



1           (2) The speaker of the house of representatives shall  
2           select two members of the house of  
3           representatives;

4           (3) The senators belonging to a party or parties  
5           different from the president of the senate shall  
6           designate two members of the Senate;

7           (4) The representatives belonging to a party or  
8           parties different from the speaker of the house  
9           of representatives shall designate two members of  
10          the house of representatives; and

11          (5) The governor shall appoint four members of the  
12          general public.

13          Initial appointments shall be made within ninety days of  
14          the effective date of this Act.

15          (b) Each legislative member of the commission shall serve  
16          four-year terms, except that with respect to the terms of the  
17          initial sunset advisory commission members, the members selected  
18          from each of subsections (a)(2) and (a)(4) shall serve for a  
19          term of two years. Public members shall serve for a term of two  
20          years.

21          (c) Members of the sunset advisory commission are subject  
22          to the following restrictions:



1           (1) after a member serves eight years on the  
2           commission, the individual shall not be eligible  
3           for appointment to another term or part of a  
4           term;

5           (2) a legislative member who serves a full term may  
6           not be appointed to an immediately succeeding  
7           term; and

8           (3) a public member may not serve more than two  
9           consecutive terms.

10          (d) A vacancy in the commission shall be filled in the  
11 same manner as the original appointment as specified in  
12 subsection (a) within fifteen days. If a legislative member  
13 ceases to be a member of the house from which he was appointed,  
14 the member vacates his membership on the commission.

15          (e) An individual shall be ineligible for appointment to  
16 the commission as a public member if the individual or  
17 individual's spouse is:

18           (1) regulated by a state agency that the commission  
19           will review during the term for which the  
20           individual would serve;

21           (2) employed by, participates in the management of,  
22           or directly or indirectly has more than a ten per



1 cent interest in a business entity or other  
2 organization regulated by a state agency the  
3 commission will review during the term for which  
4 the individual would serve; or

5 (3) required to register as a lobbyist under chapter  
6 97 because of the person's activities for  
7 compensation on behalf of a profession or entity  
8 related to the operation of an agency under  
9 review.

10 (e) The commission shall act by majority vote of its  
11 membership, and shall select a chairperson and vice chairman by  
12 a two-thirds vote; provided that the chairmanship and vice  
13 chairmanship must alternate between the membership groups  
14 comprised of the members appointed from the senate and house of  
15 representatives. The chairman and vice chairman shall not be  
16 from the same membership group.

17 (f) Seven members of the commission shall constitute a  
18 quorum.

19 (g) Notwithstanding section 26-34, commission member  
20 appointments shall not be subject to senatorial confirmation.



1 (h) The commissioners shall serve without compensation,  
2 but shall be reimbursed for reasonable expenses, including  
3 travel expenses, necessary for the performance of their duties.

4 § -3 **Staffing.** (a) The commission shall employ an  
5 executive director to act as the executive head of the  
6 commission.

7 (b) The executive director shall employ persons necessary  
8 to carry out this chapter through funds made available by the  
9 legislature.

10 § -4 **Rulemaking.** The commission shall adopt rules  
11 pursuant to chapter 91 necessary for the purposes of this  
12 chapter.

13 § -5. **Agency report to the commission.** (a) Before  
14 July 1 of the odd-numbered year before the year in which a state  
15 agency subject to this chapter is altered, the agency shall  
16 report to the commission:

17 (1) information regarding the application to the  
18 agency of the criteria in § -7; and

19 (2) any other information that the agency considers  
20 appropriate or that is requested by the  
21 commission.



1           § -6       **Duties of the commission.**       (a) Before January  
2 1 of the year in which any state agency subject to this chapter  
3 are altered, the commission shall:

- 4           (1) review and take action necessary to verify the  
5                 reports submitted by the agency under § -5;  
6           (2) consult with the auditor and the office of the  
7                 governor on the application to the agency of the  
8                 criteria provided in § -7;  
9           (3) conduct a review of the agency based on the  
10                criteria provided in § -7 and prepare a written  
11                report, which shall be a public record; and  
12           (4) review the implementation of commission  
13                recommendations contained in the reports  
14                presented to the legislature during the preceding  
15                legislative session and the resulting  
16                legislation.

17           (b) Before February 1 of the year a state agency subject  
18 to this chapter is altered, the commission shall conduct public  
19 hearings concerning, but not limited to, the application to the  
20 agency of the criteria provided in § -7. The commission may  
21 hold public hearings after the review of the agency is complete  
22 and available to the public.



