service contract  
12 between the person and a state or county  
13 agency and at least ten per cent of the  
14 wastewater processed is used directly by the  
15 State or county which has entered into the  
16 service contract;
- 17 (ii) The primary function of the facility shall  
18 be the processing of secondary treated  
19 wastewater that has been produced by a  
20 municipal wastewater treatment facility that  
21 is owned by a state or county agency;

- 1 (iii) The facility shall not make sales of water  
2 to residential customers;
- 3 (iv) The facility may distribute and sell  
4 recycled water or reclaimed water to  
5 entities not covered by a state or county  
6 service contract; provided that, in the  
7 absence of regulatory oversight and direct  
8 competition, the distribution and sale of  
9 recycled or reclaimed water shall be  
10 voluntary and its pricing fair and  
11 reasonable. For purposes of this  
12 subparagraph, "recycled water" and  
13 "reclaimed water" mean treated wastewater  
14 that by design is intended or used for a  
15 beneficial purpose; and
- 16 (v) The facility shall not be engaged, either  
17 directly or indirectly, in the processing of  
18 food wastes; and
- 19 (K) Any person who owns, controls, operates, or  
20 manages any seawater air conditioning district  
21 cooling project; provided that at least fifty per  
22 cent of the energy required for the seawater air

1 conditioning district cooling system is provided  
2 by a renewable energy resource, such as cold,  
3 deep seawater.

4 If the application of this chapter is ordered by the  
5 commission or the commissioner, as the case may be, in any case  
6 provided in paragraphs (2)(C), (2)(D), (2)(H), and (2)(I), the  
7 business of any public utility that presents evidence of bona  
8 fide operation on the date of the commencement of the  
9 proceedings resulting in the order shall be presumed to be  
10 necessary to public convenience and necessity, but any  
11 certificate issued under this proviso shall nevertheless be  
12 subject to ~~[such]~~ terms and conditions as the commission or the  
13 communications commissioner, respectively, may prescribe, as  
14 provided in sections ~~[269-16.9]~~ \_\_\_\_\_-34 and 269-20."

15 3. By amending the definition of "telecommunications  
16 carrier" or "telecommunications common carrier" to read:

17 ""Telecommunications carrier" or "telecommunications common  
18 carrier" ~~[means any person that owns, operates, manages, or~~  
19 ~~controls any facility used to furnish telecommunications~~  
20 ~~services for profit to the public, or to classes of users as to~~  
21 ~~be effectively available to the public, engaged in the provision~~  
22 ~~of services, such as voice, data, image, graphics, and video~~

1 ~~services, that make use of all or part of their transmission~~  
2 ~~facilities, switches, broadcast equipment, signalling, or~~  
3 ~~control devices.] has the same meaning as in section -1."~~

4 4. By amending the definition of "telecommunications  
5 service" or "telecommunications" to read:

6 ""Telecommunications service" or "telecommunications"  
7 ~~[means the offering of transmission between or among points~~  
8 ~~specified by a user, of information of the user's choosing,~~  
9 ~~including voice, data, image, graphics, and video without change~~  
10 ~~in the form or content of the information, as sent and received,~~  
11 ~~by means of electromagnetic transmission, or other similarly~~  
12 ~~capable means of transmission, with or without benefit of any~~  
13 ~~closed transmission medium, and does not include cable service~~  
14 ~~as defined in section 440G-3.] has the same meaning as in~~  
15 ~~section -1."~~

16 SECTION 22. Section 269-6, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) The public utilities commission shall have the  
19 general supervision hereinafter set forth over all public  
20 utilities, and shall perform the duties and exercise the powers  
21 imposed or conferred upon it by this chapter. Included among  
22 the general powers of the commission is the authority to adopt

1 rules pursuant to chapter 91 necessary for the purposes of this  
2 chapter. Chapter 269 shall apply to telecommunications carriers  
3 or telecommunications common carriers until such time as the  
4 Hawaii broadband commissioner is sworn in and the Hawaii  
5 broadband commissioner issues an order accepting the  
6 commissioner's authority and undertaking to enforce  
7 chapter \_\_\_\_\_."

8 SECTION 23. Section 269-16, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§269-16 Regulation of utility rates; ratemaking**  
11 **procedures.** (a) All rates, fares, charges, classifications,  
12 schedules, rules, and practices made, charged, or observed by  
13 any public utility or by two or more public utilities jointly  
14 shall be just and reasonable and shall be filed with the public  
15 utilities commission. The rates, fares, classifications,  
16 charges, and rules of every public utility shall be published by  
17 the public utility in [~~such~~] the manner as the public utilities  
18 commission may require, and copies shall be furnished to any  
19 person on request.

20 To the extent the contested case proceedings referred to in  
21 chapter 91 are required in any rate proceeding to ensure  
22 fairness and to provide due process to parties that may be

1 affected by rates approved by the commission, the evidentiary  
2 hearings shall be conducted expeditiously and shall be conducted  
3 as a part of the ratemaking proceeding.

4 (b) No rate, fare, charge, classification, schedule, rule,  
5 or practice, other than one established pursuant to an automatic  
6 rate adjustment clause previously approved by the commission,  
7 shall be established, abandoned, modified, or departed from by  
8 any public utility, except after thirty days' notice to the  
9 commission as prescribed in section 269-12(b), and prior  
10 approval by the commission for any increases in rates, fares, or  
11 charges. The commission, in its discretion and for good cause  
12 shown, may allow any rate, fare, charge, classification,  
13 schedule, rule, or practice to be established, abandoned,  
14 modified, or departed from upon notice less than that provided  
15 for in section 269-12(b). A contested case hearing shall be  
16 held in connection with any increase in rates, and the hearing  
17 shall be preceded by a public hearing as prescribed in section  
18 269-12(c), at which the consumers or patrons of the public  
19 utility may present testimony to the commission concerning the  
20 increase. The commission, upon notice to the public utility,  
21 may:



- 1           (1) Suspend the operation of all or any part of the  
2           proposed rate, fare, charge, classification, schedule,  
3           rule, or practice or any proposed abandonment or  
4           modification thereof or departure therefrom;
- 5           (2) After a hearing, by order:
- 6                (A) Regulate, fix, and change all [~~such~~] rates,  
7                fares, charges, classifications, schedules,  
8                rules, and practices so that the same shall be  
9                just and reasonable;
- 10              (B) Prohibit rebates and unreasonable discrimination  
11              between localities or between users or consumers  
12              under substantially similar conditions;
- 13              (C) Regulate the manner in which the property of  
14              every public utility is operated with reference  
15              to the safety and accommodation of the public;
- 16              (D) Prescribe its form and method of keeping  
17              accounts, books, and records, and its accounting  
18              system;
- 19              (E) Regulate the return upon its public utility  
20              property;
- 21              (F) Regulate the incurring of indebtedness relating  
22              to its public utility business; and

1 (G) Regulate its financial transactions; and  
2 (3) Do all things that are necessary and in the exercise  
3 of the commission's power and jurisdiction, all of  
4 which as so ordered, regulated, fixed, and changed are  
5 just and reasonable, and provide a fair return on the  
6 property of the utility actually used or useful for  
7 public utility purposes.

8 (c) The commission may in its discretion, after public  
9 hearing and upon showing by a public utility of probable  
10 entitlement and financial need, authorize temporary increases in  
11 rates, fares, and charges; provided that the commission shall  
12 require by order the public utility to return, in the form of an  
13 adjustment to rates, fares, or charges to be billed in the  
14 future, any amounts with interest, at a rate equal to the rate  
15 of return on the public utility's rate base found to be  
16 reasonable by the commission, received by reason of continued  
17 operation that are in excess of the rates, fares, or charges  
18 finally determined to be just and reasonable by the commission.  
19 Interest on any excess shall commence as of the date that any  
20 rate, fare, or charge goes into effect that results in the  
21 excess and shall continue to accrue on the balance of the excess  
22 until returned.

1 (d) The commission shall make every effort to complete its  
2 deliberations and issue its decision as expeditiously as  
3 possible and before nine months from the date the public utility  
4 filed its completed application; provided that in carrying out  
5 this mandate, the commission shall require all parties to a  
6 proceeding to comply strictly with procedural time schedules  
7 that it establishes. If a decision is rendered after the nine-  
8 month period, the commission shall report in writing the reasons  
9 therefor to the legislature within thirty days after rendering  
10 the decision.

