
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's primary purpose is to provide effective, proactive,
3 and informed oversight of all regulated companies to ensure
4 these companies efficiently and safely provide their customers
5 with adequate and reliable services at just and reasonable
6 rates, while providing regulated companies with a fair
7 opportunity to earn a reasonable rate of return. However, the
8 public utilities commission has several long and short term
9 goals that reflect the commission's increased work complexity
10 and program responsibilities, which go beyond the commission's
11 traditional regulatory role, including in the area of energy
12 regulation. Furthermore, with the advent of new and emerging
13 technology, the market, and other forces, the regulatory
14 landscape throughout the country is rapidly changing. However,
15 the commission's current structure and operations have prevented
16 it from quickly adapting to these changes.



1 The legislature further finds that due to the commission's
2 increasing responsibilities and the evolution of the regulatory
3 landscape, it is essential that the structure and operations of
4 the public utilities commission be updated to enable the
5 commission to operate more efficiently and effectively,
6 consistent with best practices. For example, updating the
7 operations of the commission by adopting best practices ensures
8 that the commission functions in a more inclusive and
9 collaborative manner. Updating the structure of the commission
10 will also be beneficial. Increasing the number of commissioners
11 from three to five promotes diversity and is in line with the
12 number of commissioners in many other jurisdictions.
13 Furthermore, requiring the commission to be composed of women
14 and men, at least one member from a neighbor island, and members
15 from fields other than just the legal profession will enable the
16 commission to consider a wider variety of backgrounds,
17 perspectives, and expertise in its deliberations to better serve
18 Hawaii's geographic and demographic diversity. The legislature
19 notes that, in contrast to administrative agencies, commissions
20 throughout the country are impaneled to provide for collective
21 deliberation, as well as diversified perspective across



1 geopolitical, demographic, professional, and other criteria.
2 The legislature also notes that a diverse commission and staff
3 can provide a stronger, more robust foundation for decision-
4 making. A commission made up of individuals with diverse
5 educational and geographic backgrounds and diverse
6 representation of genders will have a broader range of
7 knowledge, skills, and abilities than a more homogeneous
8 commission. Commissioners from diverse backgrounds will provide
9 greater access to a variety of relevant information, opinions,
10 expertise, and perspectives, which will enhance deliberations
11 and decision-making.

12 The legislature additionally finds that the public
13 utilities commission and its commissioners must fill three
14 equally essential and nonexclusive roles. In their quasi-
15 administrative capacity, commissioners interpret policy and
16 apply technical expertise to the routines of rulemaking,
17 implementation, and enforcement. In their quasi-legislative
18 capacity, commissioners craft policy and inform and support
19 policymaking by other bodies. In their quasi-judicial capacity,
20 commissioners must make findings and rulings in the context of
21 particular cases, in accordance with established law and legal



1 procedures. Commissioners serving on the public utilities
2 commission therefore fill a unique role, and as such, have a
3 responsibility to regulate in the public interest with the
4 highest ethical standards. The legislature notes that this
5 adherence to high ethical standards necessarily extends to
6 commission staff, but in particular, the senior staff members of
7 the commission, including its chief counsel, executive officer,
8 chief of policy and research, and other staff who must engage in
9 discussions with outside parties.

10 The legislature encourages the commission to engage in
11 appropriate conversations with the consumer advocate and the
12 State's regulated industries, even when there is no current case
13 involved, which will enable the commission to gain a better
14 understanding of the regulated industries. The legislature also
15 encourages the commission to take steps toward a more
16 collaborative working environment, such as more face to face
17 meetings and by ensuring that research and analysis of cases and
18 proposals of settlements are circulated amongst all
19 commissioners to aid in the commissioners' deliberations of an
20 issue.



1 In keeping with the idea of a more collaborative
2 commission, the legislature also finds that advancements in
3 technology have enabled people to participate and work remotely,
4 without having to be physically present in the same location as
5 their colleagues. Permitting the use of teleconference or
6 videoconference technology for public hearings and briefings
7 before the commission, or meetings with other commissioners and
8 staff, will enable commissioners to participate in public
9 hearings and commissioner or staff meetings in a convenient
10 manner and be fully engaged.

11 The legislature further finds that the office of the
12 auditor last conducted a management audit on the public
13 utilities commission in 2004. At that time, the auditor's
14 report identified core deficiencies that resulted from a lack of
15 vision and plans. As it has been thirteen years since the last
16 management audit, the legislature concludes that another audit
17 is appropriate. This will ensure that any previously identified
18 issues have been addressed and will also aid in the transition
19 to a more efficient and effective commission.



