

JAN 20 2012

A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1 SECTION 1. The legislature finds that the public utilities
2 commission, as it is presently composed, has proven to be unable
3 to fulfill its administrative and adjudicative duties under
4 chapter 269, Hawaii Revised Statutes. The office of the auditor
5 has conducted multiple management audits of the commission over
6 the past thirty-six years and has consistently found serious and
7 pervasive problems with staffing, management, and planning.

8 The initial audit, conducted in 1975 and published in three
9 volumes, found "considerable confusion" within the commission
10 regarding staffing, roles, regulations, and the relevant law.
11 The next audit, conducted in 1989, found that "numerous and
12 serious problems with organization and personnel management"
13 first identified fourteen years earlier continued within the
14 commission and that the commission "lacked adequate
15 policymaking, enforcement, and administrative capabilities".
16 Most recently, in 2004, the auditor found that problems first
17 identified more than three decades earlier continued to plague
18 the commission and that both the commission and the division of



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

5 The legislature notes that the regulatory structures and
6 the regulated industries that the commission manages have grown
7 increasingly more complex since the formation of the commission.
8 The regulatory environment now includes increasing development
9 of the neighbor islands and accompanying new demands for public
10 utilities services. Despite these new challenges, the structure
11 and composition of the commission and the process for approving
12 new public utilities have changed little since the commission's
13 creation at statehood, even given the findings of the 1975,
14 1989, and 2004 management audits.

15 The legislature further finds that serious structural
16 changes in the composition of the commission, the provision of
17 experienced professional staff, and greater transparency in the
18 approval process for certain public utilities are necessary to
19 ensure that the commission accurately responds to the interests
20 of the entire State and holds sufficient expertise in the
21 relevant issue areas.



1 The legislature also finds that problems identified in the
2 2004 audit of the commission have still not been resolved,
3 despite attempts by the legislature to work with the commission
4 towards reform. In 2007, the legislature enacted Acts 177 and
5 183, Session Laws of Hawaii 2007, to approve and fund the
6 restructuring of both the public utilities commission and the
7 division of consumer advocacy according to proposals developed
8 by each agency. The reorganization plans included staff
9 increases, relocation of offices, and redefinition of staff
10 positions to improve workload efficiency.

11 In the four years since legislative approval, the
12 commission's progress in implementing its plans for reform have
13 been stymied by budget reductions and other economic factors
14 beyond the commission's control. As a result of long-standing
15 fiscal constraints and despite the best efforts of commission
16 staff, the commission has still been unable to overcome long
17 delays and backlogs that stifle economic development.

18 To remedy past financial shortfalls, the legislature passed
19 Act 130, Session Laws of Hawaii 2010, to appropriate additional
20 funds and reauthorize staff positions for the purpose of
21 enabling the commission to become fully functional. The
22 legislature finds that the creation of a new staff position



1 authorized to function with a large degree of autonomy to
2 coordinate all of the administrative functions of the commission
3 will further the goals of increasing professionalism and
4 enabling efficient functioning of the commission envisioned by
5 the reorganization plan contained in Acts 177 and 183, Session
6 Laws of Hawaii 2007.

7 SECTION 2. Section 269-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§269-2 Public utilities commission; number, appointment**
10 **of commissioners, qualifications; compensation; persons having**
11 **interest in public utilities[-]; composition.** (a) There shall
12 be a public utilities commission composed of [~~three~~] five
13 members, to be called commissioners, [~~and~~] who shall be
14 appointed in the manner prescribed in section 26-34, except as
15 otherwise provided in this section. All members shall be
16 appointed for terms of six years each, except that the terms of
17 the members first appointed shall be for two, four, and six
18 years, respectively, as designated by the governor at the time
19 of appointment. The governor shall designate a member to be
20 chairperson of the commission. Each member shall hold office
21 until the member's successor is appointed and qualified.

22 Section 26-34 shall not apply insofar as it relates to the



1 number of terms and consecutive number of years a member can
2 serve on the commission; provided that no member shall serve
3 more than twelve consecutive years.

4 In appointing commissioners, the governor shall select
5 persons who have had experience in accounting, business,
6 engineering, government, finance, law, or other similar
7 fields[-]; provided that no more than two commissioners shall
8 represent the same professional or occupational field; provided
9 further that the composition of the commission shall reflect a
10 diversity of professional knowledge and range of expertise. At
11 all times, the commission shall include at least two
12 commissioners representing the counties of Hawaii, Kauai, and
13 Maui; provided that these two commissioners shall not represent
14 the same county. The governor shall preserve geographic and
15 professional diversity in making appointments to the commission.
16 The commissioners shall devote full time to their duties as
17 members of the commission and no commissioner shall hold any
18 other public office or other employment during the
19 commissioner's term of office. No person owning any stock or
20 bonds of any public utility corporation, or having any interest
21 in, or deriving any remuneration from, any public utility shall
22 be appointed a commissioner.



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

11 The commission is placed within the department of budget
12 and finance for administrative purposes.

13 (c) The commission shall establish two panels with
14 membership of each panel consisting of two commissioners and the
15 chairperson. One panel shall have jurisdiction over issues
16 relating to energy and private water and sewage utilities and
17 the other panel shall have jurisdiction over issues relating to
18 motor and water carrier transportation services,
19 telecommunications, and warehousing of goods. Each panel shall
20 meet, confer, and take action pursuant to the requirements of
21 this chapter on each matter under its subject matter
22 jurisdiction; provided that an action by a panel shall



1 constitute an action of the commission. Proceedings of the
2 panels shall be conducted pursuant to this chapter and rules
3 shall be adopted by the commission pursuant to chapter 91;
4 provided that all proceedings of the panels shall be public
5 meetings subject to the requirements of chapter 92."