11 Notwithstanding subsection (c), if the commission has not  
12 issued its final decision on a public utility's rate application  
13 within the nine-month period stated in this section, the  
14 commission, within one month after the expiration of the nine-  
15 month period, shall render an interim decision allowing the  
16 increase in rates, fares and charges, if any, to which the  
17 commission, based on the evidentiary record before it, believes  
18 the public utility is probably entitled. The commission may  
19 postpone its interim rate decision for thirty days if the  
20 commission considers the evidentiary hearings incomplete. In  
21 the event interim rates are made effective, the commission shall  
22 require by order the public utility to return, in the form of an

1 adjustment to rates, fares, or charges to be billed in the  
2 future, any amounts with interest, at a rate equal to the rate  
3 of return on the public utility's rate base found to be  
4 reasonable by the commission, received under the interim rates  
5 that are in excess of the rates, fares, or charges finally  
6 determined to be just and reasonable by the commission.  
7 Interest on any excess shall commence as of the date that any  
8 rate, fare, or charge goes into effect that results in the  
9 excess and shall continue to accrue on the balance of the excess  
10 until returned.

11 The nine-month period in this subsection shall begin only  
12 after a completed application has been filed with the commission  
13 and a copy served on the consumer advocate. The commission  
14 shall establish standards concerning the data required to be set  
15 forth in the application in order for it to be deemed a  
16 completed application. The consumer advocate may, within  
17 twenty-one days after receipt, object to the sufficiency of any  
18 application, and the commission shall hear and determine any  
19 objection within twenty-one days after it is filed. If the  
20 commission finds that the objections are without merit, the  
21 application shall be deemed to have been completed upon original  
22 filing. If the commission finds the application to be

1 incomplete, it shall require the applicant to submit an amended  
2 application consistent with its findings, and the nine-month  
3 period shall not commence until the amended application is  
4 filed.

5 (e) In any case of two or more organizations, trades, or  
6 businesses (whether or not incorporated, whether or not  
7 organized in the State of Hawaii, and whether or not affiliated)  
8 owned or controlled directly or indirectly by the same  
9 interests, the commission may distribute, apportion, or allocate  
10 gross income, deductions, credits, or allowances between or  
11 among the organizations, trades, or businesses, if it determines  
12 that the distribution, apportionment, or allocation is necessary  
13 to adequately reflect the income of any [~~such~~] of the  
14 organizations, trades, or businesses to carry out the regulatory  
15 duties imposed by this section.

16 (f) Notwithstanding any law to the contrary, for public  
17 utilities having annual gross revenues of less than \$2,000,000,  
18 the commission may make and amend its rules and procedures to  
19 provide the commission with sufficient facts necessary to  
20 determine the reasonableness of the proposed rates without  
21 unduly burdening the utility company and its customers. In the

1 determination of the reasonableness of the proposed rates, the  
2 commission shall:

- 3 (1) Require the filing of a standard form application to  
4 be developed by the commission. The standard form  
5 application for general rate increases shall describe  
6 the specific facts that shall be submitted to support  
7 a determination of the reasonableness of the proposed  
8 rates, and require the submission of financial  
9 information in conformance with a standard chart of  
10 accounts to be approved by the commission, and other  
11 commission guidelines to allow expeditious review of a  
12 requested general rate increase application;
- 13 (2) Hold a public hearing as prescribed in section  
14 269-12(c) at which the consumers or patrons of the  
15 public utility may present testimony to the commission  
16 concerning the increase. The public hearing shall be  
17 preceded by proper notice, as prescribed in section  
18 269-12; and
- 19 (3) Make every effort to complete its deliberations and  
20 issue a proposed decision and order within six months  
21 from the date the public utility files a completed  
22 application with the commission; provided that all

1 parties to the proceeding strictly comply with the  
2 procedural schedule established by the commission and  
3 no person is permitted to intervene. If a proposed  
4 decision and order is rendered after the six-month  
5 period, the commission shall report in writing the  
6 reasons therefor to the legislature within thirty days  
7 after rendering the proposed decision and order.  
8 Prior to the issuance of the commission's proposed  
9 decision and order, the parties shall not be entitled  
10 to a contested case hearing.

11 If all parties to the proceeding accept the  
12 proposed decision and order, the parties shall not be  
13 entitled to a contested case hearing, and section  
14 269-15.5 shall not apply. If the commission permits a  
15 person to intervene, the six-month period shall not  
16 apply and the commission shall make every effort to  
17 complete its deliberations and issue its decision  
18 within the nine-month period from the date the public  
19 utility's completed application was filed, pursuant to  
20 subsections (b), (c), and (d).

21 If a party does not accept the proposed decision  
22 and order, either in whole or in part, that party

1 shall give notice of its objection or nonacceptance  
2 within the timeframe prescribed by the commission in  
3 the proposed decision and order, setting forth the  
4 basis for its objection or nonacceptance; provided  
5 that the proposed decision and order shall have no  
6 force or effect pending the commission's final  
7 decision. If notice is filed, the above six-month  
8 period shall not apply and the commission shall make  
9 every effort to complete its deliberations and issue  
10 its decision within the nine-month period from the  
11 date the public utility's completed application was  
12 filed as set forth in subsection (d). Any party that  
13 does not accept the proposed decision and order under  
14 this paragraph shall be entitled to a contested case  
15 hearing; provided that the parties to the proceeding  
16 may waive the contested case hearing.

17 Public utilities subject to this subsection shall follow  
18 the standard chart of accounts to be approved by the commission  
19 for financial reporting purposes. The public utilities shall  
20 file a certified copy of the annual financial statements in  
21 addition to an updated chart of accounts used to maintain their  
22 financial records with the commission and consumer advocate



1 within ninety days from the end of each calendar or fiscal year,  
2 as applicable, unless this timeframe is extended by the  
3 commission. The owner, officer, general partner, or authorized  
4 agent of the utility shall certify that the reports were  
5 prepared in accordance with the standard chart of accounts.

6 (g) Any automatic fuel rate adjustment clause requested by  
7 a public utility in an application filed with the commission  
8 shall be designed, as determined in the commission's discretion,  
9 to:

- 10 (1) Fairly share the risk of fuel cost changes between the  
11 public utility and its customers;
- 12 (2) Provide the public utility with sufficient incentive  
13 to reasonably manage or lower its fuel costs and  
14 encourage greater use of renewable energy;
- 15 (3) Allow the public utility to mitigate the risk of  
16 sudden or frequent fuel cost changes that cannot  
17 otherwise reasonably be mitigated through other  
18 commercially available means, such as through fuel  
19 hedging contracts;
- 20 (4) Preserve, to the extent reasonably possible, the  
21 public utility's financial integrity; and

1 (5) Minimize, to the extent reasonably possible, the  
2 public utility's need to apply for frequent  
3 applications for general rate increases to account for  
4 the changes to its fuel costs.

5 (h) Notwithstanding any law to the contrary, this chapter  
6 shall not apply to the rates, fares, and charges of the  
7 incumbent local exchange carrier, and the incumbent local  
8 exchange carrier shall not be required to obtain approval or  
9 provide any cost support or other information to establish or  
10 otherwise modify in any manner its rates, fares, and charges and  
11 shall not be required to bundle any service offerings into a  
12 single or combined pricing package. Notwithstanding the above,  
13 all rates, fares, charges, and bundled service offerings shall  
14 be filed with the commission for informational purposes only and  
15 become effective immediately upon filing."

16 SECTION 24. Section 269-51, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§269-51 Consumer advocate; director of commerce and**  
19 **consumer affairs.** The director of commerce and consumer affairs  
20 shall be the consumer advocate in hearings before the public  
21 utilities commission~~[-]~~ and the Hawaii broadband commissioner.

22 The consumer advocate shall represent, protect, and advance the

1 interests of all consumers, including small businesses, of  
2 utility services. The consumer advocate shall not receive any  
3 salary in addition to the salary received as director of  
4 commerce and consumer affairs.

5 The responsibility for advocating the interests of the  
6 consumer of utility services shall be separate and distinct from  
7 the responsibilities of the public utilities commission and  
8 those assistants employed by the commission. As consumer  
9 advocate, the director of commerce and consumer affairs shall  
10 have full rights to participate as a party in interest in all  
11 proceedings before the public utilities commission[-] and the  
12 Hawaii broadband commissioner."