1 The purpose of this Act is to update the structure and
2 operation of the commission to increase efficiency and
3 effectiveness by:

- 4 (1) Establishing guiding principles of the commission;
- 5 (2) Requiring the commission to establish a docket review
6 and decision-making process that encourages
7 collaboration;
- 8 (3) Allowing a commissioner to attend a public hearing,
9 meeting, or work with staff by teleconference or
10 videoconference in specific situations;
- 11 (4) Requiring the executive officer, chief counsel, chief
12 of policy and research, and any individual employed as
13 or in the role of a hearings officer of the public
14 utilities commission to annually file a disclosure of
15 financial interests with the state ethics commission
16 and requiring these disclosures to be public;
- 17 (5) Increasing the number of members on the commission,
18 specifying the composition of commission members, and
19 ensuring that members who are residents of a county
20 other than the city and county of Honolulu receive per
21 diem compensation and travel expenses;



- 1 (6) Requiring new commissioners to attend pertinent
- 2 educational or training seminars within the first year
- 3 of the commissioner's appointment and permitting
- 4 commissioners and key staff to take advantage of
- 5 relevant training opportunities;
- 6 (7) Clarifying the ability of the commissioners to appoint
- 7 and employ staff;
- 8 (8) Clarifying the roles of the executive officer and
- 9 chief counsel to the commission;
- 10 (9) Requiring the commissioners to work with the
- 11 departments of commerce and consumer affairs and human
- 12 resources development to develop clearly defined
- 13 duties and responsibilities for public utilities
- 14 commission staff and report the staff duties to the
- 15 legislature; and
- 16 (10) Requiring a management audit to aid in the
- 17 commission's transition to a better functioning
- 18 entity.

19 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
20 amended by adding three new sections to be appropriately
21 designated and to read as follows:



1 "§269- Guiding principles of the public utilities
2 commission. The guiding principles of the public utilities
3 commission shall be to:

4 (1) Ensure reliability and delivery of all essential
5 services provided by regulated entities at all times;

6 (2) Provide oversight of resource planning efforts to
7 ensure adequacy and resiliency to ensure essential
8 services are available when needed;

9 (3) Strive for affordability for consumers while allowing
10 regulated entities an opportunity to maintain
11 reasonable earnings;

12 (4) Align private interest with public interest through
13 the proactive, aggressive pursuit of factual
14 information and technical competency to result in fair
15 and timely decisions and orders in pursuit of the
16 public interest;

17 (5) Regulate in the public interest; and

18 (6) Encourage and facilitate competition for the benefit
19 of consumers.

20 §269- Commission; docket review; decision-making;
21 process. (a) The chairperson shall implement a docket review



1 and decision-making process that engages all commissioners in a
2 collegial, face-to-face manner, where commissioners shall have
3 the opportunity to review, discuss, and offer input to any order
4 or decision and order requiring a consensus of commissioners.
5 Commissioners shall work collaboratively to reach consensus on
6 pending matters in a timely fashion, utilizing, at a minimum,
7 weekly meetings when necessary.

8 (b) To empower all commissioners to fully participate in
9 the work of the commission, any commissioner may call for a
10 meeting with the other commissioners for a deliberative
11 discussion on any docket or topic before the commission or
12 likely to come before the commission. Within twenty-four hours
13 of the request, the executive officer shall calendar such a
14 meeting. No commissioner shall refuse such a meeting request
15 without reasonable justification, such as illness.

16 (c) A commissioner who discusses relevant commission-
17 related information at a meeting with an outside party shall
18 inform the other commissioners of the meeting.

19 (d) Once the commission is composed of five commissioners
20 who have been appointed and confirmed by the senate, the



1 commission may form panels of three commissioners to handle
2 smaller dockets.

3 (e) Commissioners shall be guided by the public interest
4 principle of regulation.

5 §269- Hearing attendance by teleconference or video
6 conference. (a) A commissioner may attend a public hearing of
7 the public utilities commission, or a meeting scheduled by other
8 commissioners, by teleconference or videoconference to allow a
9 commissioner residing on an island other than Oahu to attend a
10 public hearing of the commission, or a meeting scheduled by
11 other commissioners, held on Oahu and a commissioner residing on
12 the island of Oahu to attend a public hearing of the commission,
13 or a meeting scheduled by other commissioners, held on an island
14 other than Oahu by teleconference or videoconference; provided
15 that commissioner participation by teleconference or
16 videoconference shall not be permitted at contested case or
17 evidentiary hearings.

