

JAN 21 2011

A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1 SECTION 1. The legislature finds that the public utilities
2 commission (commission), as it is presently composed, has proven
3 to be unable to fulfill its administrative and adjudicative
4 duties under chapter 269, Hawaii Revised Statutes. The office
5 of the auditor has conducted multiple management audits of the
6 public utilities commission over the past thirty-six years and
7 has consistently found serious and pervasive problems with
8 staffing, management, and planning. The initial audit,
9 conducted in 1975 and published in three volumes, found
10 "considerable confusion" within the commission regarding
11 staffing, roles, regulations, and the relevant law. The next
12 audit, conducted in 1989, found that "numerous and serious
13 problems with organization and personnel management" first
14 identified fourteen years earlier continued within the
15 commission and that the commission "lacked adequate
16 policymaking, enforcement, and administrative capabilities".
17 Most recently, in 2004, the auditor found that problems first
18 identified more than three decades earlier continued to plague



1 the commission and that both the commission and the division of
2 consumer advocacy of the department of commerce and consumer
3 affairs "are hard pressed to devote time and personnel required
4 to strategically plan for desired results; consequently, program
5 and activity plans are allowed to drift without direction".

6 The legislature notes that the regulatory structures and
7 the regulated industries that the commission manages have grown
8 increasing more complex since the formation of the commission.
9 The regulatory environment now includes increasing development
10 of the neighbor islands and accompanying new demands for public
11 utilities services. Despite these new challenges, the structure
12 and composition of the commission and the process for approving
13 new public utilities has changed little since the commission's
14 creation at statehood, even given the findings of the 1975,
15 1989, and 2004 management audits. The legislature finds that
16 serious, structural changes in the composition of the
17 commission, the provision of experienced professional staff, and
18 greater transparency in the approval process for certain public
19 utilities are necessary to ensure that the commission both
20 accurately responds to the interests of the entire State and
21 holds sufficient expertise in the relevant issue areas.



1 The legislature finds that problems identified in the 2004
2 audit of the commission have still not been resolved, despite
3 attempts by the legislature to work with the commission towards
4 reform. In 2007, the legislature enacted Acts 177 and 183,
5 Session Laws of Hawaii 2007, to approve and fund the
6 restructuring of both the public utilities commission and the
7 division of consumer advocacy according to proposals developed
8 by each agency. The reorganization plans included staff
9 increases, relocation of offices, and redefinition of staff
10 positions to improve workload efficiency. In the four years
11 since legislative approval, the commission's progress in
12 implementing its plans for reform have been stymied by budget
13 reductions and other economic factors beyond the commission's
14 control. As a result of long-standing fiscal constraints and
15 despite the best efforts of commission staff, the commission has
16 still been unable to overcome long delays and backlogs that
17 stifle economic development. To remedy past financial
18 shortfalls, the legislature passed Act 130, Session Laws of
19 Hawaii 2010 to appropriate additional funds and reauthorize
20 staff positions for the purpose of enabling the commission to
21 become fully functional. The legislature finds that the
22 creation of a new staff position authorized to function with a



1 large degree of autonomy to coordinate all of the administrative
2 functions of the commission will further the goals of increasing
3 professionalism and enabling efficient functioning of the
4 commission envisioned by the reorganization plan contained in
5 Acts 177 and 183.

6 The legislature further finds that the State's water cargo
7 transportation industry is critical to the economic health of
8 its island communities. As a regulated industry under the
9 oversight of the commission, water carriers are subject to
10 requirements including a determination pursuant to chapter 271G,
11 Hawaii Revised Statutes, that the service offered by the water
12 carrier is essential for the public convenience and necessity.
13 Experience has shown that efficient, reliable, frequent, and
14 universal water carrier service depends on economies of scale
15 and scope as well as the substantial investment of capital and
16 other resources; a successful regulatory regime must take into
17 account and accommodate these realities. To this end, the
18 legislature finds that applications for entry into the regulated
19 water carrier market require in-depth analysis of specific
20 issues to ensure that successful applications do, in fact, serve
21 the public interest and protect our island communities from the
22 risk of harm caused by disruptions in service.



1 Accordingly, the purpose of this Act is to improve the
2 structure and functioning of the public utilities commission by
3 ensuring that commissioners fairly represent the interests of
4 the entire State and hold the highest possible levels of
5 experience and expertise, commission staff is highly qualified
6 and adequately provided for to support the commission in the
7 performance of its statutory duties, and the approval process
8 for important public utilities remains transparent and
9 responsive to the needs of the people of the State.

