

1 the average available in the top three performing
2 countries in the world;

3 (2) Availability of broadband communications services on a
4 competitive basis to reduce prices, increase service
5 penetration, and improve service to all persons in the
6 State;

7 (3) Increased broadband availability at affordable cost to
8 low income and other disadvantaged groups;

9 (4) Increased sharing of broadband infrastructure to
10 reduce provider costs and customer prices, encourage
11 deployment, and ease entry into a competitive
12 broadband marketplace;

13 (5) Increased, flexible, timely, and responsible access to
14 public rights-of-way and public facilities for
15 broadband service providers; and

16 (6) A more streamlined permit approval process that
17 incorporates the input of stakeholders and other
18 interested parties.

19 This Act creates the Hawaii communications commission
20 ("commission") and tasks it with investigating, promoting, and
21 ensuring the growth and development of broadband infrastructure
22 within the State in accord with these goals. Under this Act,



1 the commission's role is to "champion" the State's broadband,
2 telecommunications, and video programming services interests
3 before the federal government, including Congress, the executive
4 branch, and the Federal Communications Commission and state and
5 local agencies, including the governor, the state legislature,
6 and county governments. While fulfilling this role, this Act
7 requires the commission to maintain close working relationships
8 with community groups, civic associations, industry trade
9 organizations, industry leaders, and other stakeholders to
10 ensure that the State's interests and concerns are understood.

11 Under this Act, the commission is required to:

- 12 (1) Develop state policies relating to the provision of
13 broadband communications services and interstate and
14 international communications services and facilities
15 serving or transiting the State of Hawaii;
- 16 (2) Work with other governmental entities to investigate
17 measures including standardization, consolidation, and
18 coordination that can be taken to streamline and
19 expedite permitting and approval processes for the
20 construction of additional broadband infrastructure;
21 and



1 (3) Develop and implement initiatives and programs to
2 construct or otherwise make available additional
3 infrastructure for the provision of broadband
4 services, and the sharing of such infrastructure by
5 competing providers of broadband services to the
6 public.

7 This Act also consolidates the regulation of
8 telecommunications carriers and cable operators in the State
9 under the commission. In doing so, the Act creates a "one stop
10 shop" to assist businesses providing broadband,
11 telecommunications, and video programming services, and
12 expediting the process for them to make their services rapidly
13 available to the public. Consolidating and streamlining the
14 State's regulatory processes for the telecommunications sector
15 in the State will help to facilitate the construction of
16 telecommunications and broadband infrastructure and the
17 introduction, penetration, and capability of advanced broadband
18 communications services.

19 The public utilities commission currently regulates
20 telecommunications carriers pursuant to chapter 269 and the
21 director of commerce and consumer affairs currently regulates



1 cable operators pursuant to chapter 440G of the Hawaii Revised
2 Statutes.

3 This Act extracts the telecommunications provisions from
4 chapter 269 and all of chapter 440G of the Hawaii Revised
5 Statutes. The Act removes authority from the director of
6 commerce and consumer affairs to regulate cable operators and,
7 following a one-year transition period, removes authority from
8 the public utilities commission to regulate telecommunications
9 carriers. The commission is established to regulate both
10 telecommunications carriers and cable operators, and is
11 established within the department of business, economic
12 development, and tourism.

13 This Act requires the commission to examine promptly rate
14 regulation for telecommunications carriers, including
15 alternatives such as price cap regulation. The Act also directs
16 the commission to investigate the possibility of implementing
17 incentive regulation for telecommunications carriers in order to
18 increase investment in broadband infrastructure within the
19 State. This Act also provides for transitional provisions that
20 assure that there is no gap in regulatory authority caused by
21 the transition, if and until, the commission takes appropriate
22 action to change existing rules, decisions, and other



1 determinations. Finally, this Act makes conforming amendments
2 to other provisions of the Hawaii Revised Statutes.

3 PART II

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 HAWAII COMMUNICATIONS COMMISSION

9 PART I. HAWAII COMMUNICATIONS COMMISSION, GENERALLY

10 § -1 Definitions. As used in this chapter, unless the
11 context otherwise requires:

12 "Applicant" means a person who initiates an application or
13 proposal.

14 "Application" means an unsolicited filing.

15 "Basic cable service" means any service tier which includes
16 the retransmission of local television broadcast signals.

17 "Broadband" means an "always on" service that combines
18 computer processing, information provision, and computer
19 interactivity with data transport, enabling end users to access
20 the internet and use a variety of applications, at minimum
21 speeds set by the commission.



1 "Cable franchise" means a nonexclusive initial
2 authorization or renewal thereof issued pursuant to this
3 chapter, whether the authorization is designated as a franchise,
4 permit, order, contract, agreement, or otherwise, that
5 authorizes the construction or operation of a cable system.

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

7 (1) Provides cable service over a cable system and
8 directly or through one or more affiliates owns a
9 significant interest in the cable system; or

10 (2) Otherwise controls or is responsible for, through any
11 arrangement, the management and operation of a cable
12 system.

13 "Cable service" means:

14 (1) The one-way transmission to subscribers of video or
15 other programming service; and

16 (2) Subscriber interaction, if any, that is required for
17 the selection of video programming or other
18 programming service.

19 "Cable system" means any facility within this State
20 consisting of a set of closed transmission paths and associated
21 signal generation, reception, and control equipment that is
22 designed to provide cable service, which includes video



1 programming and that is provided to multiple subscribers within
2 a community, but does not include a facility:

3 (1) That serves only to retransmit the television signals
4 of one or more television broadcast stations;

5 (2) That serves only subscribers in one or more multiple
6 unit dwellings under common ownership, control, or
7 management, unless that facility or facilities uses
8 any public right-of-way; or

9 (3) Of a telecommunications carrier subject in whole or in
10 part to the provisions of part II of this chapter,
11 except to the extent that those facilities provide
12 video programming directly to subscribers.

13 "Carrier of last resort" means a telecommunications carrier
14 designated by the commission to provide universal service in a
15 given local exchange service area determined to be lacking in
16 effective competition.

17 "Department" means the department of business, economic
18 development, and tourism.

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



1 "Director" means the director of business, economic
2 development, and tourism.

3 "Facility" includes all real property, antenna, poles,
4 supporting structures, wires, cables, conduits, amplifiers,
5 instruments, appliances, fixtures, and other personal property
6 used by a cable operator in providing service to its
7 subscribers.

8 "Hawaii communications commission" or "commission" has the
9 meaning as in section -2.

10 "Hawaii communications commissioner" or "commissioner" has
11 the meaning as in section -3.

12 "Institution of higher education" means an academic college
13 or university accredited by the Western Association of Schools
14 and Colleges.

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

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

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

20 "Public, educational, or governmental access facilities" or

21 "PEG access facility" means:



- 1 (1) Channel capacity designated for public, educational,
- 2 or governmental uses; and
- 3 (2) Facilities and equipment for the use of that channel
- 4 capacity.

5 "Public, educational, or governmental access organization"
6 or "PEG access organization" or "access organization" means any
7 nonprofit organization designated by the commissioner to oversee
8 the development, operation, supervision, management, production,
9 or broadcasting of programs for any channels obtained under
10 section -67, and provide PEG access services.

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

14 "School" means an academic and non-college type regular or
15 special education institution of learning established and
16 maintained by the department of education or licensed and
17 supervised by that department including charter schools.

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

20 "Telecommunications carrier" or "telecommunications common
21 carrier" means any person that owns, operates, manages, or
22 controls any facility used to furnish telecommunications



1 services for profit to the public, or to classes of users as to
 2 be effectively available to the public, engaged in the provision
 3 of services, such as voice, data, image, graphics, and video
 4 services, that make use of all or part of their transmission
 5 facilities, switches, broadcast equipment, signaling, or control
 6 devices.

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

16 "Video programming" means programming provided by, or
 17 generally considered comparable to programming provided by, a
 18 television broadcast station.

19 § -2 Hawaii communications commission; established.

20 There is established a Hawaii communications commission. The
 21 commission shall implement this chapter and shall be placed
 22 within the department for administrative purposes.



1 § -3 Hawaii communications commissioner. The commission
2 shall be under the supervision and control of the Hawaii
3 communications commissioner. The commissioner, who shall be
4 exempt from chapter 76, shall be appointed by the governor, with
5 the consent of the Senate. The commissioner shall be
6 responsible for the performance of the duties imposed upon the
7 commission, and any other specific duties, provided in this
8 chapter.

9 § -4 Deputy commissioner. The commissioner may appoint
10 a deputy commissioner, who shall be exempt from chapter 76. The
11 commissioner may, in the commissioner's discretion, dismiss the
12 deputy commissioner. The deputy commissioner shall have the
13 power to perform any act or duty assigned by the commissioner
14 and shall serve as the commissioner if, for any reason, the
15 commissioner is unable to perform the duties of commissioner,
16 until a new commissioner is appointed.

17 § -5 Employment of assistants. (a) The commissioner
18 may appoint and employ clerks, stenographers, agents, engineers,
19 accountants, and other assistants, with or without regard to
20 chapter 76; provided that:

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



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

4 (b) The commissioner may appoint and, in the
5 commissioner's discretion, dismiss hearings officers as may be
6 necessary, with or without regard to chapter 76.

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

13 (d) The commissioner may appoint one or more attorneys
14 independent of the attorney general who shall act as attorneys
15 for the commission and shall be exempt from chapter 76. The
16 commissioner shall define their powers and duties and fix their
17 compensation.

18 (e) With the consent of the director, the commissioner may
19 utilize from the department, one or more attorneys independent
20 of the attorney general who shall act as attorneys for the
21 commission and shall be exempt from chapter 76. The
22 commissioner shall define their powers and duties.



1 § -6 Terms. The commissioner shall be appointed for a
2 term of six years, shall not serve more than two consecutive
3 terms, and shall hold office until the commissioner's successor
4 is appointed and confirmed. Section 26-34 shall not apply
5 insofar as it relates to the number of terms and consecutive
6 number of years a person may be appointed as commissioner.

7 § -7 Salary. The salary of the commissioner shall be
8 set equal to that of the chairperson of the public utilities
9 commission pursuant to section 269-2.

10 § -8 General powers and duties. (a) The commission
11 shall have the authority expressly conferred upon the commission
12 by, or reasonably implied from, the provisions of this chapter.

13 (b) The commission shall have general supervision over all
14 telecommunications carriers and cable operators, and shall
15 perform the duties and exercise the powers imposed or conferred
16 upon it by this chapter.

17 (c) The commission has the authority to adopt rules
18 pursuant to chapter 91 necessary for the purposes of this
19 chapter.

20 (d) The commission shall have the authority to designate
21 and select PEG access organizations, the authority to contract
22 with the PEG access organizations and enforce the terms and



1 conditions of the contracts, and general supervision over PEG
2 access in the State.