18 (b) Each commissioner participating in a public hearing by
19 teleconference or videoconference shall be considered present at
20 the meeting for purposes of determining quorum and participating
21 in all proceedings.



1 (c) A public hearing held by teleconference or
2 videoconference:

3 (1) Need not have a quorum present at any one location;
4 and

5 (2) Is subject to the notice requirements under section
6 269-12.

7 (d) The notice of each teleconference or videoconference
8 public hearing shall specify all physical locations from which
9 the commissioners will participate.

10 (e) Each commissioner may work with staff via
11 teleconference or videoconference on commission-related
12 matters."

13 SECTION 3. Section 84-17, Hawaii Revised Statutes, is
14 amended by amending subsections (c) and (d) to read as follows:

15 "(c) The following persons shall file annually with the
16 state ethics commission a disclosure of financial interests:

17 (1) The governor, the lieutenant governor, the members of
18 the legislature, and delegates to the constitutional
19 convention; provided that delegates to the
20 constitutional convention shall only be required to
21 file initial disclosures;



- 1 (2) The directors and their deputies, the division chiefs,
2 the executive directors and the executive secretaries
3 and their deputies, the purchasing agents and the
4 fiscal officers, regardless of the titles by which the
5 foregoing persons are designated, of every state
6 agency and department;
- 7 (3) The permanent employees of the legislature and its
8 service agencies, other than persons employed in
9 clerical, secretarial, or similar positions;
- 10 (4) The administrative director of the State, and the
11 assistants in the office of the governor and the
12 lieutenant governor, other than persons employed in
13 clerical, secretarial, or similar positions;
- 14 (5) The hearings officers of every state agency and
15 department;
- 16 (6) The president, the vice presidents, assistant vice
17 presidents, the chancellors, and the provosts of the
18 University of Hawaii and its community colleges;
- 19 (7) The superintendent, the deputy superintendent, the
20 assistant superintendents, the complex area



- 1 superintendents, the state librarian, and the deputy
2 state librarian of the department of education;
- 3 (8) The administrative director and the deputy director of
4 the courts;
- 5 (9) The members of every state board or commission whose
6 original terms of office are for periods exceeding one
7 year and whose functions are not solely advisory;
- 8 (10) Candidates for state elective offices, including
9 candidates for election to the constitutional
10 convention, provided that candidates shall only be
11 required to file initial disclosures;
- 12 (11) The administrator and assistant administrator of the
13 office of Hawaiian affairs; [~~and~~]
- 14 (12) The Hawaii unmanned aerial systems test site chief
15 operating officer[~~-~~]; and
- 16 (13) The individuals employed as or in the role of
17 executive officer, chief counsel, chief of policy and
18 research, or hearing officers of the public utilities
19 commission.



1 (d) The financial disclosure statements of the following
2 persons shall be public records and available for inspection and
3 duplication:

4 (1) The governor, the lieutenant governor, the members of
5 the legislature, candidates for and delegates to the
6 constitutional convention, the trustees of the office
7 of Hawaiian affairs, and candidates for state elective
8 offices;

9 (2) The directors of the state departments and their
10 deputies, regardless of the titles by which the
11 foregoing persons are designated; provided that with
12 respect to the department of the attorney general, the
13 foregoing shall apply only to the attorney general and
14 the first deputy attorney general;

15 (3) The administrative director of the State;

16 (4) The president, the vice presidents, the assistant vice
17 presidents, the chancellors, members of the board of
18 regents, and the provosts of the University of Hawaii;

19 (5) The members of the board of education and the
20 superintendent, the deputy superintendent, the state



- 1 librarian, and the deputy state librarian of the
2 department of education;
- 3 (6) The administrative director and the deputy director of
4 the courts;
- 5 (7) The administrator and the assistant administrator of
6 the office of Hawaiian affairs; [and]
- 7 (8) The members of the following state boards,
8 commissions, and agencies:
- 9 (A) The board of directors of the agribusiness
10 development corporation established under section
11 163D-3;
- 12 (B) The board of agriculture established under
13 section 26-16;
- 14 (C) The state ethics commission established under
15 section 84-21;
- 16 (D) The Hawaii community development authority
17 established under section 206E-3;
- 18 (E) The Hawaiian homes commission established under
19 the Hawaiian Homes Commission Act of 1920, as
20 amended, and section 26-17;