1 (c) At each regular legislative session, the commission  
2 shall present to the legislature and the governor a report on  
3 the agencies reviewed. Each report shall include:

- 4 (1) its finding regarding the criteria prescribed by  
5 § -7;
- 6 (2) its recommendations based on the matters  
7 prescribed by § -8;
- 8 (3) other information the commission considers  
9 necessary for a complete review of the agency.

10 § -7. **Criteria for review.** (a) The commission  
11 shall consider the following criteria in determining whether a  
12 public need exists for the continuation of a state agency or for  
13 the performance of the functions of the agency:

- 14 (1) the efficiency and effectiveness with which the  
15 agency operates;
- 16 (2) an identification of the mission, goals, and  
17 objectives intended for the agency and of the  
18 problem or need that the agency was intended to  
19 address, and the extent to which the mission,  
20 goals, and objectives have been achieved and the  
21 problem or need has been addressed;



- 1           (3) an identification of nay activities of the agency  
2           in addition to those granted by statute and of  
3           the authority for those activities, and the  
4           extent to which those activities are needed;
- 5           (4) an assessment of authority of the agency relating  
6           to fees, inspections, enforcement, and penalties;
- 7           (5) whether less restrictive or alternative methods  
8           of performing any function that the agency  
9           performs could adequately protect or provide  
10          service to the public;
- 11          (6) the extent to which the jurisdiction of the  
12          agency and the programs administered by the  
13          agency overlap or duplicate those of other  
14          agencies, the extent to which the agency  
15          coordinates with those agencies, and the extent  
16          to which the programs administered by the agency  
17          can be consolidated with the programs of other  
18          state agencies;
- 19          (7) the promptness and effectiveness with which the  
20          agency addresses complaints concerning entities  
21          or other persons affected by the agency,





- 1 including an assessment of the agency's  
2 administrative hearings process;
- 3 (8) an assessment of the agency's rulemaking process  
4 and the extent to which the agency has encouraged  
5 participation by the public in making rules and  
6 decisions and the extent to which the public  
7 participation has resulted in rules that benefit  
8 the public;
- 9 (9) the extent to which the agency has complied with  
10 federal and state laws and applicable rules  
11 regarding equality of employment opportunity and  
12 the rights and privacy of individuals, and state  
13 law and applicable rules of any state agency  
14 regarding purchasing guidelines and programs for  
15 historically underutilized businesses;
- 16 (10) the extent to which the agency issues and  
17 enforces rules relating to potential conflicts of  
18 interest of its employees;
- 19 (11) the extent to which the agency complies with  
20 chapters 92 and 92F and follows records  
21 management practices that enable the agency to



1                   respond efficiently to requests for public  
2                   information; and

3                   (12) the effect of federal intervention or loss of  
4                   federal funds if the agency is abolished.

5           § -8       **Recommendations; required items.**     (a) In its  
6 report on a state agency, the commission shall:

7                   (1) make recommendations on the alteration,  
8                   continuation, or reorganization of each affected  
9                   state agency and its advisory committees and on  
10                  the need for the performance of the functions of  
11                  the agency and its advisory committees;

12                  (2) make recommendations on the consolidation,  
13                  transfer, or reorganization of programs within  
14                  state agencies not under review when the programs  
15                  duplicate functions performed in agencies under  
16                  review;; and

17                  (3) make recommendations to improve the operations of  
18                  the agency, including management recommendations  
19                  that do not require a change in the agency's  
20                  enabling statute.

21                  (b) The commission shall include the estimated fiscal  
22 impact of its recommendations and may recommend appropriation



1 levels for certain programs to improve the operations of the  
2 state agency.

3 (c) The commission shall have drafts of legislation  
4 prepared to carry out the commission's recommendations under  
5 this section.

6 § -9 **Review of certain agencies.** (a) In the two-  
7 year period preceding the date scheduled for the alteration of a  
8 state agency under this chapter, the commission may exempt  
9 certain agencies from the requirements of this chapter relating  
10 to staff reports, hearings, and review.

11 (b) The commission may only exempt agencies that have been  
12 inactive for a period of two years preceding the date the agency  
13 is scheduled for alteration or that have been rendered inactive  
14 by an action of the legislature.

15 (c) The commission's action in exempting agencies under  
16 this section must be done by an affirmative record vote and must  
17 be decided by a majority of all members present and voting.

18 § -10 **Subpoena; disclosure; privacy; access to and**  
19 **assistance of state agencies.** (a) The commission may issue  
20 process to compel the attendance of witnesses and the production  
21 of books, record, papers, and other objects necessary and proper



1 for the purposes of the commission proceedings. The process may  
2 be served on a witness at any place in this state.