13 SECTION 25. Section 269-54, Hawaii Revised Statutes, is  
14 amended by amending subsections (d) and (e) to read as follows:

15 "(d) Whenever it appears to the consumer advocate that:  
16 (1) any public utility, telecommunications carrier, or cable  
17 operator has violated or failed to comply with any provision of  
18 this part or of any state or federal law; (2) any public  
19 utility, telecommunications carrier, or cable operator has  
20 failed to comply with any rule, regulation, or other requirement  
21 of the public utilities commission, the Hawaii broadband  
22 commissioner, or of any other state or federal agency; (3) any

1 public utility, telecommunications carrier, or cable operator  
2 has failed to comply with any provision of its charter,  
3 certificate of public convenience and necessity, or franchise;  
4 (4) changes, additions, extensions, or repairs to the plant or  
5 service of any public utility, telecommunications carrier, or  
6 cable operator are necessary to meet the reasonable convenience  
7 or necessity of the public; or (5) the rates, fares,  
8 classifications, charges, or rules of any public utility,  
9 telecommunications carrier, or cable operator are unreasonable  
10 or unreasonably discriminatory, the consumer advocate may  
11 institute proceedings for appropriate relief before the public  
12 utilities commission~~[-]~~ or the Hawaii broadband commissioner, as  
13 applicable. The consumer advocate may appeal any final decision  
14 and order in any proceeding to which the consumer advocate is a  
15 party in the manner provided by law.

16 (e) The consumer advocate may file with the public  
17 utilities commission or the Hawaii broadband commissioner, as  
18 the case may be, and serve on any public utility,  
19 telecommunications carrier, or cable operator a request in  
20 writing to furnish any information reasonably relevant to any  
21 matter or proceeding before the public utilities commission or  
22 the Hawaii broadband commissioner or reasonably required by the

1 consumer advocate to perform the duties hereunder. Any [~~such~~]  
2 request shall set forth with reasonable specificity the purpose  
3 for which the information is requested and shall designate with  
4 reasonable specificity the information desired. The public  
5 utility, telecommunications carrier, or cable operator shall  
6 comply with [~~such~~] the request within the time limit set forth  
7 by the consumer advocate unless within ten days following  
8 service it requests a hearing on the matter before the public  
9 utilities commission or the Hawaii broadband commissioner and  
10 states its reasons therefor. If a hearing is requested, the  
11 public utilities commission or the Hawaii broadband  
12 commissioner, as the case may be, shall proceed to hold the  
13 hearing and make its determination on the request within thirty  
14 days after the same is filed. The consumer advocate or the  
15 public utility may appeal the decision of the commission on any  
16 [~~such~~] request, subject to chapter 602, in the manner provided  
17 for civil appeals from the circuit courts. The consumer  
18 advocate, telecommunications carrier, or cable operator may  
19 appeal the decision of the Hawaii broadband commissioner, in the  
20 manner provided for in section -16. Subject to the  
21 foregoing, such requests may ask the public utility,  
22 telecommunications carrier, or cable operator to:

- 1 (1) Furnish any information [~~with which~~] that the consumer  
2 advocate may require concerning the condition,  
3 operations, practices, or services of the public  
4 utility[+], telecommunications carrier, or cable  
5 operator;
- 6 (2) Produce and permit the consumer advocate or the  
7 consumer advocate's representative to inspect and copy  
8 any designated documents (including writings,  
9 drawings, graphs, charts, photographs, recordings, and  
10 other data compilations from which information can be  
11 obtained), or to inspect and copy, test, or sample any  
12 designated tangible thing which is in the possession,  
13 custody, or control of the public utility[+],  
14 telecommunications carrier, or cable operator; or
- 15 (3) Permit entry upon land or other property in the  
16 possession or control of the public utility,  
17 telecommunications carrier, or cable operator for the  
18 purpose of inspection and measuring, surveying,  
19 photographing, testing, or sampling the property or  
20 any designated object thereon."

21 SECTION 26. Section 269-55, Hawaii Revised Statutes, is  
22 amended to read as follows:

SB1680 SD1.DOC  
\*SB1680 SD1.DOC\*  
\*SB1680 SD1.DOC\*

1           "**§269-55 Handling of complaints.** The consumer advocate  
2 shall counsel public utility, telecommunications, and cable  
3 service customers in the handling of consumer complaints before  
4 the public utilities commission[-] or the Hawaii broadband  
5 commissioner. The public utilities commission shall provide a  
6 central clearinghouse of information by collecting and compiling  
7 all consumer complaints and inquiries concerning public  
8 utilities. The Hawaii broadband commissioner shall provide a  
9 central clearinghouse of information by collecting and compiling  
10 all consumer complaints and inquiries concerning  
11 telecommunications carriers and cable operators."

12           SECTION 27. Section 339K-2, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "**[+]§339K-2[+]** **Compact administrator.** The compact  
15 administrator, acting jointly with like officers of other party  
16 states, may [~~promulgate~~] adopt rules and regulations to carry  
17 out more effectively the terms of the compact. The compact  
18 administrator shall cooperate with all departments, agencies,  
19 and officers of and in the government of this State and its  
20 subdivisions in facilitating the present administration of the  
21 compact or of any supplementary agreement or agreements entered  
22 into by this State thereunder. The compact administrator shall

1 adopt the practices and may impose the fees authorized under  
2 article III of the compact, except that state and county law  
3 enforcement agencies [~~and~~], the public utilities commission, and  
4 the Hawaii broadband commissioner shall retain their enforcement  
5 and inspection authority relating to carriers."

6 SECTION 28. Section 356D-15, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8 "(b) The authority may acquire by the exercise of the  
9 power of eminent domain property already devoted to a public  
10 use; provided that no property belonging to any government may  
11 be acquired without its consent, and that no property belonging  
12 to a public utility may be acquired without the approval of the  
13 public utilities commission[+] or, in the case of  
14 telecommunications carriers or telecommunications common  
15 carriers, the Hawaii broadband commissioner; and provided  
16 further that the acquisition is subject to legislative  
17 disapproval expressed in a concurrent resolution adopted by  
18 majority vote of the senate and the house of representatives in  
19 the first regular or special session following the date of  
20 condemnation."

21 SECTION 29. Section 448E-13, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "**§448E-13 Exemption of public utility and [~~community~~**  
2 **antennae] cable television company employees.** All employees of  
3 a public utility within the State under a franchise or charter  
4 granted by the State [~~which~~] that is regulated by the public  
5 utilities commission or the Hawaii broadband commissioner and  
6 [~~community antennae television company,~~] a cable television  
7 franchisee, while so employed, shall be exempt from the  
8 provision of this chapter."

9           SECTION 30. Section 481-11, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§481-11 Remedies cumulative.** The remedies prescribed in  
12 this part are cumulative and in addition to the remedies  
13 prescribed in [~~chapter~~] chapters 269 and \_\_\_\_\_ for discriminations  
14 by public utilities. If any conflict arises between this part  
15 and chapter 269[~~, the latter prevails.~~] or chapter \_\_\_\_\_, chapter  
16 269 or chapter \_\_\_\_\_, whichever is applicable, shall prevail."

17           SECTION 31. Section 481P-5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "**§481P-5 Exemptions.** This chapter shall not apply to:

20           (1) A person who initiates telephone calls to a residence  
21                 for the sole purpose of polling or soliciting the  
22                 expression of ideas, opinions, or votes, or a person

1           soliciting solely for a political or religious cause  
2           or purpose;

3           (2) A securities broker-dealer, salesperson, investment  
4           adviser, or investment adviser representative who is  
5           registered with this State to sell securities or who  
6           is authorized to sell securities in this State  
7           pursuant to federal securities laws, when soliciting  
8           over the telephone within the scope of the person's  
9           registration;

10          (3) A financial institution that is authorized to accept  
11          deposits under its chartering or licensing authority  
12          where such deposits are insured by the Federal Deposit  
13          Insurance Corporation or the National Credit Union  
14          Administration, including but not limited to a bank,  
15          savings bank, savings and loan association, depository  
16          financial services loan company, or credit union, or a  
17          nondepository financial services loan company that is  
18          licensed or authorized to conduct business in this  
19          State by the commissioner of financial institutions,  
20          or an affiliate or subsidiary of a financial  
21          institution as defined in chapter 412;

- 1 (4) A person or organization that is licensed or  
2 authorized to conduct business in this State by the  
3 insurance commissioner including but not limited to an  
4 insurance company and its employees, while engaged in  
5 the business of selling or advertising the sale of  
6 insurance products or services;
- 7 (5) A college or university accredited by an accrediting  
8 organization recognized by the United States  
9 Department of Education;
- 10 (6) A person who publishes a catalog of at least fifteen  
11 pages, four times a year, with a circulation of at  
12 least one hundred thousand, where the catalog includes  
13 clear disclosure of sale prices, shipping, handling,  
14 and other charges;
- 15 (7) A political subdivision or instrumentality of the  
16 United States, or any state of the United States;
- 17 (8) The sale of goods or services by telecommunications or  
18 landline (i.e., cable) or wireless video service  
19 providers, for which the terms and conditions of the  
20 offering, production, or sale are regulated by the  
21 [~~public utilities commission~~] Hawaii broadband  
22 commissioner or the Federal Communications Commission,

1           ~~[or pursuant to chapter 440G,~~ including the sale of  
2 goods or services by affiliates of these  
3 telecommunications or video service providers.  
4 Nothing herein shall be construed to preclude or  
5 preempt actions brought under any other laws including  
6 chapter 480;

7           (9) A real estate broker or salesperson who is licensed by  
8 this State to sell real estate, when soliciting within  
9 the scope of the license; or

10          (10) A travel agency that is registered with this State,  
11 when engaging in the business of selling or  
12 advertising the sale of travel services."