3 § -9 Development duties. (a) The commission shall
4 ensure that all consumers are provided with nondiscriminatory,
5 reasonable, and equitable access to high quality network
6 facilities and services that provide subscribers with sufficient
7 network capacity to services that provide a combination of
8 voice, data, image, cable, and video, and that are available at
9 just, reasonable, and nondiscriminatory rates. Within twelve
10 months of the effective date of this part, the commission shall
11 investigate the extent to which telecommunications services
12 provided to residential and business customers are available
13 from multiple providers in Hawaii and whether to reclassify
14 telecommunications services provided to residential and business
15 customers as "fully competitive" communications services.

16 (b) No later than July 1, 2013, the commission shall study
17 and develop a comprehensive policy to further deploy broadband
18 communications, including Internet access, in the State. The
19 study shall include consideration of communications by wire and
20 radio, including satellite and wireless services. The
21 commission shall develop plans and strategies to increase
22 broadband affordability, penetration, and competitive



1 availability in the State. The plans may include measures to
2 streamline access to public rights-of-way and public facilities
3 for broadband service providers and the permitting and approval
4 processes required for such access. The plans may also include
5 making low-cost broadband-capable computers available to
6 eligible recipients. The plans may further include encouraging
7 or, with respect to state-owned property, requiring the sharing
8 of new infrastructure used for broadband services.

9 The commission shall regularly update and revise its
10 studies and findings in order to ensure that the State's
11 policies and initiatives remain effective in promoting the
12 State's interests.

13 (c) The commission shall develop programs and initiatives
14 intended to facilitate the deployment of broadband
15 communications services in the State and access to those
16 services by users in the State. The programs may include
17 initiatives by the State to facilitate and construct new
18 broadband communications infrastructure that can be shared by
19 competing providers of broadband services. The commission shall
20 fund these programs and initiatives using funds collected
21 pursuant to section -23 and deposited in the commission



1 special fund pursuant to section -22. In addition, the
2 commission may seek appropriations of funds from the State.

3 (d) The commission shall develop, and routinely update, a
4 state policy and formulate positions to be taken before federal
5 agencies regarding all communications matters irrespective of
6 the commission's statutory jurisdiction. The commission shall
7 advocate on behalf of the State's broadband, telecommunications
8 and video programming distribution interests before Congress,
9 the executive branch, and the Federal Communications Commission,
10 and locally before the governor, the state legislature, and
11 county governments. The commission shall also make its best
12 effort to maintain close working relationships with community
13 groups, civic associations, industry trade associations,
14 industry leaders, and other interested parties to ensure that
15 the State's interests and concerns are understood.

16 § -10 Communications infrastructure permitting. The
17 commission shall investigate measures that could streamline and
18 expedite the permitting and approval processes that are imposed
19 by governmental entities with respect to the construction of
20 infrastructure intended for use in the provision of broadband
21 services to the public. The commission shall also investigate
22 the possibility of assuming all or a portion of the duties and



1 authority to issue permits and approvals for the construction of
2 broadband communications infrastructure. If the assumption of
3 the duties and authorities is deemed by the commission to be
4 appropriate and efficient, and if the relevant governmental
5 entities approve, the commission shall assume the duties and
6 authorities and shall carry them out in accordance with any
7 statutes or rules applicable to the duties and authorities.

8 § -11 Investigative powers. (a) The commission may
9 examine the condition of each telecommunications carrier, cable
10 operator and PEG access organization, the manner in which each
11 is operated with reference to the safety or accommodation of the
12 public, the safety, working hours, and wages of its employees,
13 the services provided by it, the steps being taken to provide
14 those services, the fares and rates charged by it, the value of
15 its physical property, the issuance by it of stocks and bonds
16 and the disposition of the proceeds thereof, the amount and
17 disposition of its income, and all its financial transactions,
18 its business relations with other persons, companies, or
19 corporations, its compliance with all applicable state and
20 federal laws and with the provisions of its franchise, charter,
21 and articles of association, if any, its classifications, rules,
22 regulations, practices, and service, and all matters of every



1 nature affecting the relations and transactions between it and
2 the public or persons or corporations.

3 (b) Beginning July 1, 2013, the commission may investigate
4 any person acting in the capacity of or engaging in the business
5 of a telecommunications carrier within the State without having
6 a certificate of public convenience and necessity or other
7 authority previously obtained under and in compliance with this
8 chapter or the rules adopted under this chapter or chapter 269.

9 (c) The commission may investigate any person acting in
10 the capacity of or engaging in the business of a cable
11 television operator within the State without having a franchise
12 or other authority previously obtained under and in compliance
13 with this chapter or the rules adopted under this chapter.

14 (d) Any investigation may be made by the commission on its
15 own motion either to investigate the possibility of a violation
16 of this chapter, or to ascertain the conditions of the industry
17 in the State, or for any other reason determined by the
18 commission to be necessary or appropriate to carry out the
19 requirements of this chapter. The commission shall also
20 initiate an investigation when requested by the
21 telecommunications carrier, cable operator or PEG access
22 organization to be investigated, or by any person upon a sworn



1 written complaint to the commission, setting forth any prima
2 facie cause of complaint.

3 § -12 Delegating powers. Any power, duty, or function
4 vested in the commissioner by this chapter may be exercised,
5 discharged, or performed by any employee of the commission
6 employed pursuant to section -5(a), (b), or (d) acting in the
7 name and by the delegated authority of the commissioner. Any
8 power, duty, or function vested in the commissioner by this
9 chapter may be exercised, discharged, or performed by any
10 employee of the department utilized pursuant to section -5(c)
11 or (e) acting in the name and by the delegated authority of the
12 commissioner, with the approval of the director.

13 § -13 Annual report and register of orders. The
14 commission shall prepare and present to the governor, through
15 the director, in the month of January in each year a report
16 respecting its actions during the preceding fiscal year. This
17 report shall include summary information and analytical,
18 comparative, and trend data concerning major regulatory issues
19 acted upon and pending before the commission; cases processed by
20 the commission, including their dispositions; telecommunications
21 carrier and cable operator operations, capital improvements, and
22 rates; telecommunications carrier and cable operator and PEG



1 access organization performance in terms of efficiency and
2 quality of services rendered; environmental matters having a
3 significant impact upon telecommunications carriers and cable
4 operators; actions of the federal government affecting the
5 regulation of telecommunications carriers and cable operators in
6 the State; long and short-range plans and objectives of the
7 commission; together with the commission's recommendations
8 respecting legislation and other matters requiring executive and
9 legislative consideration; and any other matters deemed
10 necessary by the commission. Copies of the annual reports shall
11 be furnished by the governor to the legislature. In addition,
12 the commission shall establish and maintain a register of all
13 its orders, decisions, and contracts, which shall be available
14 for public inspection.

15 § -14 Commission investigative authorities. In all
16 investigations made by the commission, and in all proceedings
17 before it, the commission and the commissioner shall have the
18 same powers regarding administering oaths, compelling the
19 attendance of witnesses and the production of documentary
20 evidence, examining witnesses, and punishing for contempt, as
21 are possessed by the circuit courts of the State. In case of
22 disobedience by any person to any order of the commission or of



1 the commissioner, or any subpoena issued by it or the
2 commissioner, or of the refusal of any witness to testify to any
3 matter regarding which the witness may be questioned lawfully,
4 any circuit court, on application by the commission or the
5 commissioner, shall compel obedience similar to a case of
6 disobedience of the requirements of a subpoena issued from a
7 circuit court or a refusal to testify therein. No person shall
8 be excused from testifying or from producing any book, waybill,
9 document, paper, electronic record, or account in any
10 investigation or inquiry by a hearing before the commission or
11 the commissioner, when ordered to do so, upon the ground that
12 the testimony or evidence, book, waybill, document, paper,
13 electronic record, or account required of the person may tend to
14 incriminate the person or subject the person to penalty or
15 forfeiture; provided that no person shall be prosecuted for any
16 crime, punished for any crime, or subjected to any criminal
17 penalty or criminal forfeiture for or on account of any act,
18 transaction, matter, or thing concerning which the person shall
19 under oath have testified or produced documentary evidence.
20 Nothing herein shall be construed to provide any
21 telecommunications carrier, cable operator, PEG access
22 organization, or person any immunity whatsoever. The fees and



1 traveling expenses of witnesses, when mandated to appear, shall
2 be the same as allowed witnesses in the circuit courts, and
3 shall be paid by the State out of any appropriation available
4 for the expenses of the commission.

5 § -15 Notices. (a) Whenever an investigation is
6 undertaken and a hearing is scheduled by the commission,
7 reasonable notice in writing of the hearing and of the subject
8 or subjects to be investigated shall be given to the
9 telecommunications carrier, cable operator, PEG access
10 organization, or the person concerned, and when based upon
11 complaints made to it as prescribed in section -11, a copy of
12 the complaint, and a notice in writing of the date and place
13 fixed by the commission for beginning the investigation, shall
14 be served upon the telecommunications carrier, cable operator,
15 PEG access organization, or the person concerned, or other
16 respondent, and the complainant not less than two weeks before
17 the date designated for the hearing.

18 (b) Any notice provided pursuant to section -38(e),
19 shall plainly state the rate, fare, charge, classification,
20 schedule, rule, or practice proposed to be established,
21 abandoned, modified, or departed from and the proposed effective



1 date thereof, and shall be given by filing the notice with the
2 commission and making it available for public inspection.

3 (c) Any public hearing held pursuant to section -38(f),
4 shall be a noticed public hearing or hearings on the island on
5 which the telecommunications carrier is situated. Notice of the
6 hearing, with the purpose thereof and the date, time, and place
7 at which it will be held, shall be given not less than once in
8 each of three weeks statewide, the first notice being not less
9 than twenty-one days before the public hearing and the last
10 notice being not more than two days before the scheduled
11 hearing. The applicant or applicants shall notify their
12 consumers or patrons of the proposed change in rates and of the
13 time and place of the public hearing not less than one week
14 before the date set, the manner and the fact of notification to
15 be reported to the commission before the date of hearing.

16 § -16 Right to be represented by counsel. At any
17 investigation by or proceeding before the commission the
18 telecommunications carrier, cable operator, PEG access
19 organization, or the person concerned, or other respondent or
20 party and any complainant or permitted intervenor shall have the
21 right to be present and represented by counsel, to present any



1 evidence desired, and to cross-examine any witness who may be
2 called.