10 SECTION 2. Chapter 271G, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§271G- Notice of hearing required. (a) Whenever the
14 commission conducts a public hearing on an application for a
15 certificate pursuant to section 271G-10, the commission shall
16 provide reasonable notice in writing to the applicant for a
17 certificate and to the public on each island that will be
18 affected by the proposed service of the fact of the public
19 hearing and the matter to be considered. Notice pursuant to
20 this section shall be provided at least thirty days before the
21 date fixed by the commission for the public hearing.



1 (b) Any notice provided pursuant to this section shall
2 plainly state the proposed operations, routes, and services of
3 the applicant and their proposed effective date. Notice under
4 this section shall be effectuated by filing the notice with the
5 commission, which shall make it available for public inspection.

6 (c) Any public hearing held pursuant to section 271G-10(c)
7 shall be a noticed public hearing or hearings on the island or
8 islands to which the water carrier proposes to provide services
9 or which will be affected by the proposed service. Notice of
10 the hearing, its purpose, and the date, time, and place at which
11 it will open shall be given not less than once in each of three
12 weeks in the county or counties to which the water carrier
13 proposes to provide services or which will be affected by the
14 proposed service. The first notice shall be given not less than
15 twenty-one days before the public hearing and the last notice
16 shall be given not more than two days before the public
17 hearing."

18 SECTION 3. Section 269-2, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§269-2 Public utilities commission; number, appointment**
21 **of commissioners, qualifications; compensation; establishment**
22 **and composition of panels; persons having interest in public**



1 **utilities.** (a) There shall be a public utilities commission
2 composed of [three] five members, to be called commissioners,
3 ~~[and]~~ who shall be appointed in the manner prescribed in section
4 26-34, except as otherwise provided in this section. All
5 members shall be appointed for terms of six years each, except
6 that the terms of the members first appointed shall be for two,
7 four, and six years, respectively, as designated by the governor
8 at the time of appointment. ~~[The governor shall designate a~~
9 ~~member to be chairperson of the commission.]~~ The commission
10 shall elect its chairperson from one of its members. Each
11 member shall hold office until the member's successor is
12 appointed and qualified. Section 26-34 shall not apply insofar
13 as it relates to the number of terms and consecutive number of
14 years a member can serve on the commission; provided that no
15 member shall serve more than twelve consecutive years.

16 In appointing commissioners, the governor shall select
17 persons who have had experience in accounting, business,
18 engineering, government, finance, law, or other similar
19 fields[-]; provided that the composition of the commission shall
20 reflect a diversity of professional knowledge and range of
21 expertise. One commissioner shall be appointed from each of the
22 counties and one commissioner shall be appointed at large. The



1 commissioners shall devote full time to their duties as members
2 of the commission and no commissioner shall hold any other
3 public office or other employment during the commissioner's term
4 of office. No person owning any stock or bonds of any public
5 utility corporation, or having any interest in, or deriving any
6 remuneration from, any public utility shall be appointed a
7 commissioner.

8 (b) The commission shall establish two panels with
9 membership consisting of two commissioners plus the chairperson.
10 One panel shall be devoted to issues relating to energy and the
11 private water and sewage utilities and the other panel shall be
12 devoted to issues relating to motor and water carrier
13 transportation services, telecommunications, and warehousing of
14 goods. Each commissioner, except the chairperson, shall be
15 assigned to serve on only one panel for the entirety of the
16 commissioner's term. Each panel established pursuant to this
17 subsection shall meet, confer, and make recommendations for
18 further action to the commission as a whole on each matter under
19 its subject matter jurisdiction. Proceedings of the panels
20 shall be conducted pursuant to rules adopted by the commission
21 pursuant to chapter 91; provided that all proceedings of the



1 panels shall be public meetings subject to the requirements of
2 chapter 92.

3 [~~b~~] (c) Effective July 1, 2005, the chairperson of the
4 commission shall be paid a salary set at eighty-seven per cent
5 of the salary of the director of human resources development [7]
6 and each of the other commissioners shall be paid a salary equal
7 to ninety-five per cent of the chairperson's salary. The
8 commissioners shall be exempt from chapters 76 and 89 but shall
9 be members of the state employees retirement system and shall be
10 eligible to receive the benefits of any state or federal
11 employee benefit program generally applicable to officers and
12 employees of the State, including those under chapter 87A.

13 The commission is placed within the department of budget
14 and finance for administrative purposes."

15 SECTION 4. Section 269-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§269-3 [~~Employment~~] Executive officer; appointment of
18 assistants. (a) The commission shall employ a staff, which
19 shall include an executive officer, administrative personnel,
20 and other personnel as specified in this section and as
21 otherwise necessary to carry out the duties of the commission.
22 The executive officer shall have sufficient administrative,



1 managerial, and supervisory experience to carry out the duties
2 established by this section.