13          SECTION 32. Section 481X-1, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15          "(a) This chapter shall not apply to:

16           (1) Express or implied warranties;

17           (2) Maintenance agreements; and

18           (3) Warranties, service contracts, and maintenance  
19 agreements offered by public utilities on their  
20 transmission devices to the extent they are regulated  
21 by the public utilities commission or the ~~department~~

1 ~~of commerce and consumer affairs.]~~ Hawaii broadband  
2 commissioner."

3 SECTION 33. Section 486J-11, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§486J-11 Powers of the public utilities commission[~~-~~] and**  
6 **the Hawaii broadband commissioner.** (a) The public utilities  
7 commission and the Hawaii broadband commissioner may take any  
8 action or make any determination under this chapter, including  
9 but not limited to actions or determinations that affect persons  
10 not regulated under chapters 269,     , 271, and 271G, as the  
11 public utilities commission or the Hawaii broadband commissioner  
12 deems necessary to carry out its responsibilities or otherwise  
13 effectuate chapter 269,     , 271, or 271G.

14 (b) The public utilities commission or, in the case of  
15 telecommunications carriers or telecommunications common  
16 carriers, the Hawaii broadband commissioner, may examine or  
17 investigate each distributor, the manner in which it is  
18 operated, its prices and rates, its operating costs and  
19 expenses, the value of its property and assets, the amount and  
20 disposition of its income, any of its financial transactions,  
21 its business relations with other persons, companies, or  
22 corporations, its compliance with all applicable state and

1 federal laws, and all matters of any nature affecting the  
2 relations and transactions between the distributor and the  
3 public, persons, or businesses.

4 (c) In the performance of its duties under this chapter,  
5 the public utilities commission and the Hawaii broadband  
6 commissioner shall have the same powers respecting administering  
7 oaths, compelling the attendance of witnesses and the production  
8 of documents, examining witnesses, and punishing for contempt,  
9 as are possessed by the circuit courts. In case of disobedience  
10 by any person to any order of or subpoena issued by the public  
11 utilities commission~~[7]~~ or the Hawaii broadband commissioner, or  
12 of the refusal of any witness to testify to any matter regarding  
13 which the witness may be lawfully questioned, any circuit court,  
14 upon application by the public utilities commission~~[7]~~ or the  
15 Hawaii broadband commissioner, shall compel obedience as in case  
16 of disobedience of the requirements of a subpoena issued from a  
17 circuit court or a refusal to testify therein."

18 SECTION 34. Section 659-3, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§659-3[+] **Forfeiture of franchise.** The several  
21 circuit courts shall have jurisdiction of all proceedings in, or  
22 in the nature of, quo warranto, brought by or in the name of the

1 public utilities commission, the Hawaii broadband commissioner,  
2 or the State, for the forfeiture of the franchise of any  
3 corporate body offending against any law relating to such  
4 corporation, for misuser, for nonuser, for doing or committing  
5 any act or acts amounting to a surrender of its charter and for  
6 exercising rights not conferred upon it."

7 SECTION 35. Section 708-800, Hawaii Revised Statutes, is  
8 amended by amending the definition of "telecommunication  
9 service" to read as follows:

10 ""Telecommunication service" means the offering of  
11 transmission between or among points specified by a user, of  
12 information of the user's choosing, including voice, data,  
13 image, graphics, and video without change in the form or content  
14 of the information, as sent and received, by means of  
15 electromagnetic transmission, or other similarly capable means  
16 of transmission, with or without benefit of any closed  
17 transmission medium, and does not include cable service as  
18 defined in section [~~440G-3.~~]     -1."

19 SECTION 36. Section 269-16.5, Hawaii Revised Statutes, is  
20 repealed.

1           ~~["§269-16.5 Lifeline telephone rates. (a) The public~~  
2 ~~utilities commission shall implement a program to achieve~~  
3 ~~lifeline telephone rates for residential telephone users.~~

4           ~~(b) "Lifeline telephone rate" means a discounted rate for~~  
5 ~~residential telephone users identified as elders with limited~~  
6 ~~income and the handicapped with limited income as designated by~~  
7 ~~the commission.~~

8           ~~(c) The commission shall require every telephone public~~  
9 ~~utility providing local telephone service to file a schedule of~~  
10 ~~rates and charges providing a rate for lifeline telephone~~  
11 ~~subscribers.~~

12           ~~(d) Nothing in this section shall preclude the commission~~  
13 ~~from changing any rate established pursuant to subsection (a)~~  
14 ~~either specifically or pursuant to any general restructuring of~~  
15 ~~all telephone rates, charges, and classifications." ]~~

16           SECTION 37. Section 269-16.6, Hawaii Revised Statutes, is  
17 repealed.

18           ~~["§269-16.6 Telecommunications relay services for the~~  
19 ~~deaf, persons with hearing disabilities, and persons with speech~~  
20 ~~disabilities. (a) The public utilities commission shall~~  
21 ~~implement intrastate telecommunications relay services for the~~



1 ~~deaf, persons with hearing disabilities, and persons with speech~~  
2 ~~disabilities.~~

3 ~~(b) The commission shall investigate the availability of~~  
4 ~~experienced providers of quality telecommunications relay~~  
5 ~~services for the deaf, persons with hearing disabilities, and~~  
6 ~~persons with speech disabilities. The provision of these~~  
7 ~~telecommunications relay services to be rendered on or after~~  
8 ~~July 1, 1992, shall be awarded by the commission to the provider~~  
9 ~~or providers the commission determines to be best qualified to~~  
10 ~~provide these services. In reviewing the qualifications of the~~  
11 ~~provider or providers, the commission shall consider the factors~~  
12 ~~of cost, quality of services, and experience, and such other~~  
13 ~~factors as the commission deems appropriate.~~

14 ~~(c) If the commission determines that the~~  
15 ~~telecommunications relay service can be provided in a cost-~~  
16 ~~effective manner by a service provider or service providers, the~~  
17 ~~commission may require every intrastate telecommunications~~  
18 ~~carrier to contract with such provider or providers for the~~  
19 ~~provision of the telecommunications relay service under the~~  
20 ~~terms established by the commission.~~

1       ~~(d) The commission may establish a surcharge to collect~~  
2 ~~customer contributions for telecommunications relay services~~  
3 ~~required under this section.~~

4       ~~(e) The commission may adopt rules to establish a~~  
5 ~~mechanism to recover the costs of administering and providing~~  
6 ~~telecommunications relay services required under this section.~~

7       ~~(f) The commission shall require every intrastate~~  
8 ~~telecommunications carrier to file a schedule of rates and~~  
9 ~~charges and every provider of telecommunications relay service~~  
10 ~~to maintain a separate accounting for the costs of providing~~  
11 ~~telecommunications relay services for the deaf, persons with~~  
12 ~~hearing disabilities, and persons with speech disabilities.~~

13       ~~(g) Nothing in this section shall preclude the commission~~  
14 ~~from changing any rate established pursuant to this section~~  
15 ~~either specifically or pursuant to any general restructuring of~~  
16 ~~all telephone rates, charges, and classifications.~~

17       ~~(h) As used in this section:~~

18       ~~"Telecommunications relay services" means telephone~~  
19 ~~transmission services that provide an individual who has a~~  
20 ~~hearing or speech disability the ability to engage in~~  
21 ~~communication by wire or radio with a hearing individual in a~~  
22 ~~manner that is functionally equivalent to the ability of an~~

1 ~~individual who does not have a hearing or speech disability to~~  
2 ~~communicate using wire or radio voice communication services.~~