3 § -17 Commission may institute proceedings to enforce
4 chapter. (a) If the commission is of the opinion that any
5 telecommunications carrier, cable operator, PEG access
6 organization, or any person is violating or failing to comply
7 with any provision of this chapter or of any rule, order, or
8 other requirement of the commission, or of any provisions of its
9 certificate of public convenience and necessity, franchise,
10 charter, contract, or articles of association, if any, or that
11 changes, additions, extensions, or repairs are desirable in its
12 plant or service to meet the reasonable convenience or necessity
13 of the public, or to ensure greater safety or security, or that
14 any rates, fares, classifications, charges, or rules are
15 unreasonable or unreasonably discriminatory, or that in any way
16 it is doing what it ought not to do, or not doing what it ought
17 to do, the commission shall in writing inform the
18 telecommunications carrier, cable operator, PEG access
19 organization, or the person and may institute such proceedings
20 as may be necessary to require the telecommunications carrier,
21 cable operator, PEG access organization, or the person to
22 correct any such deficiency. In such event, the commission may



1 by order direct the consumer advocate to appear in the
2 proceeding, to carry out the purposes of this section. The
3 commission may examine into any of the matters referred to in
4 section -11, notwithstanding that the same may be within the
5 jurisdiction of any court or other body; provided that this
6 section shall not be construed as in any manner limiting or
7 otherwise affecting the jurisdiction of any court or other body.
8 The commission may also revoke or amend any provision of a
9 certificate of public convenience and necessity, franchise,
10 charter, or articles of association, if any, pursuant to
11 sections -31 or -68.

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

20 (1) The citation may contain an order of abatement and an
21 assessment of civil penalties as provided in section
22 -26. All penalties collected under this subsection



1 shall be deposited in the Hawaii communications
2 commission special fund created in section -22.
3 Service of a citation issued under this subsection
4 shall be made by personal service whenever possible,
5 or by certified mail, return receipt requested, sent
6 to the last known business or residence address of the
7 person cited.

8 (2) Any person served with a citation under this
9 subsection may submit a written request to the
10 commission for a hearing, within twenty calendar days
11 from the receipt of the citation, with respect to the
12 violations alleged, the scope of the order of
13 abatement, and the amount of civil penalties assessed.

14 If the person cited under this subsection timely
15 notifies the commission of the request for a hearing,
16 the commission shall afford an opportunity for a
17 hearing under chapter 91. The hearing shall be
18 conducted by the commission or the commission may
19 designate a hearings officer to conduct the hearing.

20 (3) If the person cited under this subsection does not
21 submit a written request to the commission for a
22 hearing within twenty calendar days from the receipt



1 of the citation, the citation shall be deemed a final
2 order of the commission. The commission may apply to
3 the appropriate court for a judgment to enforce the
4 provisions of any final order issued by the commission
5 pursuant to this subsection, including but not limited
6 to the provisions for abatement and civil penalties
7 imposed. In any proceeding to enforce the provisions
8 of the final order of the commission, the commission
9 need only show that the notice was given, a hearing
10 was held or the time granted for requesting the
11 hearing has run without such a request, and a
12 certified copy of the final order of the commission.

- 13 (4) If any party is aggrieved by the decision of the
14 commission or the designated hearings officer, the
15 party may appeal to the State intermediate appellate
16 court, subject to chapter 602, in the manner provided
17 for civil appeals from the circuit court; provided
18 that the operation of an abatement order shall not be
19 stayed on appeal unless specifically ordered by the
20 intermediate appellate court after applying the stay
21 criteria enumerated in section 91-14(c). The
22 sanctions and disposition authorized under this



1 subsection shall be separate and in addition to all
2 other remedies either civil or criminal provided in
3 any other applicable statutory provision. The
4 commission may adopt rules under chapter 91 as may be
5 necessary to fully effectuate this subsection.

6 § -18 Appeals. An appeal from an order of the
7 commission under this chapter shall lie, subject to chapter 602,
8 in the manner provided for civil appeals from the circuit
9 courts. Only a person aggrieved in a contested case proceeding
10 provided for in this chapter may appeal from the order, if the
11 order is final, or if preliminary, is of the nature defined by
12 section 91-14(a). The commission may elect to be a party to all
13 matters, from which an order of the commission is appealed or
14 any action in any court of law seeking a mandamus, or injunctive
15 or other relief to compel compliance with this chapter, or any
16 rule or order adopted thereunder, or to restrain or otherwise
17 prevent or prohibit any illegal or unauthorized conduct in
18 connection therewith, and file appropriate responsive briefs or
19 pleadings. If there is no adverse party to the appeal, the
20 commission shall be a party and shall file responsive briefs or
21 pleadings in defending all orders. The appearance of the
22 commission as a party in judicial proceedings in no way limits



1 the participation of persons otherwise qualified to be parties
2 on appeal. The appeal shall not of itself stay the operation of
3 the order appealed from, but the appellate court may stay the
4 order after a hearing upon a motion therefor and may impose
5 conditions it deems proper, including but not limited to
6 requiring a bond, requiring that accounts be kept, or requiring
7 that other measures be taken as ordered to secure restitution of
8 the excess charges, if any, made during the pendency of the
9 appeal, in case the order appealed from is sustained, reversed,
10 or modified in whole or in part.

11 § -19 Alternative dispute resolution. The commission
12 may require the parties in any matter before the commission to
13 participate in nonbinding arbitration, mediation, or other
14 alternative dispute resolution process prior to the hearing.

15 § -20 Perjury. Any person who willfully and knowingly
16 makes under oath any false statement in connection with any
17 investigation by or proceeding before the commission shall be
18 guilty of perjury and, upon conviction, shall be subject to the
19 penalty prescribed by law for the offense.

20 § -21 Telecommunications carriers, cable operators and
21 PEG access organizations, to furnish information. Every
22 telecommunications carrier, cable operator, PEG access



1 organization, or other person subject to investigation by the
2 commission, shall at all times, upon request, furnish to the
3 commission all information that it may require respecting any of
4 the matters concerning which the commission is given power to
5 investigate, and shall permit the examination of its books,
6 records, contracts, maps, and other documents by the commission,
7 or any of its members, or any person authorized by it in writing
8 to make such examination, and shall furnish the commission with
9 a complete inventory of property under its control or management
10 in such form as the commission may direct. Information and data
11 that the commission requires to be produced by a
12 telecommunications carrier, cable operator, PEG access
13 organization, or other person that is proprietary in nature or
14 qualifies as commercially sensitive information shall be treated
15 and protected as confidential by the commission.

16 § -22 Hawaii communications commission special fund.

17 (a) There is established in the state treasury the Hawaii
18 communications commission special fund to be administered by the
19 commission. The proceeds of the fund shall be used by the
20 commission and the division of consumer advocacy of the
21 department of commerce and consumer affairs for all expenses
22 incurred in the administration of this chapter, including



1 without limitation, the operation of programs as may be
2 developed by the commission to develop and construct, or
3 encourage the construction of, broadband infrastructure; make
4 broadband-capable computers available to low income and
5 disadvantaged persons; or otherwise promote universal
6 availability of communications services. The expenditures of
7 the commission shall be done in accordance with legislative
8 appropriations. On a quarterly basis, an amount not to exceed
9 thirty per cent of the proceeds remaining in the fund shall be
10 allocated to the division of consumer advocacy of the department
11 of commerce and consumer affairs and deposited in the compliance
12 resolution fund established pursuant to section 26-9(o).

13 (b) All moneys appropriated to, received, and collected by
14 the commission that are not otherwise pledged, obligated, or
15 required by law to be placed in any other special fund or
16 expended for any other purpose shall be deposited into the
17 Hawaii communications commission special fund including, but not
18 limited to, all moneys received and collected by the commission
19 pursuant to sections -23, -26, and 92-21.

20 (c) The commission shall submit a report to the
21 legislature detailing all funds received and all moneys



1 disbursed out of the fund prior to the convening of each regular
2 session.

3 § -23 Finances; regulatory fee. (a) There shall be
4 paid to the commission in each of the months of July and
5 December of each year, by each telecommunications carrier
6 subject to this chapter, a fee set by the commission not to
7 exceed one-fourth of one per cent of the gross income from the
8 telecommunications carrier's business during the preceding year,
9 or the sum of \$30, whichever is greater. The commission shall
10 set the fee amount based on its projected budget for the year to
11 administer and enforce this chapter. This fee shall be
12 deposited with the director of finance to the credit of the
13 commission special fund created pursuant to section -22.

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



1 § -24 Consumer advocate. The commission shall recognize
2 the director as the consumer advocate in hearings and
3 proceedings before the commission.

4 § -25 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 commission, telecommunications carriers, and cable
9 operators on matters within the jurisdiction of this chapter at
10 the request of the commission or any telecommunications carrier
11 or cable operator. The members of the committee shall serve
12 without pay but shall be entitled to reimbursement for necessary
13 expenses while attending meetings and while in discharge of
14 their duties.

15 § -26 Penalties. (a) Any telecommunications carrier,
16 cable operator, or PEG access organization violating or failing
17 in any particular way to conform to or comply with this chapter
18 or any lawful order of the commission, including, but not
19 limited to the acts specified in section -68 for cable
20 operators and PEG access organizations, shall be subject to a
21 civil penalty not to exceed \$25,000 for each day the violation,
22 neglect, or failure continues, to be assessed by the commission

1 after a hearing in accordance with chapter 91. The commission
2 may order any offender to cease carrying on its business while
3 the violation, neglect, or failure continues.

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

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

18 (d) If any civil penalty imposed pursuant to this section
19 is not paid within a period as the commission may direct, the
20 attorney general may institute a civil action for recovery of
21 the same in circuit court.



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

5 PART II. TELECOMMUNICATIONS

6 § -31 Certificates of public convenience and necessity.

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

21 (b) A certificate shall be issued to any qualified
22 applicant, authorizing the whole or any part of the operations



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

18 (c) No telecommunications carrier that holds a certificate
19 of public convenience and necessity, franchise, or charter
20 enacted or granted by the legislative or executive authority of
21 the State or its predecessor governments, or that has a bona
22 fide operation as a telecommunications carrier heretofore



1 recognized by the public utilities commission prior to July 1,
2 2013, shall be required to obtain a new certificate of public
3 convenience and necessity under this section.

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

12 § -32 Location of records. A telecommunications carrier
13 shall keep and maintain records, books, papers, accounts, and
14 other documents that the commission determines are necessary and
15 shall make them immediately available when requested by the
16 commission; provided that the original copies shall be made
17 available when requested by the commission.

18 § -33 Annual financial reports. All annual financial
19 reports required to be filed with the commission by
20 telecommunications carriers shall include a certification that
21 the report conforms with the applicable uniform system of



1 accounts adopted by the commission. The commission shall adopt
2 a uniform system of accounts for this purpose.