6 SECTION 3. Section 269-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§269-3 [~~Employment~~] Executive officer; appointment of
9 assistants. (a) [~~The chairperson of the public utilities~~
10 ~~commission may~~] The commission shall employ a staff, which shall
11 include an executive officer, administrative personnel, and
12 other personnel as specified in this section and as otherwise
13 necessary to carry out the duties of the commission. The
14 executive officer shall have sufficient administrative,
15 managerial, and supervisory experience to carry out the duties
16 established by this section.

17 (b) Subject to the supervision of the commission, the
18 executive officer shall appoint [~~and~~], employ, and define the
19 powers and duties of clerks, stenographers, agents, engineers,
20 accountants, and other assistants for the public utilities
21 commission as the [~~chairperson~~] executive officer finds
22 necessary for the performance of the commission's functions [~~and~~



1 ~~define their powers and duties~~]. The chairperson may appoint
2 and, at pleasure, dismiss [~~a chief administrator~~] the executive
3 officer and hearings officers as may be necessary.
4 Notwithstanding section 103D-209 [~~, the chairperson~~] and subject
5 to the supervision of the commission, the executive officer
6 shall appoint one or more attorneys independent of the attorney
7 general who shall act as attorneys for the commission [~~and~~],
8 define their powers and duties, and fix their compensation. The
9 [~~chief administrator,~~] executive officer, chief of policy and
10 research, chief of administrative support, chief of consumer
11 affairs and compliance, utility analysts, and attorneys shall be
12 exempt from chapter 76. Research assistants, economists, legal
13 secretaries, legal assistants, and enforcement officers may be
14 appointed by the executive officer with or without regard to
15 chapter 76. Other employees shall be appointed as may be needed
16 by the [~~chairperson~~] executive officer in accordance with
17 chapter 76[~~-~~] and subject to the supervision of the commission.

18 [~~(b)~~] (c) Notwithstanding section 91-13, the commission
19 may consult with [~~its assistants~~] personnel appointed [~~under~~
20 ~~authority of~~] pursuant to this section in any contested case or
21 agency hearing concerning any issue of facts [~~- Neither~~];
22 provided that neither the commission nor any of its [~~assistants~~]



1 personnel shall [~~in such proceeding~~] consult with any other
2 person or party except upon notice and an opportunity for all
3 parties to participate, save to the extent required for the
4 disposition of ex parte matters authorized by law."

5 SECTION 4. By July 1, 2013, the public utilities
6 commission shall comprise five commissioners who reflect the
7 requisite geographical and professional diversity as provided by
8 section 269-2, Hawaii Revised Statutes; provided that to
9 transition to the five-commissioner public utilities commission,
10 the governor shall nominate new commissioners as needed to meet
11 the requirements of section 269-2, Hawaii Revised Statutes. The
12 governor may reduce the term of any commissioner as necessary to
13 provide, as nearly as is feasible, for the expiration of terms
14 on a staggered basis.

15 SECTION 5. The public utilities commission shall submit a
16 report to the legislature, no later than sixty days prior to the
17 convening of the regular session of 2013 and each regular
18 session thereafter, detailing the implementation and operation
19 of the subject-matter panels established by section 269-2(c),
20 Hawaii Revised Statutes. Reports submitted pursuant to this
21 section shall include recommendations for the continuance or
22 abandonment of the panel structure considering the development



1 of subject-matter expertise among the members of the panels and
2 the efficiency of operations of the commission as a whole.

3 SECTION 6. There is appropriated out of the public
4 utilities commission special fund established pursuant to
5 section 269-33, Hawaii Revised Statutes, the sum of \$700,000 or
6 so much thereof as may be necessary for fiscal year 2012-2013
7 for the salaries of the two additional commissioners added to
8 the public utilities commission by section 2 of this Act and the
9 executive officer required by section 3 of this Act.

10 The sum appropriated shall be expended by the public
11 utilities commission for the purposes of this Act.

12 SECTION 7. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 8. This Act shall take effect upon its approval;
15 provided that:

16 (1) Section 6 of this Act shall take effect on July 1,
17 2012;

18 (2) The new subsection (c) of section 269-2, Hawaii
19 Revised Statutes, established by section 2 of this Act
20 shall be repealed on July 1, 2017; and

21



1 (3) Section 5 of this Act shall be repealed on July 1,
2 2017.
3

INTRODUCED BY:

Rosely H. Bah

J. Kai Goh

Diana Lim

[Signature]

Chen Jue Wang

Will H. H.

Will Eyo

Shannon Chun Oakland

David Y. Lee

[Signature]

Josh H.

Nichelle Sudani

[Signature]



S.B. NO. 2439

Report Title:

Public Utilities Commission; Commissioners; Staff; Appropriation

Description:

Increases the membership of the public utilities commission from three to five; temporarily creates two subject matter panels within the public utilities commission; authorizes the employment of an executive officer; provides for transition to five-member composition; requires report to the legislature on panel structure; makes appropriation from the public utilities commission special fund.

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