3 ~~"Telecommunications relay services" includes services that~~  
4 ~~enable two-way communication using text telephones or other~~  
5 ~~nonvoice terminal devices, speech-to-speech services, video~~  
6 ~~relay services, and non-English relay services." ]~~

7 SECTION 38. Section 269-16.8, Hawaii Revised Statutes, is  
8 repealed.

9 ~~[ "**§269-16.8** **Aggregators of telephone service**~~  
10 ~~**requirements.** (a) For the purposes of this section:~~

11 ~~"Aggregator" means every person or entity that is not a~~  
12 ~~telecommunications carrier, who, in the ordinary course of its~~  
13 ~~business, makes telephones available and aggregates the calls of~~  
14 ~~the public or transient users of its business, including but not~~  
15 ~~limited to a hotel, motel, hospital, or university, that~~  
16 ~~provides operator-assisted services through access to an~~  
17 ~~operator service provider.~~

18 ~~"Operator service" means a service provided by a~~  
19 ~~telecommunications company to assist a customer to complete a~~  
20 ~~telephone call.~~

21 ~~(b) The commission, by rule or order, shall adopt and~~  
22 ~~enforce operating requirements for the provision of operator-~~

1 ~~assisted services by an aggregator. These requirements shall~~  
2 ~~include, but not be limited to, the following:~~

3 ~~(1) Posting and display of information in a prominent and~~  
4 ~~conspicuous fashion on or near the telephone equipment~~  
5 ~~owned or controlled by the aggregator which states the~~  
6 ~~identity of the operator service provider, the~~  
7 ~~operator service provider's complaint handling~~  
8 ~~procedures, and means by which the customer may access~~  
9 ~~the various operator service providers.~~

10 ~~(2) Identification by name of the operator service~~  
11 ~~provider prior to the call connection and, if not~~  
12 ~~posted pursuant to subsection (b) (1), a disclosure of~~  
13 ~~pertinent rates, terms, conditions, and means of~~  
14 ~~access to various operator service providers and the~~  
15 ~~local exchange carriers; provided that the operator~~  
16 ~~service provider shall disclose this information at~~  
17 ~~any time upon request by the customer.~~

18 ~~(3) Allowing the customer access to any operator service~~  
19 ~~provider operating in the relevant geographic area~~  
20 ~~through the access method chosen by the provider or as~~  
21 ~~deemed appropriate by the commission.~~

1       ~~(4) Other requirements as deemed reasonable by the~~  
2           ~~commission in the areas of public safety, quality of~~  
3           ~~service, unjust or discriminatory pricing, or other~~  
4           ~~matters in the public interest." ]~~

5           SECTION 39. Section 269-16.9, Hawaii Revised Statutes, is  
6       repealed.

7           ~~["§269-16.9 Telecommunications providers and services.~~

8       ~~(a) Notwithstanding any provision of this chapter to the~~  
9       ~~contrary, the commission, upon its own motion or upon the~~  
10       ~~application of any person, and upon notice and hearing, may~~  
11       ~~exempt a telecommunications provider or a telecommunications~~  
12       ~~service from any or all of the provisions of this chapter,~~  
13       ~~except the provisions of section 269-34, upon a determination~~  
14       ~~that the exemption is in the public interest. In determining~~  
15       ~~whether an exemption is in the public interest, the commission~~  
16       ~~shall consider whether the exemption promotes state policies in~~  
17       ~~telecommunications, the development, maintenance, and operation~~  
18       ~~of effective and economically efficient telecommunications~~  
19       ~~services, and the furnishing of telecommunications services at~~  
20       ~~just and reasonable rates and in a fair manner in view of the~~  
21       ~~needs of the various customer segments of the telecommunications~~

1 ~~industry. Among the specific factors the commission may~~  
2 ~~consider are:~~

3 ~~(1) The responsiveness of the exemption to changes in the~~  
4 ~~structure and technology of the State's~~  
5 ~~telecommunications industry;~~

6 ~~(2) The benefits accruing to the customers and users of~~  
7 ~~the exempt telecommunications provider or service;~~

8 ~~(3) The impact of the exemption on the quality,~~  
9 ~~efficiency, and availability of telecommunications~~  
10 ~~services;~~

11 ~~(4) The impact of the exemption on the maintenance of~~  
12 ~~fair, just, and reasonable rates for~~  
13 ~~telecommunications services;~~

14 ~~(5) The likelihood of prejudice or disadvantage to~~  
15 ~~ratepayers of basic local exchange service resulting~~  
16 ~~from the exemption;~~

17 ~~(6) The effect of the exemption on the preservation and~~  
18 ~~promotion of affordable, universal, basic~~  
19 ~~telecommunications services as those services are~~  
20 ~~determined by the commission;~~

- 1       ~~(7) The resulting subsidization, if any, of the exempt~~  
2       ~~telecommunications service or provider by nonexempt~~  
3       ~~services;~~
- 4       ~~(8) The impact of the exemption on the availability of~~  
5       ~~diversity in the supply of telecommunications services~~  
6       ~~throughout the State;~~
- 7       ~~(9) The improvements in the regulatory system to be gained~~  
8       ~~from the exemption, including the reduction in~~  
9       ~~regulatory delays and costs;~~
- 10       ~~(10) The impact of the exemption on promoting innovations~~  
11       ~~in telecommunications services;~~
- 12       ~~(11) The opportunity provided by the exemption for~~  
13       ~~telecommunications providers to respond to~~  
14       ~~competition; and~~
- 15       ~~(12) The potential for the exercise of substantial market~~  
16       ~~power by the exempt provider or by a provider of the~~  
17       ~~exempt telecommunications service.~~
- 18       ~~(b) The commission shall expedite, where practicable, the~~  
19       ~~regulatory process with respect to exemptions and shall adopt~~  
20       ~~guidelines under which each provider of an exempted service~~  
21       ~~shall be subject to similar terms and conditions.~~

1       ~~(c) The commission may condition or limit any exemption as~~  
2 ~~the commission deems necessary in the public interest. The~~  
3 ~~commission may provide a trial period for any exemption and may~~  
4 ~~terminate the exemption or continue it for such period and under~~  
5 ~~such conditions and limitations as it deems appropriate.~~

6       ~~(d) The commission may require a telecommunications~~  
7 ~~provider to apply for a certificate of public convenience and~~  
8 ~~necessity pursuant to section 269-7.5; provided that the~~  
9 ~~commission may waive any application requirement whenever it~~  
10 ~~deems the waiver to be in furtherance of the purposes of this~~  
11 ~~section. The exemptions under this section may be granted in a~~  
12 ~~proceeding for certification or in a separate proceeding.~~

13       ~~(e) The commission may waive other regulatory requirements~~  
14 ~~under this chapter applicable to telecommunications providers~~  
15 ~~when it determines that competition will serve the same purpose~~  
16 ~~as public interest regulation.~~

17       ~~(f) If any provider of an exempt telecommunications~~  
18 ~~service or any exempt telecommunications provider elects to~~  
19 ~~terminate its service, it shall provide notice of this to its~~  
20 ~~customers, the commission, and every telephone public utility~~  
21 ~~providing basic local exchange service in this State. The~~  
22 ~~notice shall be in writing and given not less than six months~~



~~1 before the intended termination date. Upon termination of  
2 service by a provider of an exempt service or by an exempt  
3 provider, the appropriate telephone public utility providing  
4 basic local exchange service shall ensure that all customers  
5 affected by the termination receive basic local exchange  
6 service. The commission shall, upon notice and hearing or by  
7 rule, determine the party or parties who shall bear the cost, if  
8 any, of access to the basic local exchange service by the  
9 customers of the terminated exempt service.~~

~~10 (g) Upon the petition of any person or upon its own  
11 motion, the commission may rescind any exemption or waiver  
12 granted under this section if, after notice and hearing, it  
13 finds that the conditions prompting the granting of the  
14 exemption or waiver no longer apply, or that the exemption or  
15 waiver is no longer in the public interest, or that the  
16 telecommunications provider has failed to comply with one or  
17 more of the conditions of the exemption or applicable statutory  
18 or regulatory requirements.~~

~~19 (h) For purposes of this section, the commission, upon  
20 determination that any area of the State has less than adequate  
21 telecommunications service, shall require the existing  
22 telecommunications provider to show cause as to why the~~

1 ~~commission should not authorize an alternative~~  
2 ~~telecommunications provider for that area under the terms and~~  
3 ~~conditions of this section." ]~~