3 ~~[(a) The chairperson of the public utilities commission~~
4 ~~may]~~ (b) Subject to the supervision of the commission, the
5 executive officer shall appoint [and], employ, and define the
6 powers and duties of clerks, stenographers, agents, engineers,
7 accountants, and other assistants for the public utilities
8 commission as the [chairperson] executive officer finds
9 necessary for the performance of the commission's functions [and
10 define their powers and duties]. The [chairperson] commission
11 may appoint and, at pleasure, dismiss [a chief administrator
12 and] hearings officers as may be necessary. Notwithstanding
13 section 103D-209 [the chairperson] and subject to the
14 supervision of the commission, the executive officer shall
15 appoint one or more attorneys independent of the attorney
16 general who shall act as attorneys for the commission [and],
17 define their powers and duties, and fix their compensation. The
18 [chief administrator,] executive officer, chief of policy and
19 research, chief of administrative support, chief of consumer
20 affairs and compliance, utility analysts, and attorneys shall be
21 exempt from chapter 76. Research assistants, economists, legal
22 secretaries, legal assistants, and enforcement officers may be



1 appointed by the executive officer with or without regard to
2 chapter 76. Other employees shall be appointed as may be needed
3 by the [~~chairperson~~] executive officer in accordance with
4 chapter 76 and subject to the supervision of the commission.

5 [~~(b)~~] (c) Notwithstanding section 91-13, the commission
6 may consult with [~~its assistants~~] personnel appointed [~~under~~
7 ~~authority of~~] pursuant to this section in any contested case or
8 agency hearing concerning any issue of facts [~~. Neither~~];
9 provided that neither the commission nor any of its [~~assistants~~]
10 personnel shall [~~in such proceeding~~] consult with any other
11 person or party except upon notice and an opportunity for all
12 parties to participate, save to the extent required for the
13 disposition of ex parte matters authorized by law."

14 SECTION 5. Section 269-7.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§269-7.5 Certificates of public convenience and**
17 **necessity.** (a) No public utility, as defined in section 269-1,
18 shall commence its business without first having obtained from
19 the commission a certificate of public convenience and
20 necessity. Applications for certificates shall be made in
21 writing to the commission and shall comply with the requirements
22 prescribed in the commission's rules. The application shall



1 include the type of service to be performed, the geographical
2 scope of the operation, the type of equipment to be employed in
3 the service, the name of competing utilities for the proposed
4 service, a statement of [~~its~~] the applicant's financial ability
5 to render the proposed service, a current financial statement of
6 the applicant, and the rates or charges proposed to be charged
7 including the rules governing the proposed service.

8 (b) If the applicant for a certificate of public
9 convenience and necessity has any known consumers or patrons at
10 the time of the filing of the application, the applicant shall
11 notify these consumers or patrons of the rates and charges
12 proposed to be established by the application; provided that:

13 (1) The notice shall be mailed to the last known address
14 of the consumer or patron on file with the applicant
15 or the applicant's affiliates; and

16 (2) The manner and the fact of the notification shall be
17 reported to the commission,
18 within seven days from the filing of the application.

19 (c) A certificate shall be issued to any qualified
20 applicant[7] authorizing the whole or any part of the operations
21 covered by the application[7] if it is found that the applicant
22 is fit, willing, and able [~~properly~~] to properly perform the



1 service proposed and to conform to the terms, conditions, and
2 rules adopted by the commission, and that the proposed service
3 is ~~[7]~~ or will be ~~[7]~~ required by the present or future public
4 convenience and necessity ~~[7 otherwise]~~. If the application does
5 not meet the criteria established by this subsection, it shall
6 be denied. Any certificate issued shall specify the service to
7 be rendered and ~~[there shall be attached to the exercise of the~~
8 privileges granted by the certificate at the time of issuance
9 and ~~from time to time thereafter, such]~~ any reasonable
10 conditions and limitations to the exercise of the privileges
11 granted by the certificate as [a] the public convenience and
12 necessity may require~~[-]~~ at the time of issuance of the
13 certificate or at any later time as determined by the
14 commission. The reasonableness of the rates, charges, and
15 tariff rules proposed by the applicant shall be determined by
16 the commission during the same proceeding examining the present
17 and future conveniences and needs of the public and
18 qualifications of the applicant, in accordance with the
19 standards set forth in section 269-16.