3 § -34 Telecommunications providers and services. (a)

4 Notwithstanding any provision of this chapter to the contrary,
5 the commission, upon its own motion or upon the application of
6 any person, and upon notice and hearing, may exempt a
7 telecommunications carrier or a telecommunications service from
8 any or all of the provisions of this chapter, except the
9 requirements of section -36, upon a determination that the
10 exemption is in the public interest. In determining whether an
11 exemption is in the public interest, the commission shall
12 consider whether the exemption promotes state policies in
13 telecommunications, the development, maintenance, and operation
14 of effective and economically efficient telecommunications
15 services, and the furnishing of telecommunications services at
16 just and reasonable rates and in a fair manner in view of the
17 needs of the various customer segments of the telecommunications
18 industry. Among the specific factors the commission may
19 consider are:

- 20 (1) The appropriateness of the exemption in view of
21 changes in the structure and technology of the State's
22 telecommunications industry;



- 1 (2) The benefits accruing to the customers and users of
- 2 the exempt telecommunications carrier or service;
- 3 (3) The impact of the exemption on the quality,
- 4 efficiency, and availability of telecommunications
- 5 services;
- 6 (4) The impact of the exemption on the maintenance of
- 7 fair, just, and reasonable rates for
- 8 telecommunications services;
- 9 (5) The likelihood of prejudice or disadvantage to
- 10 ratepayers of basic local exchange service resulting
- 11 from the exemption;
- 12 (6) The effect of the exemption on the preservation and
- 13 promotion of affordable, universal, basic
- 14 telecommunications services as those services are
- 15 determined by the commission;
- 16 (7) The resulting subsidization, if any, of the exempt
- 17 telecommunications service or provider by nonexempt
- 18 services;
- 19 (8) The impact of the exemption on the availability of
- 20 diversity in the supply of telecommunications services
- 21 throughout the State;



1 (9) The improvements in the regulatory system to be gained
2 from the exemption, including the reduction in
3 regulatory delays and costs;

4 (10) The impact of the exemption on promoting innovations
5 in telecommunications services;

6 (11) The opportunity provided by the exemption for
7 telecommunications carriers to respond to competition;

8 (12) The potential for the exercise of substantial market
9 power by the exempt provider or by a provider of the
10 exempt telecommunications service; and

11 (13) The impact of the exemption on the competitive
12 availability and affordability of broadband and other
13 advanced services to consumers.

14 (b) The commission shall expedite, where practicable, the
15 regulatory process with respect to exemptions and shall adopt
16 guidelines under which each provider of an exempted service
17 shall be subject to similar terms and conditions.

18 (c) The commission may condition or limit any exemption as
19 the commission deems necessary in the public interest. The
20 commission may provide a trial period for any exemption and may
21 terminate the exemption or continue it for such period and under
22 such conditions and limitations as it deems appropriate.



1 (d) The commission may require a telecommunications
2 provider to apply for a certificate of public convenience and
3 necessity pursuant to section -31; provided that the
4 commission may waive any application requirement whenever it
5 deems the waiver to be in furtherance of the purposes of this
6 section. The exemptions under this section may be granted in a
7 proceeding for certification or in a separate proceeding.

8 (e) The commission may waive other regulatory requirements
9 under this chapter applicable to telecommunications carriers
10 when it determines that competition will serve the same purpose
11 as public interest regulation.

12 (f) If any provider of an exempt telecommunications
13 service or any exempt telecommunications carrier elects to
14 terminate its service, it shall provide notice of this to its
15 customers, the commission, and every telecommunications carrier
16 providing basic local exchange service in this State. The
17 notice shall be in writing and given not less than six months
18 before the intended termination date. Upon termination of
19 service by a provider of an exempt service or by an exempt
20 provider, the appropriate telecommunications carrier providing
21 basic local exchange service shall ensure that all customers
22 affected by the termination receive basic local exchange



1 service. The commission shall, upon notice and hearing or by
2 rule, determine the party or parties who shall bear the cost, if
3 any, of access to the basic local exchange service by the
4 customers of the terminated exempt service.

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

14 (h) For purposes of this section, the commission, upon
15 determination that any area of the State has less than adequate
16 telecommunications service, shall require the existing
17 telecommunications carrier to show cause as to why the
18 commission should not authorize an alternative
19 telecommunications carrier for that area under the terms and
20 conditions of this section.

21 § -35 Application of this chapter. This chapter shall
22 not apply to commerce with foreign nations, or commerce with the



1 several states of the United States, except insofar as the same
2 may be permitted under the Constitution and laws of the United
3 States; nor shall it apply to telecommunications carriers owned
4 and operated by the State.

5 § -36 Obligations of telecommunications carriers. In
6 accordance with conditions and guidelines established by the
7 commission to facilitate the introduction of competition into
8 the State's telecommunications marketplace, each
9 telecommunications carrier, upon bona fide request, shall
10 provide services or information services, on reasonable terms
11 and conditions, to an entity seeking to provide intrastate
12 telecommunications, including but not limited to:

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

18 (2) The current interstate tariff used as the access rate
19 until such time that the commission may adopt a new
20 intrastate local service interconnection tariff
21 pursuant to section -37;



- 1 (3) Nondiscriminatory and equal access to any
2 telecommunications carrier's telecommunications
3 facilities, functions, and the information necessary
4 to the transmission and routing of any
5 telecommunications service and the interoperability of
6 both carriers' networks;
- 7 (4) Nondiscriminatory access among all telecommunications
8 carriers, where technically feasible and economically
9 reasonable, and where safety or the provision of
10 existing electrical service is not at risk, to the
11 poles, ducts, conduits, and rights-of-way owned or
12 controlled by the telecommunications carrier, or the
13 commission shall authorize access to electric
14 utilities' poles as provided by the joint pole
15 agreement, commission tariffs, rules, or orders, or
16 Federal Communications Commission rules and
17 regulations;
- 18 (5) Nondiscriminatory access to the network functions of
19 the telecommunications carrier's telecommunications
20 network, that shall be offered on an unbundled,
21 competitively neutral, and cost-based basis;



- 1 (6) Telecommunications services and network functions
2 without unreasonable restrictions on the resale or
3 sharing of those services and functions; and
- 4 (7) Nondiscriminatory access of customers to the
5 telecommunications carrier of their choice without the
6 need to dial additional digits or access codes, where
7 technically feasible. The commission shall determine
8 the equitable distribution of costs among the
9 authorized telecommunications carriers that will use
10 the access and shall establish rules to ensure access.

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

17 § -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 § -38 Regulation of telecommunications carrier rates;
8 ratemaking procedures. (a) All rates, fares, charges,
9 classifications, schedules, rules, and practices made, charged,
10 or observed by any telecommunications carrier or by two or more
11 telecommunications carriers jointly shall be just and reasonable
12 and shall be filed with the commission. The rates, fares,
13 classifications, charges, and rules of every telecommunications
14 carrier shall be published by the telecommunications carrier in
15 such manner as the commission may require, and copies shall be
16 furnished to any person on request.

17 (b) The commission shall promptly examine rate regulation
18 alternatives including rate-of-return ratemaking and price cap
19 ratemaking, and may issue an order imposing alternative rate
20 regulation procedures. The examination shall include pursuing
21 incentive regulation with local exchange carriers, one goal of



1 which shall be to increase broadband competitive availability
2 and affordability to consumers in the State.

3 (c) The commission may waive rate regulation and allow
4 telecommunications carriers to have pricing flexibility for
5 services that the commission determines to be effectively
6 competitive; provided that the rates for:

7 (1) Basic telephone service and for services that are not
8 effectively competitive are regulated and remain just,
9 reasonable, and nondiscriminatory; and

10 (2) Universal service is preserved and advanced.

11 (d) Unless otherwise directed by the commission, a
12 telecommunications carrier may charge any rate for a service
13 less than or equal to the rate for the service included in the
14 telecommunications carrier's filed tariff. The rate charged
15 shall be available at the same terms for all customers in all
16 geographic locations within the telecommunications carrier's
17 service area.

18 (e) Unless and until the commission waives this
19 requirement, no rate, fare, charge, classification, schedule,
20 rule, or practice, other than one established pursuant to an
21 automatic rate adjustment clause previously approved by the
22 commission, shall be established, abandoned, modified, or



1 departed from by any telecommunications carrier, except after
2 thirty days' notice to the commission as prescribed in section
3 -15(b), and prior approval by the commission for any
4 increases in rates, fares, or charges. The commission, in its
5 discretion and for good cause shown, may allow any rate, fare,
6 charge, classification, schedule, rule, or practice to be
7 established, abandoned, modified, or departed from upon notice
8 less than that provided for in section -15(b). Unless and
9 until the commission waives this requirement, a contested case
10 hearing shall be held in connection with any increase in rates,
11 and the hearing shall be preceded by a public hearing as
12 prescribed in section -15(c), at which the consumers or
13 patrons of the telecommunications carrier may present testimony
14 to the commission concerning the increase. The commission, upon
15 notice to the telecommunications carrier, may:

- 16 (1) Suspend the operation of all or any part of the
17 proposed rate, fare, charge, classification, schedule,
18 rule, or practice or any proposed abandonment or
19 modification thereof or departure therefrom;
- 20 (2) After a hearing, by order:
 - 21 (A) Regulate, fix, and change all rates, fares,
22 charges, classifications, schedules, rules, and



- 1 practices so that the same shall be just and
2 reasonable;
- 3 (B) Prohibit rebates and unreasonable discrimination
4 between localities or between users or consumers
5 under substantially similar conditions;
- 6 (C) Regulate the manner in which the property of
7 every telecommunications carrier is operated with
8 reference to the safety and accommodation of the
9 public;
- 10 (D) Prescribe its form and method of keeping
11 accounts, books, and records, and its accounting
12 system;
- 13 (E) Regulate the return upon its telecommunications
14 carrier property;
- 15 (F) Regulate the incurring of indebtedness relating
16 to its telecommunications carrier business; and
- 17 (G) Regulate its financial transactions; and
- 18 (3) Do all things that are necessary and in the exercise
19 of the commission's power and jurisdiction, all of
20 which as so ordered, regulated, fixed, and changed are
21 just and reasonable, and provide a fair return on the
22 property of the telecommunications carrier actually



1 used or useful for telecommunications carrier
2 purposes.

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

18 (g) In any case of two or more organizations, trades, or
19 businesses (whether or not incorporated, whether or not
20 organized in the State, and whether or not affiliated) owned or
21 controlled directly or indirectly by the same interests, the
22 commission may distribute, apportion, or allocate gross income,



1 deductions, credits, or allowances between or among the
2 organizations, trades, or businesses, if it determines that the
3 distribution, apportionment, or allocation is necessary to
4 adequately reflect the income of any such organizations, trades,
5 or businesses to carry out the regulatory duties imposed by this
6 section.

7 (h) Notwithstanding any law to the contrary, for
8 telecommunications carrier having annual gross revenues of less
9 than \$2,000,000, the commission may make and amend its rules and
10 procedures to provide the commission with sufficient facts
11 necessary to determine the reasonableness of the proposed rates
12 without unduly burdening the telecommunications carrier company
13 and its customers.

14 § -39 Cross-subsidies. (a) The commission shall ensure
15 that noncompetitive services shall not cross-subsidize
16 competitive services. Cross-subsidization shall be deemed to
17 have occurred:

18 (1) If any competitive service is priced below the total
19 service long-run incremental cost of providing the
20 service as determined by the commission in subsection
21 (b); or



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

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

12 § -40 Separate affiliate audits. The commission shall
13 receive the results of joint federal and state audits required
14 for companies required to operate separate affiliates and obtain
15 and pay for a joint federal and state audit every two years from
16 an independent auditor pursuant to 47 U.S.C. section 272(d), as
17 amended. The commission shall make the results of the audit
18 available for public inspection.