4 SECTION 40. Section 269-16.91, Hawaii Revised Statutes, is  
5 repealed.

6 ~~[ "~~§269-16.91~~ **Universal service subsidies.** (a) For any~~  
7 ~~alternative telecommunications provider authorized to provide~~  
8 ~~basic local exchange service to any area of the State pursuant~~  
9 ~~to section 269-16.9(h), the commission may consider the~~  
10 ~~following:~~

11 ~~(1) Transferring the subsidy, if any, of the local~~  
12 ~~exchange provider's basic residential telephone~~  
13 ~~service to the alternative provider; and~~  
14 ~~(2) Transferring from the local exchange carrier to the~~  
15 ~~alternative provider the amounts, if any, generated by~~  
16 ~~the local exchange provider's services other than~~  
17 ~~basic residential telephone service and which are used~~  
18 ~~to subsidize basic residential service in the area.~~

19 ~~(b) To receive the subsidy amounts from the local exchange~~  
20 ~~service provider, the alternative telecommunications provider~~  
21 ~~shall be required, to the extent possible, to obtain basic~~

1 ~~residential service subsidies from both the local exchange~~  
2 ~~service provider and national universal service providers."]~~

3 SECTION 41. Section 269-16.92, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["§269-16.92] Changes in subscriber carrier selections;~~  
6 ~~prior authorization required; penalties for unauthorized~~

7 ~~changes.~~ (a) ~~No telecommunications carrier shall initiate a~~  
8 ~~change in a subscriber's selection or designation of a long-~~  
9 ~~distance carrier without first receiving:~~

10 ~~(1) A letter of agency or letter of authorization;~~

11 ~~(2) An electronic authorization by use of a toll-free~~  
12 ~~number;~~

13 ~~(3) An oral authorization verified by an independent third~~  
14 ~~party; or~~

15 ~~(4) Any other prescribed authorization;~~

16 ~~provided that the letter or authorization shall be in accordance~~  
17 ~~with verification procedures that are prescribed by the Federal~~  
18 ~~Communications Commission or the public utilities commission.~~

19 ~~For purposes of this section, "telecommunications carrier" does~~  
20 ~~not include a provider of commercial mobile radio service as~~  
21 ~~defined by 47 United States Code section 332(d)(1).~~

1       ~~(b) Upon a determination that any telecommunications~~  
2 ~~carrier has engaged in conduct that is prohibited in subsection~~  
3 ~~(a), the public utilities commission shall order the carrier to~~  
4 ~~take corrective action as deemed necessary by the commission and~~  
5 ~~may subject the telecommunications carrier to administrative~~  
6 ~~penalties pursuant to section 269-28. Any proceeds from~~  
7 ~~administrative penalties collected under this section shall be~~  
8 ~~deposited into the public utilities commission special fund.~~

9       ~~The commission, if consistent with the public interest, may~~  
10 ~~suspend, restrict, or revoke the registration, charter, or~~  
11 ~~certificate of the telecommunications carrier, thereby denying,~~  
12 ~~modifying, or limiting the right of the telecommunications~~  
13 ~~carrier to provide service in this State.~~

14       ~~(c) The commission shall adopt rules, pursuant to chapter~~  
15 ~~91, necessary for the purposes of this section. The commission~~  
16 ~~may notify customers of their rights under these rules." ]~~

17       SECTION 42. Section 269-16.95, Hawaii Revised Statutes, is  
18 repealed.

19       ~~["§269-16.95 Emergency telephone service; capital costs;~~  
20 ~~ratemaking. (a) A public utility providing local exchange~~  
21 ~~telecommunications services may recover the capital cost and~~  
22 ~~associated operating expenses of providing a statewide enhanced~~

1 ~~911 emergency telephone service in the public switched telephone~~  
2 ~~network, through:~~

3 ~~(1) A telephone line surcharge; or~~

4 ~~(2) Its rate case.~~

5 ~~(b) Notwithstanding the commission's rules on ratemaking,~~  
6 ~~the commission shall expedite and give highest priority to any~~  
7 ~~necessary ratemaking procedures related to providing a statewide~~  
8 ~~enhanced 911 emergency telephone service; provided that the~~  
9 ~~commission may set forth conditions and requirements as the~~  
10 ~~commission determines are in the public interest.~~

11 ~~(c) The commission shall require every public utility~~  
12 ~~providing statewide enhanced 911 emergency telephone service to~~  
13 ~~maintain a separate accounting of the costs of providing an~~  
14 ~~enhanced 911 emergency service and the revenues received from~~  
15 ~~related surcharges until the next general rate case. The~~  
16 ~~commission shall further require that every public utility~~  
17 ~~imposing a surcharge shall identify such as a separate line item~~  
18 ~~on all customer billing statements.~~

19 ~~(d) This section shall not preclude the commission from~~  
20 ~~changing any rate, established pursuant to this section, either~~  
21 ~~specifically or pursuant to any general restructuring of all~~  
22 ~~telephone rates, charges, and classifications." ]~~

1 SECTION 43. Section 269-34, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§269-34] Obligations of telecommunications carriers.~~

4 ~~In accordance with conditions and guidelines established by the~~  
5 ~~commission to facilitate the introduction of competition into~~  
6 ~~the State's telecommunications marketplace, each~~  
7 ~~telecommunications carrier, upon bona fide request, shall~~  
8 ~~provide services or information services, on reasonable terms~~  
9 ~~and conditions, to an entity seeking to provide intrastate~~  
10 ~~telecommunications, including:~~

11 ~~(1) Interconnection to the telecommunications carrier's~~  
12 ~~telecommunications facilities at any technically~~  
13 ~~feasible and economically reasonable point within the~~  
14 ~~telecommunications carrier's network so that the~~  
15 ~~networks are fully interoperable;~~

16 ~~(2) The current interstate tariff used as the access rate~~  
17 ~~until the commission can adopt a new intrastate local~~  
18 ~~service interconnection tariff pursuant to section~~  
19 ~~269-37;~~

20 ~~(3) Nondiscriminatory and equal access to any~~  
21 ~~telecommunications carrier's telecommunications~~  
22 ~~facilities, functions, and the information necessary~~

- 1 ~~to the transmission and routing of any~~  
2 ~~telecommunications service and the interoperability of~~  
3 ~~both carriers' networks;~~
- 4 ~~(4) Nondiscriminatory access among all telecommunications~~  
5 ~~carriers, where technically feasible and economically~~  
6 ~~reasonable, and where safety or the provision of~~  
7 ~~existing electrical service is not at risk, to the~~  
8 ~~poles, ducts, conduits, and rights-of-way owned or~~  
9 ~~controlled by the telecommunications carrier, or the~~  
10 ~~commission shall authorize access to electric~~  
11 ~~utilities' poles as provided by the joint pole~~  
12 ~~agreement, commission tariffs, rules, orders, or~~  
13 ~~Federal Communications Commission rules and~~  
14 ~~regulations;~~
- 15 ~~(5) Nondiscriminatory access to the network functions of~~  
16 ~~the telecommunications carrier's telecommunications~~  
17 ~~network, that shall be offered on an unbundled,~~  
18 ~~competitively neutral, and cost-based basis;~~
- 19 ~~(6) Telecommunications services and network functions~~  
20 ~~without unreasonable restrictions on the resale or~~  
21 ~~sharing of those services and functions; and~~

1       ~~(7) Nondiscriminatory access of customers to the~~  
2       ~~telecommunications carrier of their choice without the~~  
3       ~~need to dial additional digits or access codes, where~~  
4       ~~technically feasible. The commission shall determine~~  
5       ~~the equitable distribution of costs among the~~  
6       ~~authorized telecommunications carriers that will use~~  
7       ~~such access and shall establish rules to ensure such~~  
8       ~~access.~~

9       ~~Where possible, telecommunications carriers shall enter~~  
10      ~~into negotiations to agree on the provision of services or~~  
11      ~~information services without requiring intervention by the~~  
12      ~~commission; provided that any such agreement shall be subject to~~  
13      ~~review by the commission to ensure compliance with the~~  
14      ~~requirements of this section." ]~~

15           SECTION 44. Section 269-35, Hawaii Revised Statutes, is  
16      repealed.

17           ~~[ "~~§269-35~~ **Universal service.** The commission shall~~  
18      ~~preserve and advance universal service by:~~

- 19           ~~(1) Maintaining affordable, just, and reasonable rates for~~  
20           ~~basic residential service;~~
- 21           ~~(2) Assisting individuals or entities who cannot afford~~  
22           ~~the cost of or otherwise require assistance in~~