20 (d) No public utility that holds a franchise or charter
21 enacted or granted by the legislative or executive authority of
22 the State or its predecessor governments, or that has a bona



1 fide operation as a public utility heretofore recognized by the
2 commission, shall be required to obtain a certificate of public
3 convenience and necessity under this section.

4 (e) Any certificate, upon application of the holder and at
5 the discretion of the public utilities commission, may be
6 amended, suspended, or revoked, in whole or in part. The
7 commission after notice and hearing may suspend, amend, or
8 revoke any certificate, in part or in whole, if the holder is
9 found to be in wilful violation of any of the provisions of this
10 chapter [~~or with~~], any lawful order or rule of the commission
11 [~~adopted thereunder~~], or with any term, condition, or limitation
12 of the certificate.

13 (f) The commission shall post a link on the front page of
14 the commission's website to a publicly accessible electronic
15 version of each application for a certificate pursuant to this
16 section and to each order of the commission regarding posted
17 applications, including the commission's final decision and
18 order. Links posted pursuant to this subsection shall include a
19 short description of the document to which the link refers,
20 shall be active within twenty-four hours of filing of an
21 application or issuance of an order, and shall remain active for



1 at least thirty days from the filing of the application or the
2 issuance of the order or decision and order."

3 SECTION 6. Section 271G-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~+~~§271G-10~~+~~ **Applications for certificates of public**
6 **convenience and necessity.** (a) Except as otherwise provided in
7 this section and in sections 271G-6 and 271G-12, no water
8 carrier shall engage in operations between points within the
9 State~~[-]~~ unless ~~[such]~~ the carrier holds a certificate of public
10 convenience and necessity issued by the public utilities
11 commission authorizing ~~[such]~~ the operation~~[-]~~; provided that no
12 new application shall be required for any common carrier by
13 water who is the holder of a certificate of public convenience
14 and necessity issued by the public utilities commission.

15 (b) Applications for certificates shall be made in writing
16 to the commission, be verified under oath, and ~~[shall]~~ be
17 presented in ~~[such]~~ a form ~~[and]~~, contain ~~[such]~~ the
18 information, and be accompanied by proof of service upon
19 interested parties as the commission shall, by rule or
20 regulation, require.

21 (c) The commission shall not approve an application for a
22 certificate or otherwise grant authorization pursuant to an



1 application to operate as a water carrier under this chapter
 2 until the commission has given notice and held public hearings
 3 conducted in accordance with the procedures outlined in section
 4 271G- .

5 ~~[(e)]~~ (d) ~~[A certificate shall be issued]~~ The commission
 6 shall issue a certificate to any qualified applicant ~~[therefor,]~~
 7 authorizing the whole or any part of the operations ~~[covered by]~~
 8 proposed in the application ~~[if it is found that the]~~ only if
 9 the commission finds that:

10 (1) The applicant is fit, willing, and able properly to
 11 perform the service proposed and to conform to this
 12 chapter and the requirements, rules, and regulations
 13 of the commission ~~[thereunder,];~~ and ~~[that the]~~

14 (2) The proposed service, to the extent to be authorized
 15 by the certificate, is or will be required by the
 16 present or future public convenience and necessity~~[+~~
 17 ~~otherwise the application shall be denied].~~

18 (e) The commission shall not make a finding of public
 19 convenience and necessity or issue an authorization, whether
 20 interim, permanent, or otherwise, to operate as a water carrier
 21 without the following specific findings supported by evidence in
 22 the record:



1 (1) Existing water carrier services are inadequate to
2 presently service the public or meet demonstrated and
3 quantifiable future demands for service;

4 (2) The proposed service is designed for and necessary to
5 meet demonstrated and quantifiable unmet public needs
6 for present water carrier service or demonstrated and
7 quantifiable future demands for service;

8 (3) The proposed service will provide demonstrated and
9 quantifiable benefits to the general public, business
10 community, and the economy of all islands that are
11 entitled to notice under section 271G- ;

12 (4) The specific, identified benefits of the proposed
13 service outweigh its detrimental impact to the
14 public's interest in maintaining services, including
15 but not limited to:

16 (A) Economies of scale and scope of current water
17 carriers;

18 (B) Future capital costs of existing water carriers;

19 (C) Ability of existing water carriers to make
20 necessary capital and resource investments;

21 (D) The financial health, stability, and revenue
22 stream of existing water carriers; and



1 (E) The likelihood that existing levels of service
2 will be maintained after the enactment of the
3 proposed service; and

4 (5) If the commission's finding of public convenience and
5 necessity differs from the recommendation of the
6 consumer advocate, specific findings to address each
7 grounds for objection articulated by the consumer
8 advocate.