19 § -41 Unfair or deceptive acts or practices. The
20 commission shall adopt rules prohibiting unfair or deceptive
21 acts or practices by telecommunications carriers and
22 telecommunications service providers including resellers and



1 aggregators of telecommunications services. Unfair or deceptive
2 acts or practices may include unauthorized changes in subscriber
3 carrier selections.

4 § -42 Lifeline telephone rates. (a) The commission
5 shall implement a program to achieve lifeline telephone rates
6 for residential telephone users. The commission may achieve
7 lifeline telephone rates by using funds collected pursuant to
8 section -23 and deposited in the commission special fund
9 pursuant to section -22. In conjunction with these funds, or
10 alternatively, the commission may seek appropriations of funds
11 from the legislature.

12 (b) For purposes of this section, "lifeline telephone
13 rate" means a discounted rate for residential telephone users
14 identified as elders with limited income and the handicapped
15 with limited income as designated by the commission by rule.

16 (c) The commission shall require every telecommunications
17 carrier providing local telephone service to file a schedule of
18 rates and charges providing a rate for lifeline telephone
19 subscribers.

20 (d) Nothing in this section shall preclude the commission
21 from changing any rate established pursuant to subsection (a)



1 either specifically or pursuant to any general restructuring of
2 all telephone rates, charges, and classifications.

3 § -43 Carriers of last resort. (a) The commission may
4 define and designate local exchange service areas where the
5 commission has determined that a single provider will be the
6 most appropriate way to ensure service for these areas.

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

18 (c) The commission shall adopt rules pursuant to chapter
19 91 to carry out the provisions of this section.

20 § -44 Telecommunications relay services for the deaf,
21 persons with hearing disabilities, and persons with speech
22 disabilities. (a) The commission shall implement intrastate



1 telecommunications relay services for the deaf, persons with
2 hearing disabilities, and persons with speech 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 shall be awarded by the
8 commission to the provider or providers the commission
9 determines to be best qualified to provide these services. In
10 reviewing the qualifications of the provider or providers, the
11 commission shall consider the factors of cost, quality of
12 services, and experience, and any other factors as the
13 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 the 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 non-
5 voice terminal devices, speech-to-speech services, video relay
6 services, and non-English relay services.

7 § -45 Telecommunications number portability. The
8 commission shall ensure that telecommunications number
9 portability within an exchange is available, upon request, as
10 soon as technically feasible and economically reasonable. An
11 impartial entity shall administer telecommunications numbering
12 and make the numbers available on an equitable basis.

13 § -46 Emergency telephone service; capital costs;
14 ratemaking. (a) A telecommunications carrier providing local
15 exchange telecommunications services may recover the capital
16 cost and associated operating expenses of providing a statewide
17 enhanced 911 emergency telephone service in the public switched
18 telephone network, through a telephone line surcharge.

19 (b) The commission shall require every telecommunications
20 carrier providing statewide enhanced 911 emergency telephone
21 service to maintain a separate accounting of the costs of
22 providing an enhanced 911 emergency service and the revenues



1 received from related surcharges. The commission shall further
2 require that every telecommunications carrier imposing a
3 surcharge shall identify such as a separate line item on all
4 customer billing statements.

5 (c) This section shall not preclude the commission from
6 changing any rate, established pursuant to this section, either
7 specifically or pursuant to any general restructuring of all
8 telephone rates, charges, and classifications.

9 § -47 Issuance of securities. A telecommunications
10 carrier corporation may, on securing the prior approval of the
11 commission, and not otherwise, issue stocks and stock
12 certificates, bonds, notes, and other evidences of indebtedness,
13 payable at periods of more than twelve months after the date
14 thereof, for the following purposes and no other, namely: for
15 the acquisition of property or for the construction, completion,
16 extension, or improvement of or addition to its facilities or
17 service, or for the discharge or lawful refunding of its
18 obligations or for the reimbursement of moneys actually expended
19 from income or from any other moneys in its treasury not secured
20 by or obtained from the issue of its stocks or stock
21 certificates, or bonds, notes, or other evidences of
22 indebtedness, for any of the aforesaid purposes except



1 maintenance of service, replacements, and substitutions not
2 constituting capital expenditure in cases where the corporation
3 has kept its accounts for the expenditures in a manner as to
4 enable the commission to ascertain the amount of moneys so
5 expended and the purposes for which the expenditures were made,
6 and the sources of the funds in its treasury applied to the
7 expenditures. As used herein, "property" and "facilities" mean
8 property and facilities used in all operations of a
9 telecommunications carrier corporation whether or not included
10 in its operations or rate base. A telecommunications carrier
11 corporation may not issue securities to acquire property or to
12 construct, complete, extend, improve, or add to its facilities
13 or service if the commission determines that the proposed
14 purpose will have a material adverse effect on its
15 telecommunications carrier operations.

16 All stock and every stock certificate, and every bond,
17 note, or other evidence of indebtedness of a telecommunications
18 carrier corporation not payable within twelve months, issued
19 without an order of the commission authorizing the same, then in
20 effect, shall be void.

21 § -48 Issuance of voting stock; restrictions. (a) For
22 purposes of this section:



1 "Foreign corporation" means a foreign corporation as
2 defined in section 235-1 or a corporation in which a majority of
3 the voting stock is held by a single foreign corporation as
4 defined in section 235-1.

5 "Nonresident alien" means a person not a citizen of the
6 United States who is not defined as a resident alien by the
7 United States Citizenship and Immigration Services.

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

- 18 (1) Any purchase or sale by an underwriter; or
- 19 (2) A transaction to acquire shares of a corporation with
20 less than one hundred shareholders and less than
21 \$1,000,000 in assets.



1 Every assignment, transfer, contract, or agreement for
2 assignment or transfer of any shares in violation of this
3 section shall be void and of no effect; and no such transfer
4 shall be made on the books of the corporation. Nothing herein
5 shall be construed to make illegal the holding of stock lawfully
6 held, directly or indirectly, prior to June 4, 1977.

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

20 § -50 Merger and consolidation of telecommunications
21 carriers. No telecommunications carrier corporation shall sell,
22 lease, assign, mortgage, or otherwise dispose of or encumber the



1 whole or any part of its road, line, plant, system, or other
2 property necessary or useful in the performance of its duties to
3 the public, or any franchise or permit, or any right thereunder,
4 nor by any means, directly or indirectly, merge or consolidate
5 with any other person or entity without first having secured
6 from the commission an order authorizing it so to do. Every
7 such sale, lease, assignment, mortgage, disposition,
8 encumbrance, merger, or consolidation, made other than in
9 accordance with the order of the commission, shall be void.

10 § -51 Injury to carrier property. Any person who
11 injures or destroys, through want of proper care, any necessary
12 or useful facility, equipment or property of any
13 telecommunications carrier shall be liable to the
14 telecommunications carrier for all damages sustained thereby.
15 The measure of damages to the facility, equipment, or property
16 injured or destroyed shall be the cost to repair or replace the
17 facility, equipment, or property injured or destroyed including
18 direct and allocated costs for labor, materials, supervision,
19 supplies, tools, taxes, transportation, and administrative and
20 general expense and other indirect or overhead expenses, less
21 credit, if any, for salvage. Specifying the measure of damages
22 for the facility, equipment, or property shall not preclude the



1 recovery of any other damages occasioned thereby as may be
2 authorized by law.

3 § -52 One call center; advance warning to excavators.

4 To finance the establishment and operation of the one call
5 center, pursuant to chapter 269E, and the administrative costs
6 of the commission, the commission shall direct
7 telecommunications carriers to pay to the public utilities
8 commission a fee in an amount and at a schedule determined by
9 the public utilities commission.

10 PART III. CABLE SERVICES

11 § -61 Issuance of cable franchises and regulation of
12 cable operators by the commission. The commission shall be
13 empowered to issue cable franchises and otherwise administer and
14 enforce this chapter.

15 § -62 Cable franchise required. (a) No person shall
16 construct, operate, or acquire a cable system, or extend an
17 existing cable system outside its designated service area,
18 without first obtaining a cable franchise as provided in this
19 chapter.

20 (b) No cable operator 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 cable operator heretofore recognized by the
2 public utilities commission prior to July 1, 2013, shall be
3 required to obtain a new franchise under this section.

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

8 (b) An application for issuance of a cable franchise shall
9 be made in a form prescribed by the commission. The application
10 shall set forth the facts as required by the commission to
11 determine in accordance with section -65 whether a cable
12 franchise should be issued, including facts as 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 commission 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 commission 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 commission and within a time frame
14 established by rule, the commission shall notify an
15 applicant in writing of the acceptance or non-
16 acceptance for filing of an application or proposal
17 for issuance of a cable franchise required by this
18 chapter;

19 (2) After the issuance of a notice of acceptance for
20 filing and within a time frame established by rule,
21 the commission 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 commission shall also give public notice
7 of the application and hearing at least once in each
8 of two successive weeks in the county in which the
9 proposed service area is located. The last notice
10 shall be given at least fifteen calendar days prior to
11 the date of the hearing;

12 (3) After holding a public hearing, the commission 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 commission 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 commission's approval of the applicant's request



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

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

6 content. (a) The commission 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 commission, after a public hearing as provided in
10 this chapter, shall issue a cable franchise to the applicant
11 when the commission is convinced that it is in the public
12 interest to do so. In determining whether a cable franchise
13 shall be issued, the commission 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 commission deems appropriate in the
2 circumstances.

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

9 (d) In issuing a cable franchise under this chapter, the
10 commission 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 commission 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 commission 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 commission 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 commission may prescribe.

9 (c) The commission 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 which 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 commission'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 commission.

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 that may request service.

4 (f) The cable operator shall designate three or more
5 television channels or video streams for public, educational, or
6 governmental use as directed by the commissioner.

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

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

19 (1) All applicable state statutes and all applicable rules
20 and orders of the public utilities commission and the
21 commission governing the construction, maintenance,



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



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

5 § -68 Complaints; violations; revocation, alteration, or
6 suspension of cable franchise. (a) Subscriber complaints
7 regarding the operation of a cable system may be made orally or
8 in writing to the commission. The commission shall resolve
9 complaints informally when possible.

10 (b) Any cable franchise, after a hearing in accordance
11 with chapter 91, may be revoked, altered, or suspended by the
12 commission as the commission deems necessary on any of the
13 following grounds:

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

17 (2) For failure to maintain signal quality under the
18 standards prescribed by the commission;

19 (3) For any sale, lease, assignment, or other transfer of
20 its cable franchise without consent of the commission;

21 (4) Except when commercially impracticable, for
22 unreasonable delay in construction or operation or for



1 unreasonable withholding of the extension of cable
2 service to any person in a service area;

3 (5) For violation of the terms of its cable franchise;

4 (6) For failure to comply with this chapter or any rules
5 or orders prescribed by the commission;

6 (7) For violation of its filed schedule of terms and
7 conditions of service; and

8 (8) For engaging in any unfair or deceptive act or
9 practice as prohibited by section 480-2.