1           ~~obtaining or maintaining their basic service or~~  
2           ~~equipment as determined by the commission; and~~  
3       ~~(3) Ensuring that consumers are given the information~~  
4           ~~necessary to make informed choices among the~~  
5           ~~alternative telecommunications providers and~~  
6           ~~services." ]~~

7           SECTION 45. Section 269-36, Hawaii Revised Statutes, is  
8       repealed.

9           ~~[ "**~~§269-36~~** **Telecommunications number portability.** The~~  
10       ~~commission shall ensure that telecommunications number~~  
11       ~~portability within an exchange is available, upon request, as~~  
12       ~~soon as technically feasible and economically reasonable. An~~  
13       ~~impartial entity shall administer telecommunications numbering~~  
14       ~~and make the numbers available on an equitable basis." ]~~

15           SECTION 46. Section 269-37, Hawaii Revised Statutes, is  
16       repealed.

17           ~~[ "**~~§269-37~~** **Compensation agreements.** The commission shall~~  
18       ~~ensure that telecommunications carriers are compensated on a~~  
19       ~~fair basis for termination of telecommunications services on~~  
20       ~~each other's networks, taking into account, among other things,~~  
21       ~~reasonable and necessary costs to each telecommunications~~  
22       ~~carrier of providing the services in question.~~

1 ~~Telecommunications carriers may negotiate compensation~~  
2 ~~arrangements, that may include "bill and keep", mutual and equal~~  
3 ~~compensation, or any other reasonable division of revenues~~  
4 ~~pending tariff access rates to be set by the commission. Upon~~  
5 ~~failure of the negotiations, the commission shall determine the~~  
6 ~~proper methodology and amount of compensation." ]~~

7 SECTION 47. Section 269-38, Hawaii Revised Statutes, is  
8 repealed.

9 ~~[ "~~§269-38~~ **Regulatory flexibility for effectively**~~  
10 ~~**competitive services.** The commission may allow~~  
11 ~~telecommunications carriers to have pricing flexibility for~~  
12 ~~services that the commission finds are effectively competitive,~~  
13 ~~provided that the rates for:~~

14 ~~(1) Basic telephone service and for services that are not~~  
15 ~~effectively competitive are cost-based and remain~~  
16 ~~just, reasonable, and nondiscriminatory; and~~  
17 ~~(2) Universal service is preserved and advanced." ]~~

18 SECTION 48. Section 269-39, Hawaii Revised Statutes, is  
19 repealed.

20 ~~[ "~~§269-39~~ **Cross-subsidies.** (a) The commission shall~~  
21 ~~ensure that noncompetitive services shall not cross-subsidize~~

1 ~~competitive services. Cross-subsidization shall be deemed to~~  
2 ~~have occurred:~~

3 ~~(1) If any competitive service is priced below the total~~  
4 ~~service long-run incremental cost of providing the~~  
5 ~~service as determined by the commission in subsection~~  
6 ~~(b); or~~

7 ~~(2) If competitive services, taken as a whole, fail to~~  
8 ~~cover their direct and allocated joint and common~~  
9 ~~costs as determined by the commission.~~

10 ~~(b) The commission shall determine the methodology and~~  
11 ~~frequency with which providers calculate total service long-run~~  
12 ~~incremental cost and fully allocated joint and common costs.~~  
13 ~~The total service long-run incremental cost of a service shall~~  
14 ~~include an imputation of an amount equal to the contribution~~  
15 ~~that the telecommunications carrier receives from noncompetitive~~  
16 ~~inputs used by alternative providers in providing the same or~~  
17 ~~equivalent service." ]~~

18 SECTION 49. Section 269-40, Hawaii Revised Statutes, is  
19 repealed.

20 ~~[ "~~§269-40~~ **Access to advanced services.** The commission~~  
21 ~~shall ensure that all consumers are provided with~~  
22 ~~nondiscriminatory, reasonable, and equitable access to high~~

1 ~~quality telecommunications network facilities and capabilities~~  
2 ~~that provide subscribers with sufficient network capacity to~~  
3 ~~access information services that provide a combination of voice,~~  
4 ~~data, image, and video, and that are available at just,~~  
5 ~~reasonable, and nondiscriminatory rates that are based on~~  
6 ~~reasonably identifiable costs of providing the services." ]~~

7 SECTION 50. Section 269-41, Hawaii Revised Statutes, is  
8 repealed.

9 ~~["~~§269-41~~ Universal service program; establishment;~~  
10 ~~purpose; principles.~~ There is established the universal service  
11 program. The purpose of this program is to:

- 12 ~~(1) Maintain affordable, just, and reasonable rates for~~  
13 ~~basic residential telecommunications service, as~~  
14 ~~defined by the commission;~~
- 15 ~~(2) Assist customers located in the areas of the State~~  
16 ~~that have high costs of essential telecommunications~~  
17 ~~service, low-income customers, and customers with~~  
18 ~~disabilities, in obtaining and maintaining access to a~~  
19 ~~basic set of essential telecommunications services as~~  
20 ~~determined by the commission. The commission may~~  
21 ~~expand or otherwise modify relevant programs, such as~~  
22 ~~the lifeline program under section 269-16.5;~~

1       ~~(3) Ensure that consumers in all communities are provided~~  
2       ~~with access, at reasonably comparable rates, to all~~  
3       ~~telecommunications services which are used by a~~  
4       ~~majority of consumers located in metropolitan areas of~~  
5       ~~the State. The commission shall provide for a~~  
6       ~~reasonable transition period to support the statewide~~  
7       ~~deployment of these advanced telecommunications~~  
8       ~~services, including, but not limited to, the use of~~  
9       ~~strategic community access points in public facilities~~  
10       ~~such as education, library, and health care~~  
11       ~~facilities;~~

12       ~~(4) Ensure that consumers are given the information~~  
13       ~~necessary to make informed choices among the~~  
14       ~~alternative telecommunications carriers and services;~~  
15       ~~and~~

16       ~~(5) Promote affordable access throughout the State to~~  
17       ~~enhanced government information and services,~~  
18       ~~including education, health care, public safety, and~~  
19       ~~other government services.~~

20       ~~The commission shall administer the universal service~~  
21       ~~program, including the establishment of criteria by which the~~  
22       ~~purposes of the program are met." ]~~

1 SECTION 51. Section 269-42, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§269-42 Universal service program; contributions. (a)~~  
4 ~~There is established outside of the state treasury a special~~  
5 ~~fund to be known as the universal service fund to be~~  
6 ~~administered by the commission to implement the policies and~~  
7 ~~goals of universal service. The fund shall consist of~~  
8 ~~contributions from the sources identified in subsections (e) and~~  
9 ~~(f). Interest earned from the balance of the fund shall become~~  
10 ~~a part of the fund. The commission shall adopt rules regarding~~  
11 ~~the distribution of moneys from the fund including~~  
12 ~~reimbursements to carriers for providing reduced rates to low-~~  
13 ~~income, elderly, residents of underserved or rural areas, or~~  
14 ~~other subscribers, as authorized by the commission.~~

15 ~~(b) The commission may allow distribution of funds~~  
16 ~~directly to customers based upon a need criteria established by~~  
17 ~~the commission.~~

18 ~~(c) A telecommunications carrier or other person~~  
19 ~~contributing to the universal service program may establish a~~  
20 ~~surcharge which is clearly identified and explained on~~  
21 ~~customers' bills to collect from customers contributions~~  
22 ~~required under this section.~~

1       ~~(d) Telecommunications carriers may compete to provide~~  
2 ~~services to underserved areas using funds from the universal~~  
3 ~~service program. For the purposes of this section, "underserved~~  
4 ~~areas" means those areas in the State that lack or have very~~  
5 ~~limited access to high capacity, advanced telecommunications~~  
6 ~~networks and information services, including access to cable~~  
7 ~~television.~~

8       ~~(e) The commission shall require all telecommunications~~  
9 ~~carriers to contribute to the universal service program. The~~  
10 ~~commission may require a person other than a telecommunications~~  
11 ~~carrier to contribute to the universal service program if, after~~  
12 ~~notice and opportunity for hearing, the commission determines~~  
13 ~~that the person is offering a commercial service in the State~~  
14 ~~that directly benefits from the telecommunications~~  
15 ~~infrastructure, and that directly competes with a~~  
16 ~~telecommunications service provided in the State for which a~~  
17 ~~contribution is required under this subsection.~~

18       ~~(f) The commission shall designate the method by which the~~  
19 ~~contributions under subsection (e) shall be calculated and~~  
20 ~~collected. The commission shall consider basing contributions~~  
21 ~~solely on the gross operating revenues from the retail provision~~