3 (b) If a majority of the commission directs the issuance  
4 of a subpoena, the chairman shall issue the subpoena in the name  
5 of the commission.

6 (c) If the chairman is absent, the vice chairman may issue  
7 a subpoena or other process in the same manner as the chairman.

8 (d) If necessary to obtain compliance with a subpoena or  
9 other process, the commission may issue attachments.

10 (e) Testimony taken under subpoena must be reduced to  
11 writing and given under oath subject to the penalties of  
12 perjury.

13 (f) A witness who attends a commission proceeding under  
14 process is entitled to the same mileage as a witness who appears  
15 before a court in this state.

16 (g) The commission may request the assistance of state  
17 agencies and officers. When assistance is requested, a state  
18 agency or officer shall assist the commission. In carrying out  
19 its functions under this chapter, the commission or its  
20 designated staff member may inspect the records, documents, and  
21 files of any state agency.



1           (h) Notwithstanding any law to the contrary, a working  
2 paper, including all documentary or other information, prepared  
3 or maintained by the commission staff in performing its duties  
4 under this chapter or other law to conduct an evaluation and  
5 prepare a report is exempted from chapter 92F of the Hawaii  
6 Revised Statutes.

7           (i) A record held by another entity that is considered to  
8 be confidential by law and that the commission receives in  
9 connection with the performance of the commission's functions  
10 under this chapter or another law remains confidential and is  
11 exempted from the public disclosure requirements of chapter 92F.

12           **§ -11     Scope; exemptions; initial alteration.     (a)**

13           Notwithstanding any other provision of the law, all state  
14 agencies shall be subject to the scope of this chapter with the  
15 exception of the following agencies:

- 16           (1) The office of the governor
- 17           (2) The legislature, and its attached agencies
- 18           (3) The supreme court
- 19           (4) The employees' retirement system
- 20           (5) The department of hawaiian home lands
- 21           (6) The office of hawaiian affairs



1 (b) The initial review of state agencies shall start in  
2 2014, and the initial schedule shall be as follows, with each  
3 successive grouping to be reviewed two years after the  
4 immediately preceding grouping:

5 (1) Office of the Lieutenant Governor, the Department  
6 of Defense, the Department of Human Resources  
7 Development, and the judiciary, and all attached  
8 agencies;

9 (2) Department of Budget and Finance and the  
10 Department of Business, Economic Development, and  
11 Tourism, and all attached agencies;

12 (3) Department of Education and the University of  
13 Hawaii, and all attached agencies;

14 (4) Department of Health and the Department of Human  
15 Services, and all attached agencies;

16 (5) Department of Accounting and General Services,  
17 the Department of Agriculture, and the Department  
18 of the Attorney General, and all attached  
19 agencies;

20 (6) Department of Commerce and Consumer Affairs, the  
21 Department of Labor and Industrial Relations, and



1                   the Department of Taxation, and all attached  
2                   agencies;

3                   (7) Department of Land and Natural Resources, the  
4                   Department of Public Safety, and Department of  
5                   Transportation, and all attached agencies.

6           § -12    **Procedure after alteration.**   (a) A state agency  
7 that is altered in an odd-numbered year may continue in  
8 existence until June 30 of the following year to conclude its  
9 business. Unless the law provides otherwise, alteration does  
10 not reduce or otherwise limit the powers and authority of the  
11 state agency during the concluding year. Unless the law  
12 provides otherwise, all rules that have been adopted by the  
13 state agency expire at the end of the state agency, if  
14 terminated.

15           (b) Any unobligated and unexpended appropriations of an  
16 altered agency shall lapse on July 1 of the even-numbered year  
17 after alteration.

18           (c) Except as provided in subsection (d) or as otherwise  
19 provided by law, all money in a special fund, trust fund,  
20 revolving fund, or other dedicated fund of an abolished state  
21 agency on July 1 of the even-numbered year after alteration is  
22 transferred to the general fund. The part of the law dedicating



1 the money to a specific fund of an altered agency becomes void  
2 on July 1 of the even-numbered year after alteration.