10 § -69 Renewal of cable franchise. Any cable franchise
11 issued pursuant to this chapter may be renewed by the commission
12 upon approval of a cable operator's application or proposal
13 therefor. The form of the application or proposal shall be
14 prescribed by the commission. The periods of renewal shall be
15 not less than five nor more than fifteen years each. The
16 commission shall require of the applicant full disclosure,
17 including the proposed plans and schedule of expenditures for or
18 in support of the use of PEG access facilities and equipment and
19 broadband facilities.

20 § -70 Transfer of cable franchise. (a) No cable
21 franchise, including the rights, privileges, and obligations
22 thereof, may be assigned, sold, leased, encumbered, or otherwise



1 transferred, voluntarily or involuntarily, directly or
2 indirectly, including by transfer of control of any cable
3 system, whether by change in ownership or otherwise, except upon
4 written application to and approval by the commission. The form
5 of the application shall be prescribed by the commission.

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

8 § -71 Rate, filed with the commission; approval. (a)
9 The commission shall require each cable operator to file a
10 schedule of its rates of service on a form and with the notice
11 that the commission may prescribe.

12 (b) To the extent permitted by federal law, the commission
13 shall regulate rates to ensure that they are fair both to the
14 public and to the cable operator.

15 § -72 Reports. Each cable operator shall file with the
16 commission reports of its financial, technical, and operational
17 condition and its ownership. The reports shall be made in a
18 form and on the time schedule prescribed by the commission and
19 shall be kept on file open to the public.

20 § -73 Annual fees. (a) Each cable operator shall pay
21 an annual fee to be determined by the commission. The fees so



1 collected under this section shall be deposited into the
2 commission special fund established under section -22.

3 (b) The commission shall adjust the fees assessed under
4 this section, as necessary from time to time, pursuant to rules
5 adopted in accordance with chapter 91.

6 § -74 Criminal and civil liability. Nothing in this
7 chapter shall be deemed to affect the criminal and civil
8 liability of cable programmers, cable operators, or PEG access
9 organizations pursuant to the federal, state, or local laws
10 regarding libel, slander, obscenity, incitement, invasions of
11 privacy, false or misleading advertising, or other similar laws,
12 except that no PEG access organization shall incur any such
13 liability arising from, based on, or related to any program not
14 created by the PEG access organization, which is broadcast on
15 any channel obtained under section -65, or under similar
16 arrangements."

17 PART III

18 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
19 amended by amending subsection (o) to read as follows:

20 "(o) Every person licensed under any chapter within the
21 jurisdiction of the department of commerce and consumer affairs
22 and every person licensed subject to chapter 485A or registered



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



1 reinstatement of the license. The director may establish,
2 increase, decrease, or repeal the fees when necessary pursuant
3 to rules adopted under chapter 91. The director may also
4 increase or decrease the fees pursuant to section 92-28.

5 There is created in the state treasury a special fund to be
6 known as the compliance resolution fund to be expended by the
7 director's designated representatives as provided by this
8 subsection. Notwithstanding any law to the contrary, all
9 revenues, fees, and fines collected by the department shall be
10 deposited into the compliance resolution fund. Unencumbered
11 balances existing on June 30, 1999, in the cable television fund
12 under chapter 440G, the division of consumer advocacy fund under
13 chapter 269, the financial institution examiners' revolving
14 fund, section 412:2-109, the special handling fund, section
15 414-13, and unencumbered balances existing on June 30, 2002, in
16 the insurance regulation fund, section 431:2-215, shall be
17 deposited into the compliance resolution fund. This provision
18 shall not apply to the drivers education fund underwriters fee,
19 sections 431:10C-115 and 431:10G-107, insurance premium taxes
20 and revenues, revenues of the workers' compensation special
21 compensation fund, section 386-151, the captive insurance
22 administrative fund, section 431:19-101.8, the insurance



1 commissioner's education and training fund, section 431:2-214,
2 the medical malpractice patients' compensation fund as
3 administered under section 5 of Act 232, Session Laws of Hawaii
4 1984, and fees collected for deposit in the office of consumer
5 protection restitution fund, section 487-14, the real estate
6 appraisers fund, section 466K-1, the real estate recovery fund,
7 section 467-16, the real estate education fund, section 467-19,
8 the contractors recovery fund, section 444-26, the contractors
9 education fund, section 444-29, the condominium education trust
10 fund, section 514B-71, [and] the mortgage foreclosure dispute
11 resolution special fund, section 667-86[-], and any fee imposed
12 by the Hawaii communications commission pursuant to chapter ,
13 including the regulatory fee in section -23. Any law to the
14 contrary notwithstanding, the director may use the moneys in the
15 fund to employ, without regard to chapter 76, hearings officers
16 and attorneys. All other employees may be employed in
17 accordance with chapter 76. Any law to the contrary
18 notwithstanding, the moneys in the fund shall be used to fund
19 the operations of the department. The moneys in the fund may be
20 used to train personnel as the director deems necessary and for
21 any other activity related to compliance resolution.

22 As used in this subsection, unless otherwise required by



1 the context, "compliance resolution" means a determination of
2 whether:

3 (1) Any licensee or applicant under any chapter subject to
4 the jurisdiction of the department of commerce and
5 consumer affairs has complied with that chapter;

6 (2) Any person subject to chapter 485A has complied with
7 that chapter;

8 (3) Any person submitting any filing required by chapter
9 514E or section 485A-202(a)(26) has complied with
10 chapter 514E or section 485A-202(a)(26);

11 (4) Any person has complied with the prohibitions against
12 unfair and deceptive acts or practices in trade or
13 commerce; or

14 (5) Any person subject to chapter 467B has complied with
15 that chapter;

16 and includes work involved in or supporting the above functions,
17 licensing, or registration of individuals or companies regulated
18 by the department, consumer protection, and other activities of
19 the department.

20 The director shall prepare and submit an annual report to
21 the governor and the legislature on the use of the compliance



1 resolution fund. The report shall describe expenditures made
2 from the fund including non-payroll operating expenses."

3 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
4 amended as follows:

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

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

13 (1) By the public utilities commission, the labor and
14 industrial relations appeals board, and the Hawaii
15 labor relations board;

16 (2) By any court or judicial or legislative office of the
17 State; provided that if the attorney general is
18 requested to provide representation to a court or
19 judicial office by the chief justice or the chief
20 justice's designee, or to a legislative office by the
21 speaker of the house of representatives and the
22 president of the senate jointly, and the attorney



1 general declines to provide such representation on the
2 grounds of conflict of interest, the attorney general
3 shall retain an attorney for the court, judicial, or
4 legislative office, subject to approval by the court,
5 judicial, or legislative office;

6 (3) By the legislative reference bureau;

7 (4) By any compilation commission that may be constituted
8 from time to time;

9 (5) By the real estate commission for any action involving
10 the real estate recovery fund;

11 (6) By the contractors license board for any action
12 involving the contractors recovery fund;

13 (7) By the office of Hawaiian affairs;

14 (8) By the department of commerce and consumer affairs for
15 the enforcement of violations of chapters 480 and
16 485A;

17 (9) As grand jury counsel;

18 (10) By the Hawaiian home lands trust individual claims
19 review panel;

20 (11) By the Hawaii health systems corporation, or its
21 regional system boards, or any of their facilities;

22 (12) By the auditor;



- 1 (13) By the office of ombudsman;
- 2 (14) By the insurance division;
- 3 (15) By the University of Hawaii;
- 4 (16) By the Kahoolawe island reserve commission;
- 5 (17) By the division of consumer advocacy;
- 6 (18) By the office of elections;
- 7 (19) By the campaign spending commission;
- 8 (20) By the Hawaii tourism authority, as provided in
- 9 section 201B-2.5;
- 10 (21) By the division of financial institutions for any
- 11 action involving the mortgage loan recovery fund; [e]
- 12 (22) By the Hawaii communications commission; or
- 13 [~~22~~] (23) By a department, in the event the attorney
- 14 general, for reasons deemed by the attorney general to
- 15 be good and sufficient, declines to employ or retain
- 16 an attorney for a department; provided that the
- 17 governor waives the provision of this section."

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

19 "(c) Every attorney employed by any department on a full-

20 time basis, except an attorney employed by the public utilities

21 commission, the Hawaii communications commission, the labor and

22 industrial relations appeals board, the Hawaii labor relations



1 board, the office of Hawaiian affairs, the Hawaii health systems
 2 corporation or its regional system boards, the department of
 3 commerce and consumer affairs in prosecution of consumer
 4 complaints, insurance division, the division of consumer
 5 advocacy, the University of Hawaii, the Hawaii tourism authority
 6 as provided in section 201B-2.5, the Hawaiian home lands trust
 7 individual claims review panel, or as grand jury counsel, shall
 8 be a deputy attorney general."

9 SECTION 5. Section 46-15, Hawaii Revised Statutes, is
 10 amended by amending subsection (a) to read as follows:

11 "(a) The mayor of each county, after holding a public
 12 hearing on the matter and receiving the approval of the
 13 respective council, shall be empowered to designate areas of
 14 land for experimental and demonstration housing projects, the
 15 purposes of which are to research and develop ideas that would
 16 reduce the cost of housing in the State. Except as hereinafter
 17 provided, the experimental and demonstration housing projects
 18 shall be exempt from all statutes, ordinances, charter
 19 provisions, and rules or regulations of any governmental agency
 20 or public utility relating to planning, zoning, construction
 21 standards for subdivisions, development and improvement of land,
 22 and the construction and sale of homes thereon; provided that



1 the experimental and demonstration housing projects shall not
2 affect the safety standards or tariffs approved by the public
3 utility [~~commissions~~] or the Hawaii communications commission
4 for such public utility.

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

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



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

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

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

19 SECTION 6. Section 91-13.5, Hawaii Revised Statutes, is
20 amended by amending subsection (f) to read as follows:

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



- 1 (1) Any proceedings of the public utilities commission;
- 2 [ex]
- 3 (2) Any county or county agency that is exempted by county
- 4 ordinance from this section[-]; or
- 5 (3) Any proceedings of the Hawaii communications
- 6 commission."

7 SECTION 7. Section 92-21, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§92-21 Copies of records; other costs and fees. Except
10 as otherwise provided by law, a copy of any government record,
11 including any map, plan, diagram, photograph, photostat, or
12 geographic information system digital data file, which is open
13 to the inspection of the public, shall be furnished to any
14 person applying for the same by the public officer having charge
15 or control thereof upon the payment of the reasonable cost of
16 reproducing such copy. Except as provided in section 91-2.5,
17 the cost of reproducing any government record, except geographic
18 information system digital data, shall not be less than 5 cents
19 per page, sheet, or fraction thereof. The cost of reproducing
20 geographic information system digital data shall be in
21 accordance with rules adopted by the agency having charge or
22 control of that data. Such reproduction cost shall include but



1 shall not be limited to labor cost for search and actual time
 2 for reproducing, material cost, including electricity cost,
 3 equipment cost, including rental cost, cost for certification,
 4 and other related costs. All fees shall be paid in by the
 5 public officer receiving or collecting the same to the state
 6 director of finance, the county director of finance, or to the
 7 agency or department by which the officer is employed, as
 8 government realizations; provided that fees collected by the
 9 public utilities commission pursuant to this section shall be
 10 deposited in the public utilities commission special fund
 11 established under section 269-33[-], and fees collected by the
 12 Hawaii communications commission shall be deposited in the
 13 Hawaii communications commission special fund established under
 14 section -22."