1 ~~of intrastate telecommunications services offered by the~~  
2 ~~telecommunications carriers subject to the contribution." ]~~

3 SECTION 52. Section 269-43, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["~~§269-43~~ Carriers of last resort. (a) The commission~~  
6 ~~may define and designate local exchange service areas where the~~  
7 ~~commission has determined that providing universal service funds~~  
8 ~~to a single provider will be the most appropriate way to ensure~~  
9 ~~service for these areas.~~

10 ~~(b) The commission shall determine the level of service~~  
11 ~~that is appropriate for each designated local exchange service~~  
12 ~~area and shall invite telecommunications providers to bid for a~~  
13 ~~level of service that is appropriate. The successful bidder~~  
14 ~~shall be designated the carrier of last resort for the~~  
15 ~~designated local exchange service area for a period of time and~~  
16 ~~upon conditions set by the commission. In determining the~~  
17 ~~successful bidder, the commission shall take into consideration~~  
18 ~~the level of service to be provided, the investment commitment,~~  
19 ~~and the length of the agreement, in addition to the other~~  
20 ~~qualifications of the bidder.~~



1       ~~(c) The universal service fund shall also provide service~~  
2 ~~drops and basic service at discounted rates to public~~  
3 ~~institutions, as stated in section 269-41.~~

4       ~~(d) The commission shall adopt rules pursuant to chapter~~  
5 ~~91 to carry out the provisions of this section."]~~

6       SECTION 53. Chapter 440G, Hawaii Revised Statutes, is  
7 repealed.

8       SECTION 54. All rules, policies, procedures, orders,  
9 certificates of public convenience and necessity, franchises,  
10 guidelines, and other material adopted, issued, or developed by  
11 the department of commerce and consumer affairs and the public  
12 utilities commission to implement provisions of the Hawaii  
13 Revised Statutes that are reenacted or made applicable to the  
14 Hawaii broadband commissioner by this Act, shall remain in full  
15 force and effect until amended or repealed by the Hawaii  
16 broadband commissioner. In the interim, every reference to the  
17 department of commerce and consumer affairs, director of  
18 commerce and consumer affairs, public utilities commission, or  
19 chairperson of the public utilities commission in those rules,  
20 policies, procedures, orders, franchises, guidelines, and other  
21 material is amended to refer to the Hawaii broadband  
22 commissioner as appropriate.

1 SECTION 55. All deeds, leases, contracts, loans,  
2 agreements, permits, or other documents executed or entered into  
3 by or on behalf of the department of commerce and consumer  
4 affairs and the public utilities commission pursuant to the  
5 provisions of the Hawaii Revised Statutes that are reenacted or  
6 made applicable to the Hawaii broadband commissioner by this  
7 Act, shall remain in full force and effect. Effective upon  
8 approval of this Act, every reference to the department of  
9 commerce and consumer affairs, director of commerce and consumer  
10 affairs, public utilities commission, or chairperson of the  
11 public utilities commission therein shall be construed as a  
12 reference to the Hawaii broadband commissioner as appropriate.

13 SECTION 56. During fiscal year 2009-2010, fifty per cent  
14 of the moneys collected by the public utilities commission from  
15 telecommunications carriers and deposited into the public  
16 utilities commission special fund and cable television  
17 subaccount shall be deposited into the Hawaii broadband  
18 commission special fund to provide appropriations for the new  
19 commissioner.

20 SECTION 57. All appropriations, records, equipment,  
21 machines, files, supplies, contracts, books, papers, documents,  
22 maps, and other personal property heretofore made, used,

1 acquired, or held by the department of commerce and consumer  
2 affairs and the public utilities commission relating to the  
3 functions transferred to the Hawaii broadband commissioner shall  
4 be transferred with the functions to which they relate.

5 SECTION 58. The cable television division of the  
6 department of commerce and consumer affairs shall transfer four  
7 existing positions and the department of commerce and consumer  
8 affairs shall transfer ten existing positions to the service of  
9 the Hawaii broadband commissioner. The positions selected for  
10 transfer shall reasonably relate to the functions of the Hawaii  
11 broadband commissioner and be paid out of existing cable  
12 franchise fees or public utilities commission fee transfers.

13 All officers and employees whose functions are transferred  
14 by this Act shall be transferred with their functions and shall  
15 continue to perform their regular duties upon their transfer,  
16 subject to the state personnel laws and this Act.

17 No officer or employee of the State having tenure shall  
18 suffer any loss of salary, seniority, prior service credit,  
19 vacation, sick leave, or other employee benefit or privilege as  
20 a consequence of this Act, and such officer or employee may be  
21 transferred or appointed to a civil service position without the  
22 necessity of examination; provided that the officer or employee

1 possesses the minimum qualifications for the position to which  
2 transferred or appointed; and provided that subsequent changes  
3 in status may be made pursuant to applicable civil service and  
4 compensation laws.

5 An officer or employee of the State who does not have  
6 tenure and who may be transferred or appointed to a civil  
7 service position as a consequence of this Act shall become a  
8 civil service employee without the loss of salary, seniority,  
9 prior service credit, vacation, sick leave, or other employee  
10 benefits or privileges and without the necessity of examination;  
11 provided that such officer or employee possesses the minimum  
12 qualifications for the position to which transferred or  
13 appointed.

14 If an office or position held by an officer or employee  
15 having tenure is abolished, the officer or employee shall not  
16 thereby be separated from public employment, but shall remain in  
17 the employment of the State with the same pay and classification  
18 and shall be transferred to some other office or position for  
19 which the officer or employee is eligible under the personnel  
20 laws of the State as determined by the head of the department or  
21 the governor.

**Report Title:**

Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting

**Description:**

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii broadband commissioner (HBC) in the department of commerce and consumer affairs (DCCA). Transfers functions relating to telecommunications from the public utilities commission to the HBC and functions relating to cable services from DCCA to the HBC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature. (SD1)

1 SECTION 59. The Hawaii broadband commissioner shall  
2 convene a work group to develop procedures for streamlined  
3 permitting functions that are applicable to the development of  
4 broadband services and broadband technology which are normally  
5 available to state and local governments for the use or  
6 development of broadband service or broadband technology.

7 Members of the work group shall include:

- 8 (1) The Hawaii broadband commissioner established in  
9 section 3 of this Act;
- 10 (2) The mayor of the county of Hawaii, or the mayor's  
11 designee;
- 12 (3) The mayor of the city and county of Honolulu, or the  
13 mayor's designee;
- 14 (4) The mayor of the county of Kauai, or the mayor's  
15 designee;
- 16 (5) The mayor of the county of Maui, or the mayor's  
17 designee;
- 18 (6) The chairperson of the Hawaii broadband task force  
19 established by Act 2, First Special Session Laws of  
20 Hawaii 2007; and

1           (7) Two representatives of state agencies with  
2           jurisdiction over land use and permitting at the state  
3           level.

4           SECTION 60. The work group established under section 59  
5 shall submit to the legislature no later than January 1, 2010, a  
6 report with its recommended procedures for streamlining and  
7 expediting all permitting functions normally available to state  
8 and local governments for the use or development of broadband  
9 service or broadband technology. The procedures shall be  
10 consistent across all counties and shall provide that any  
11 permitting fees and revenues traditionally accruing to the  
12 counties that relate to the use or development of broadband  
13 service or broadband technology will continue to accrue to the  
14 counties once the procedures go into effect.

15           SECTION 61. The legislative reference bureau shall review  
16 all relevant laws in the Hawaii Revised Statutes relating to  
17 broadband technology, telecommunications, infrastructure  
18 development, permitting requirements, and any other issues the  
19 legislative reference bureau deems appropriate, including all  
20 acts passed by the legislature during this regular session of  
21 2009, whether enacted before or after the effective date of this  
22 Act, unless such acts specifically provide that this Act is

1 being amended, and make recommendations on how these laws may be  
2 amended to conform to this Act or facilitate the implementation  
3 of this Act. The legislative reference bureau shall submit a  
4 report of its findings and recommendations, including proposed  
5 legislation, to the legislature not later than twenty days prior  
6 to the convening of the 2010 regular session.

7 SECTION 62. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 63. This Act shall take effect on July 1, 2050, to  
10 promote further discussion on various segments of this Act;  
11 provided that any decision or order executed by the public  
12 utilities commission prior to the enactment of this Act shall  
13 remain in full force and effect until such time as the Hawaii  
14 broadband commissioner may amend or repeal the decision or order  
15 under the Hawaii broadband commissioner's jurisdiction.