3 (d) The legislature recognizes the state's continuing  
4 obligation to pay bonded indebtedness and all other obligations,  
5 including lease, contract, and other written obligations,  
6 incurred by a state agency altered under this chapter, and this  
7 chapter does not impair or impede the payment of bonded  
8 indebtedness and all other obligations including lease,  
9 contract, and other written obligations, remain valid and  
10 enforceable in accordance with their terms and subject to all  
11 applicable terms and conditions of the laws and proceedings  
12 authorizing the bonds and all other obligations, including  
13 lease, contract, and other written obligations. The governor  
14 shall designate an appropriate state agency that shall continue  
15 to carry out all covenants contained in the bonds and in all  
16 other obligations, including lease, contract and other written  
17 obligation, and the proceedings authorizing them, including the  
18 issuance of bonds, and the performance of all other obligations,  
19 including lease, contract, and other written obligations, to  
20 complete the construction of projects or the performance of  
21 other obligations, including lease, contract, and other written  
22 obligations. The designated state agency shall provide payment





1 from the sources of payment of the bonds in accordance with the  
2 terms of the bonds and shall provide payment from the sources of  
3 payment of all other obligations, including lease, contract, and  
4 other written obligations, in accordance with their terms,  
5 whether from taxes, revenues, or otherwise, until the bonds and  
6 interest on the bonds are paid in full and all other  
7 obligations, including lease, contract, and other written  
8 obligations, are performed and paid in full. If the proceedings  
9 so provide, all funds established by laws or proceedings  
10 authorizing the bonds or authorizing other obligations,  
11 including lease, contract, and other written obligations, shall  
12 remain with the previously designated trustees. If the  
13 proceedings do not provide that the funds remain with previously  
14 designated trustee, the funds shall be transferred to the  
15 designated state agency.

16       **§ -13 Savings provision.** Except as otherwise expressly  
17 provided, termination of a state agency does not affect rights  
18 and duties that matured, penalties that were incurred, civil or  
19 criminal liabilities that arose, or proceedings that were begun  
20 before the effective date of the termination.

21       **§ 14 Review of proposed legislation creating an**  
22 **agency.** (a) Each bill filed in a house of the legislature



1 that would create a new state agency shall be reviewed by the  
2 commission. The commission shall review the bill to determine  
3 if:

4 (1) the proposed functions of the agency could be  
5 administered by one or more existing state  
6 agencies;

7 (2) the form of regulation, if any, proposed by the  
8 bill is the least restrictive form of regulation  
9 that will adequately protect the public;

10 (3) the bill provides for adequate public input  
11 regarding any regulatory function proposed by the  
12 bill; and

13 (4) the bill provides for adequate protection against  
14 conflicts of interest within the agency.

15 (b) On request, the commission shall forward a written  
16 comment on the legislation to the author of the bill and to the  
17 presiding officer of the committee to which the bill is  
18 referred."

19 SECTION 2. All officers and employees whose functions are  
20 transferred by this Act shall be transferred with their  
21 functions and shall continue to perform their regular duties



1 upon their transfer, subject to the state personnel laws and  
2 this Act.

3 No officer or employee of the State having tenure shall  
4 suffer any loss of salary, seniority, prior service credit,  
5 vacation, sick leave, or other employee benefit or privilege as  
6 a consequence of this Act, and such officer or employee may be  
7 transferred or appointed to a civil service position without the  
8 necessity of examination; provided that the officer or employee  
9 possesses the minimum qualifications for the position to which  
10 transferred or appointed; and provided that subsequent changes  
11 in status may be made pursuant to applicable civil service and  
12 compensation laws.

13 An officer or employee of the State who does not have  
14 tenure and who may be transferred or appointed to a civil  
15 service position as a consequence of this Act shall become a  
16 civil service employee without the loss of salary, seniority,  
17 prior service credit, vacation, sick leave, or other employee  
18 benefits or privileges and without the necessity of examination;  
19 provided that such officer or employee possesses the minimum  
20 qualifications for the position to which transferred or  
21 appointed.



1           If an office or position held by an officer or employee  
2 having tenure is abolished, the officer or employee shall not  
3 thereby be separated from public employment, but shall remain in  
4 the employment of the State with the same pay and classification  
5 and shall be transferred to some other office or position for  
6 which the officer or employee is eligible under the personnel  
7 laws of the State as determined by the head of the department or  
8 the governor.

9           SECTION 3. If any provision of this Act, or the  
10 application thereof to any person or circumstance is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act, which can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

15           SECTION 4. This Act shall take effect upon its approval.

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JAN 26 2011



**Report Title:**

Government

**Description:**

Establishes the Hawaii Sunset Advisory Commission, comprised of members of the legislature and general public, tasked with regularly assessing governmental agency structures, functions, performance, and making recommendations and analyses on potential alterations for possible legislative action. Operates in conjunction with the legislature and auditor to perform assessment of governmental agencies according to a prescribed schedule to ensure regularity and consistency. Sets forth duties and responsibilities. Exempts certain agencies from scope of commission.

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