15 SECTION 8. Section 101-43, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "§101-43 Requirements prior to exercise of power. Any
 18 corporation having the power of eminent domain under section
 19 101-41 may continue to exercise the power, provided that prior
 20 to the exercise of the power:

- 21 (1) The corporation submits to the public utilities
- 22 commission or, beginning July 1, 2013, in the case of



1 telecommunications carriers or telecommunications
 2 common carriers, to the Hawaii communications
 3 commission its intention to exercise the power, with a
 4 description of the property to be condemned; and

5 (2) The public utilities commission or, beginning July 1,
 6 2013, in the case of telecommunications carriers or
 7 telecommunications common carriers, the Hawaii
 8 communications commission finds that the proposed
 9 condemnation is in the public interest, that the
 10 proposed condemnation is necessary, and that the
 11 corporation will use the property for its operations
 12 as a public utility."

13 SECTION 9. 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 communications commission under chapter
- 11 _____."

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

14 "§166-4 Park development. Except as herein provided, the
 15 department may develop, on behalf of the State or in partnership
 16 with a federal agency, a county, or a private party,
 17 agricultural parks which, at the option of the board, shall be
 18 exempt from all statutes, ordinances, charter provisions, and
 19 rules of any governmental agency relating to planning, zoning,
 20 construction standards for subdivisions, development and
 21 improvement of land, and the construction of buildings thereon;
 22 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 communications commission;
- 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 501-
12 85 and 502-17, the chairperson of the board of
13 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 11. 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 communications commission;



1 (3) The county in which the non-agricultural park
2 development is proposed shall approve the non-
3 agricultural park development; and provided further
4 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 12. 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 communications commission;

10 (3) The legislative body of the county in which the
11 industrial park is proposed to be situated approves
12 the industrial park.

13 (A) The legislative body shall approve or disapprove
14 the industrial park within forty-five days after
15 the department has submitted preliminary plans
16 and specifications for the industrial park to the
17 legislative body. If after the forty-fifth day,
18 an industrial park is not disapproved, it shall
19 be deemed approved by 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 industrial park shall be deemed approved by the
5 legislative body if the final plans and
6 specifications for the industrial park do not
7 substantially deviate from the preliminary plans
8 and specifications. The determination that the
9 final plans and specifications do not
10 substantially deviate from the preliminary plans
11 and specifications of the industrial park shall
12 rest with the board. The final plans and
13 specifications for the park shall constitute the
14 planning, zoning, building, improvement,
15 construction, and subdivision standards for that
16 industrial park. For the purposes of sections
17 501-85 and 502-17, the chairperson of the board
18 or the responsible county official may certify
19 maps and plans of land connected with the
20 industrial park as having complied with
21 applicable laws and ordinances relating to
22 consolidation and subdivision of lands, and such

1 maps and plans shall be accepted for registration
 2 or recordation by the land court and registrar;
 3 and

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

8 SECTION 13. Section 196D-10, Hawaii Revised Statutes, is
 9 amended by amending subsection (c) to read as follows:

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

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

15 "[+] §201H-13 [+] Eminent domain, exchange or use of public
 16 property. The corporation may acquire any real property,
 17 including fixtures and improvements, or interest therein:
 18 through voluntary negotiation; through exchange of land in
 19 accordance with section 171-50, provided that the public land to
 20 be exchanged need not be of like use to that of the private
 21 land; or by the exercise of the power of eminent domain which it
 22 deems necessary by the adoption of a resolution declaring that



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

12 The corporation may acquire by the exercise of the power of
13 eminent domain property already devoted to a public use;
14 provided that no property belonging to any government may be
15 acquired without its consent, and that no property belonging to
16 a public utility corporation may be acquired without the
17 approval of the public utilities commission[7] or, beginning
18 July 1, 2013, in the case of telecommunications carriers or
19 telecommunications common carriers, the Hawaii communications
20 commission, and subject to legislative disapproval expressed in
21 a concurrent resolution adopted by majority vote of the senate



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

3 SECTION 15. 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 communications
12 commission, 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 16. 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 communications commission, or of the various
4 boards 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 205-
20 4. If, on the forty-sixth day, the petition is not
21 disapproved, it shall be deemed approved by the
22 commission."



1 SECTION 17. 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 18. 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 prior to July 1, 2013,
5 or the Hawaii communications commission beginning July 1, 2013,
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 communications commission. The
11 tax 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 19. 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 20. Section 269-1, Hawaii Revised Statutes, is
13 amended as follows:

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

15 "Public utility":

- 16 (1) Includes every person who may own, control, operate,
17 or manage as owner, lessee, trustee, receiver, or
18 otherwise, whether under a franchise, charter,
19 license, articles of association, or otherwise, any
20 plant or equipment, or any part thereof, directly or
21 indirectly for public use for the transportation of
22 passengers or freight; for the conveyance or



1 transmission of telecommunications messages; for the
2 furnishing of facilities for the transmission of
3 intelligence by electricity within the State or
4 between points within the State by land, water, or
5 air; for the production, conveyance, transmission,
6 delivery, or furnishing of light, power, heat, cold,
7 water, gas, or oil; for the storage or warehousing of
8 goods; or for the disposal of sewage; provided that
9 the term shall include:

- 10 (A) An owner or operator of a private sewer company
11 or sewer facility; and
- 12 (B) A telecommunications carrier or
13 telecommunications common carrier; and

14 (2) Shall not include:

- 15 (A) An owner or operator of an aerial transportation
16 enterprise;
- 17 (B) An owner or operator of a taxicab as defined in
18 this section;
- 19 (C) Common carriers that transport only freight on
20 the public highways, unless operating within
21 localities, along routes, or between points that
22 the public utilities commission finds to be



1 inadequately serviced without regulation under
2 this chapter;

3 (D) Persons engaged in the business of warehousing or
4 storage unless the commission finds that
5 regulation is necessary in the public interest;

6 (E) A carrier by water to the extent that the carrier
7 enters into private contracts for towage,
8 salvage, hauling, or carriage between points
9 within the State; provided that the towing,
10 salvage, hauling, or carriage is not pursuant to
11 either an established schedule or an undertaking
12 to perform carriage services on behalf of the
13 public generally;

14 (F) A carrier by water, substantially engaged in
15 interstate or foreign commerce, that transports
16 passengers on luxury cruises between points
17 within the State or on luxury round-trip cruises
18 returning to the point of departure;

19 (G) Any person who:
20 (i) Controls, operates, or manages plants or
21 facilities for the production, transmission,



1 or furnishing of power primarily or entirely
2 from nonfossil fuel sources; and

3 (ii) Provides, sells, or transmits all of that
4 power, except as is used in its own internal
5 operations, directly to a public utility for
6 transmission to the public;

7 (H) A telecommunications provider only to the extent
8 determined by the public utilities commission
9 pursuant to section 269-16.9[+], or beginning
10 July 1, 2013, by the Hawaii communications
11 commission pursuant to section -34;

12 (I) Any person who controls, operates, or manages
13 plants or facilities developed pursuant to
14 chapter 167 for conveying, distributing, and
15 transmitting water for irrigation and other
16 purposes for public use and purpose;

17 (J) Any person who owns, controls, operates, or
18 manages plants or facilities for the reclamation
19 of wastewater; provided that:

20 (i) The services of the facility are provided
21 pursuant to a service contract between the
22 person and a state or county agency and at



1 least ten per cent of the wastewater
2 processed is used directly by the state or
3 county agency that entered into the service
4 contract;

5 (ii) The primary function of the facility is the
6 processing of secondary treated wastewater
7 that has been produced by a municipal
8 wastewater treatment facility owned by a
9 state or county agency;

10 (iii) The facility does not make sales of water to
11 residential customers;

12 (iv) The facility may distribute and sell
13 recycled or reclaimed water to entities not
14 covered by a state or county service
15 contract; provided that, in the absence of
16 regulatory oversight and direct competition,
17 the distribution and sale of recycled or
18 reclaimed water shall be voluntary and its
19 pricing fair and reasonable. For purposes
20 of this subparagraph, "recycled water" and
21 "reclaimed water" means treated wastewater



1 that by design is intended or used for a
2 beneficial purpose; and

3 (v) The facility is not engaged, either directly
4 or indirectly, in the processing of food
5 wastes;

6 (K) Any person who owns, controls, operates, or
7 manages any seawater air conditioning district
8 cooling project; provided that at least fifty per
9 cent of the energy required for the seawater air
10 conditioning district cooling system is provided
11 by a renewable energy resource, such as cold,
12 deep seawater;

13 (L) Any person who owns, controls, operates, or
14 manages plants or facilities primarily used to
15 charge or discharge a vehicle battery that
16 provides power for vehicle propulsion; and

17 (M) Any person who:

18 (i) Owns, controls, operates, or manages a
19 renewable energy system that is located on a
20 customer's property; and

21 (ii) Provides, sells, or transmits the power
22 generated from that renewable energy system



1 to an electric utility or to the customer on
2 whose property the renewable energy system
3 is located; provided that, for purposes of
4 this clause, a customer's property shall
5 include all contiguous property owned or
6 leased by the customer without regard to
7 interruptions in contiguity caused by
8 easements, public thoroughfares,
9 transportation rights-of-way, and utility
10 rights-of-way.

11 If the application of this chapter is ordered by the
12 commission in any case provided in paragraphs (2)(C), (2)(D),
13 (2)(H), and (2)(I), the business of any public utility that
14 presents evidence of bona fide operation on the date of the
15 commencement of the proceedings resulting in the order shall be
16 presumed to be necessary to the public convenience and
17 necessity, but any certificate issued under this proviso shall
18 nevertheless be subject to terms and conditions as the public
19 utilities commission or the Hawaii communications commission may
20 prescribe, as provided in sections -34, 269-16.9, and 269-
21 20."



1 2. By amending the definitions of "telecommunications
2 carrier" or "telecommunications common carrier" to read:

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, signalling, or~~
11 ~~control devices.~~] has the same meaning as in section -1."

12 3. By amending the definitions of "telecommunications
13 service" or "telecommunications" to read:

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



1 ~~as defined in section 440C-3.]~~ has the same meaning as in
2 section -1."

3 4. Repealing the definition of "carrier of last resort".

4 [~~"Carrier of last resort" means a telecommunications~~
5 ~~carrier designated by the commission to provide universal~~
6 ~~service in a given local exchange service area determined to be~~
7 ~~lacking in effective competition."~~]

8 5. Repealing the definition of "designated local exchange
9 service area".