9 The commission shall not make a finding of public
10 convenience and necessity nor issue a certificate if the
11 evidence in the record indicates that the issuance of the
12 certificate will diminish an existing water carrier's ability to
13 realize its allowed rate of return or if the certificate would
14 allow an applicant to serve only high-margin or high-profit
15 ports or lines of service that are currently served by an
16 existing carrier.

17 ~~[-(d)]~~ (f) Any water carrier transporting passengers under
18 ~~[any such]~~ a certificate issued pursuant to this chapter may
19 occasionally deviate from the route over which it is authorized
20 to operate under the certificate ~~[under such]~~ pursuant to the
21 rules and regulations ~~[as the]~~ of the commission ~~[may~~
22 prescribe].



1 (g) The commission shall not issue any certificate that is
2 designated as interim or temporary or that otherwise does not
3 conform to the requirements of this chapter except in response
4 to an emergency situation; provided that an emergency situation
5 shall mean a state-declared emergency including disaster relief
6 pursuant to chapter 127 or a civil defense emergency pursuant to
7 chapter 128. Any certificate issued pursuant to this subsection
8 shall expire upon the expiration of the state-declared emergency
9 or an earlier date determined by the commission in response to
10 prevailing conditions. An extension of a certificate granted
11 pursuant to this subsection beyond the expiration of the state
12 declared emergency or date determined by the commission shall be
13 granted only subject to the notice, hearing, and findings
14 requirements of this chapter.

15 (h) The commission shall post a link on the front page of
16 the commission's website to a publicly accessible electronic
17 version of each application for a certificate pursuant to this
18 section and to each order of the commission regarding posted
19 applications, including the commission's final decision and
20 order. Links posted pursuant to this subsection shall include a
21 short description of the document to which the link refers,
22 shall be active within twenty-four hours of the filing of an



1 application or issuance of an order, and shall remain active for
2 at least thirty days from the filing of the application or the
3 issuance of the order or decision and order."

4 SECTION 7. By July 1, 2012, the public utilities
5 commission shall comprise commissioners from each of the four
6 counties of the State; provided that to transition to the
7 five-commissioner public utilities commission, the governor
8 shall nominate new commissioners in the following order:

9 (1) The commissioners from the second and third most
10 populous counties of the State shall be nominated for
11 appointment by the governor no later than July 1,
12 2011; and

13 (2) The commissioner from the fourth most populous county
14 in the State shall be nominated for appointment by the
15 governor by no later than January 18, 2012.

16 The governor may reduce the terms of the foregoing commissioners
17 as may be necessary to provide, as nearly as can be, for the
18 expiration of terms on a staggered basis.

19 SECTION 8. There is appropriated out of the public
20 utilities commission special fund created pursuant to section
21 269-33, Hawaii Revised Statutes, the sum of \$ or so
22 much thereof as may be necessary for fiscal year 2011-2012 and



1 the same sum or so much thereof as may be necessary for fiscal
 2 year 2012-2013 for the salaries of the two additional
 3 commissioners added to the public utilities commission by
 4 section 3 of this Act and the executive officer created by
 5 section 4 of this Act.

6 The sums appropriated shall be expended by the public
 7 utilities commission for the purposes of this Act.

8 SECTION 9. This Act does not affect rights and duties that
 9 matured, penalties that were incurred, and proceedings that were
 10 begun before its effective date.

11 SECTION 10. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act shall take effect on July 1, 2011.
 14

INTRODUCED BY:

Cleaver & Mishkin *Amid Y. Ige* *Robt. H. Harris* *Rossly H. Baker*
Malama J. Oun
Enzanna Chun Akalant *J. Felen. Eghsh*
Chris Zimmerman *Y. K. Allen Jr.* *Will E. New* *Y. K. Allen Jr.*
Will E. New *Y. K. Allen Jr.* *Y. K. Allen Jr.*
Y. K. Allen Jr. *Y. K. Allen Jr.* *Y. K. Allen Jr.*
Y. K. Allen Jr. *Y. K. Allen Jr.* *Y. K. Allen Jr.*



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Report Title:

Public Utilities Commission; Commissioners; Staff; Appropriation

Description:

Establishes notice and fact-finding requirements for the issuance of certificates of public convenience and necessity for water carriers; expands the composition of the PUC to five members with a representative from each county plus one at-large member; creates specialized subject-matter panels within the PUC; mandates the hiring of sufficient staff; creates the position of executive officer; requires electronic posting of information in connection with applications for certificates of public convenience and necessity; bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies.

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