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

13 SECTION 21. Section 269-51, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§269-51 Consumer advocate; director of commerce and
16 consumer affairs. The director of commerce and consumer affairs
17 shall be the consumer advocate in hearings before the public
18 utilities commission[~~-~~] and the Hawaii communications
19 commission. The consumer advocate shall represent, protect, and
20 advance the interests of all consumers, including small
21 businesses, of utility services. The consumer advocate shall



1 not receive any salary in addition to the salary received as
2 director of commerce and consumer affairs.

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

10 SECTION 22. Section 269-54, Hawaii Revised Statutes, is
11 amended by amending subsections (d) and (e) to read as follows:

12 "(d) Whenever it appears to the consumer advocate that:
13 (1) any public utility, telecommunications carrier, or cable
14 operator has violated or failed to comply with any provision of
15 this part or of any state or federal law; (2) any public
16 utility, telecommunications carrier, or cable operator has
17 failed to comply with any rule, regulation, or other requirement
18 of the public utilities commission, the Hawaii communications
19 commission, or of any other state or federal agency; (3) any
20 public utility, telecommunications carrier, or cable operator
21 has failed to comply with any provision of its charter or
22 franchise[?] or certificate of public convenience and necessity;



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

13 (e) The consumer advocate may file with the public
14 utilities commission or the Hawaii communications commission and
15 serve on any public utility, telecommunications carrier, or
16 cable operator a request in writing to furnish any information
17 reasonably relevant to any matter or proceeding before the
18 public utilities commission or the Hawaii communications
19 commission or reasonably required by the consumer advocate to
20 perform the duties hereunder. Any such request shall set forth
21 with reasonable specificity the purpose for which the
22 information is requested and shall designate with reasonable



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

- 19 (1) Furnish any information with which the consumer
20 advocate may require concerning the condition,
21 operations, practices, or services of the public



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

18 SECTION 23. Section 269-55, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§269-55 Handling of complaints. The consumer advocate
21 shall counsel public utility, telecommunications, and cable
22 service customers in the handling of consumer complaints before



1 the public utilities commission[-] or the Hawaii communications
2 commission. The public utilities commission shall provide a
3 central clearinghouse of information by collecting and compiling
4 all consumer complaints and inquiries concerning public
5 utilities. The Hawaii communications commission shall provide a
6 central clearing house of information by collecting and
7 compiling all consumer complaints and inquiries concerning
8 telecommunications carriers and cable operators."

9 SECTION 24. Section 339K-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§339K-2[+] Compact administrator. The compact
12 administrator, acting jointly with like officers of other party
13 states, may promulgate rules and regulations to carry out more
14 effectively the terms of the compact. The compact administrator
15 shall cooperate with all departments, agencies, and officers of
16 and in the government of this State and its subdivisions in
17 facilitating the present administration of the compact or of any
18 supplementary agreement or agreements entered into by this State
19 thereunder. The compact administrator shall adopt the practices
20 and may impose the fees authorized under article III of the
21 compact, except that state and county law enforcement agencies
22 [~~and~~], the public utilities commission, and the Hawaii



1 communications commission shall retain their enforcement and
2 inspection authority relating to carriers."

3 SECTION 25. Section 356D-15, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The authority may acquire by the exercise of the
6 power of eminent domain property already devoted to a public
7 use; provided that no property belonging to any government may
8 be acquired without its consent, and that no property belonging
9 to a public utility may be acquired without the approval of the
10 public utilities commission[+] or, beginning July 1, 2013, in
11 the case of telecommunications carriers or telecommunications
12 common carriers, the Hawaii communications commission; and
13 provided further that the acquisition is subject to legislative
14 disapproval expressed in a concurrent resolution adopted by
15 majority vote of the senate and the house of representatives in
16 the first regular or special session following the date of
17 condemnation."

18 SECTION 26. Section 448E-13, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§448E-13 Exemption of public utility and [~~community~~
21 ~~antennae~~] cable television company employees. All employees of
22 a public utility within the State under a franchise or charter



1 granted by the State which is regulated by the public utilities
2 commission [~~and community antennae television company,~~] or the
3 Hawaii communications commission, or employees of a cable
4 operator within the State under a franchise granted by the State
5 that is regulated by the Hawaii communications commission, while
6 so employed, shall be exempt from the provision of this
7 chapter."

8 SECTION 27. Section 481-11, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§481-11 Remedies cumulative. The remedies prescribed in
11 this part are cumulative and in addition to the remedies
12 prescribed in [~~chapter~~] chapters 269 and _____ for
13 discriminations by public utilities. If any conflict arises
14 between this part and chapter 269 [~~, the latter prevails.~~] or
15 chapter _____, chapter 269 or chapter _____, whichever is
16 applicable, shall prevail."

17 SECTION 28. 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, or beginning July 1,
22 2013, the Hawaii communications commission, or the



1 Federal Communications Commission, [~~or pursuant to~~
2 ~~chapter 440G,~~] including the sale of goods or services
3 by affiliates of these telecommunications or video
4 service providers. Nothing herein shall be construed
5 to preclude or preempt actions brought under any other
6 laws including 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 29. 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~~
2 communications commission."

3 SECTION 30. 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 communications commission. (a) The public utilities
7 commission and the Hawaii communications commission 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 communications
12 commission deems necessary to carry out its responsibilities or
13 otherwise 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 communications commission 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 communications
6 commission 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 communications commission,
12 or of the refusal of any witness to testify to any matter
13 regarding which the witness may be lawfully questioned, any
14 circuit court, upon application by the public utilities
15 commission[7] or the Hawaii communications commission, shall
16 compel obedience as in case of disobedience of the requirements
17 of a subpoena issued from a circuit court or a refusal to
18 testify therein."

19 SECTION 31. Section 659-3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§659-3[+] Forfeiture of franchise. The several
22 circuit courts shall have jurisdiction of all proceedings in, or



1 in the nature of, quo warranto, brought by or in the name of the
 2 public utilities commission[7] or the Hawaii communications
 3 commission, or the State, for the forfeiture of the franchise of
 4 any corporate body offending against any law relating to such
 5 corporation, for misuser, for nonuser, for doing or committing
 6 any act or acts amounting to a surrender of its charter and for
 7 exercising rights not conferred upon it."

8 SECTION 32. Section 708-800, Hawaii Revised Statutes, is
 9 amended by amending the definition of "telecommunication
 10 service" to read as follows:

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

PART IV

21 SECTION 33. Section 269-16.5, Hawaii Revised Statutes, is
 22 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 34. 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 35. 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 36. 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 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 PART V

7 SECTION 50. Chapter 440G, Hawaii Revised Statutes, is
8 repealed.

9 PART VI

10 SECTION 51. During fiscal year 2012-2013, fifty per cent
11 of the moneys collected by the public utilities commission from
12 telecommunications carriers and deposited into the public
13 utilities commission special fund shall be deposited into the
14 Hawaii communications commission special fund.

15 SECTION 52. The unencumbered balance existing on June 30,
16 2012, in the cable television division subaccount in the
17 compliance resolution fund shall be deposited into the Hawaii
18 communications commission special fund.

19 SECTION 53. There is appropriated out of the Hawaii
20 communications commission special fund the sum of \$ or
21 so much thereof as may be necessary for fiscal year 2012-2013
22 for purposes of this Act, including the hiring of staff.



1 public utilities commission pursuant to the provisions of the
2 Hawaii Revised Statutes, that are reenacted or made applicable
3 to the Hawaii communications commission by this Act, shall
4 remain in full force and effect. Effective upon approval of
5 this Act, every reference to the department of commerce and
6 consumer affairs, director of commerce and consumer affairs,
7 public utilities commission, or chairperson of the public
8 utilities commission therein shall be construed as a reference
9 to the Hawaii communications commission or Hawaii communications
10 commissioner, as appropriate.

11 SECTION 55. **Transfer of records, equipment,**
12 **appropriations, authorizations, and other property.** All
13 appropriations, records, equipment, machines, files, supplies,
14 contracts, books, papers, documents, maps, and other personal
15 property heretofore made, used, acquired, or held by the
16 department of commerce and consumer affairs and the public
17 utilities commission relating to the functions transferred to
18 the Hawaii communications commission shall be transferred with
19 the functions to which they relate.

20 SECTION 56. **Transfer of personnel.** (a) The department of
21 commerce and consumer affairs shall transfer four full time
22 equivalent (FTE) positions to the Hawaii communications



1 commission. The positions selected for transfer shall
2 reasonably relate to the functions of the Hawaii communications
3 commission.

4 (b) Up to an additional ten general funded full time
5 equivalent (FTE) positions of the department of commerce and
6 consumer affairs shall be transferred to the Hawaii
7 communications commission to be funded from the Hawaii
8 communications commission special fund.

9 (c) All officers and employees who are transferred to the
10 Hawaii communications commission by this Act shall continue to
11 perform their regular duties upon their transfer, subject to the
12 personnel laws of the State and this Act. No officer or
13 employee of the State shall suffer any loss of salary,
14 seniority, prior service credit, vacation, sick leave, or other
15 employee benefit or privilege as a consequence of this Act.

16 (d) If an office or position held by an officer or
17 employee having tenure is abolished, the officer or employee
18 shall not thereby be separated from public employment, but shall
19 remain in the employment of the State with the same pay and
20 classification and shall be transferred to some other office or
21 position for which the officer or employee is eligible under the



1 personnel laws of the State as determined by the director of
2 human resources development.

3 SECTION 57. Conflict with provisions of this Act. All
4 Acts passed by the legislature during this regular session of
5 2012, whether enacted before or after the effective date of this
6 Act, shall be amended to conform to this Act unless such Acts
7 specifically provide that this Act is being amended.

8 SECTION 58. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 59. This Act shall take effect on July 1, 2012;
11 provided that:

12 (1) Section 2 shall take effect as follows:

13 (A) Part I (relating to the Hawaii communications
14 commission, generally) shall take effect on July
15 1, 2012; provided further that those provisions
16 relating to the regulation of telecommunications
17 carriers shall take effect on July 1, 2013;

18 (B) Part II (relating to telecommunications) shall
19 take effect on July 1, 2013;

20 (C) Part III (relating to cable) shall take effect on
21 July 1, 2012; and



1 (2) Part IV of this Act shall take effect on July 1, 2013;
 2 and
 3 (3) The amendments made to section 26-9(o), Hawaii Revised
 4 Statutes by section 3 of this Act shall not be
 5 repealed when that section is repealed and reenacted
 6 on September 30, 2014, pursuant to section 45(5) of
 7 Act 48, Session Laws of Hawaii 2011.
 8

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H.B. NO. 2054

Report Title:

Hawaii Communications Commission; Telecommunications; Cable Television Systems

Description:

Establishes the Hawaii communications commission in DBEDT. Transfers functions relating to telecommunications from the PUC to the Hawaii communications commission. Also transfers functions relating to cable services from DCCA to the Hawaii communications commission. Makes an appropriation.

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