- 1 (F) The board of directors of the Hawaii housing
2 finance and development corporation established
3 under section 201H-3;
- 4 (G) The board of land and natural resources
5 established under section 171-4;
- 6 (H) The state land use commission established under
7 section 205-1;
- 8 (I) The legacy land conservation commission
9 established under section 173A-2.4;
- 10 (J) The natural area reserves system commission
11 established under section 195-6;
- 12 (K) The board of directors of the natural energy
13 laboratory of Hawaii authority established under
14 section 227D-2;
- 15 (L) The board of directors of the Hawaii public
16 housing authority established under section
17 356D-3;
- 18 (M) The public utilities commission established under
19 section 269-2; and
- 20 (N) The commission on water resource management
21 established under section 174C-7 [✓]; and



1 (9) The executive officer, chief counsel, chief of policy
2 and research, and any individual employed as or in the
3 role of a hearings officer of the public utilities
4 commission."

5 SECTION 4. Section 269-2, Hawaii Revised Statutes, is
6 amended as follows:

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

8 "(a) There shall be a public utilities commission of
9 [~~three~~] five members, to be called commissioners, and who shall
10 be appointed in the manner prescribed in section 26-34, except
11 as otherwise provided in this section. All members shall be
12 appointed for terms of six years each, except that the terms of
13 the members first appointed shall be for two, four, and six
14 years, respectively, as designated by the governor at the time
15 of appointment. A member who is a resident of a county other
16 than the city and county of Honolulu shall receive per diem
17 compensation for expenses, incurred on the day or days on which
18 actual service is rendered at an allowance equal to the maximum
19 federal employee rate for Hawaii as established by the United
20 States Department of Defense on the date that the member incurs
21 the expense. The governor shall designate a member to be



1 chairperson of the commission. Each member shall hold office
2 until the member's successor is appointed and [~~qualified.~~]
3 confirmed by the senate; provided that a vacancy occurring
4 during a commissioner's term shall be filled for the unexpired
5 term thereof, subject to article V, section 6, of the
6 Constitution of the State of Hawaii. Section 26-34 shall not
7 apply insofar as it relates to the number of terms and
8 consecutive number of years a member can serve on the
9 commission; provided that no member shall serve more than twelve
10 consecutive years.

11 In appointing commissioners, the governor shall select
12 persons who have had experience in accounting, business,
13 engineering, government, finance, law, economics, or other
14 similar fields[-]; provided that the commission shall:

- 15 (1) Be composed of members who represent various
16 disciplines and experiences and whose skills reflect a
17 diversity of professional knowledge and expertise;
18 (2) Include a diverse representation of genders;
19 (3) Include at least one member who is a resident of a
20 county other than the city and county of Honolulu; and



1 (4) Not include more than two commissioners who have a
2 solely legal background.

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

10 Newly appointed commissioners shall attend at least one
11 pertinent educational or training seminar offered by the
12 National Association of Regulatory Utility Commissioners within
13 the first year of the commissioner's appointment. Commissioners
14 may attend additional education and training seminars offered by
15 organizations such as the National Association of Regulatory
16 Utility Commissioners, educational institutions, or other
17 organizations that involve public utilities during the remainder
18 of the commissioners' terms of office to further the
19 commissioners' understanding of changes in the regulatory
20 environment or enhance the commissioners' ability to discharge
21 their duties. The public utilities commission shall make



1 training opportunities available to key staff to further the
2 staff's abilities to assist in the commission's regulatory
3 functions."

4 2. By amending subsection (e) to read:

5 "(e) Notwithstanding section 26-35(a)(5) to the contrary,
6 the commission's operational expenditures, such as the purchase
7 of supplies, equipment, furniture, dues and subscriptions,
8 travel, consultant services, and staff training, shall be
9 determined by the chairperson and may be delegated to the
10 executive officer appointed and employed pursuant to section
11 269-3; provided that such expenditures shall be subject to all
12 applicable procurement laws and procedures. In addition to the
13 per diem permitted under subsection 269-2(a), the commission's
14 budget shall provide for travel expenses equal to at least one
15 round trip per week for any commissioner who is a resident of a
16 county other than the city and county of Honolulu; provided that
17 the chairperson of the commission shall not have the authority
18 to withhold basic travel requirements from any commissioner who
19 is not a resident of the city and county of Honolulu."

20 SECTION 5. Section 269-3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§269-3 **Employment of assistants.** (a) The chairperson of
2 the public utilities commission may appoint and employ
3 professional staff and other assistants for the public utilities
4 commission as the chairperson finds necessary for the
5 performance of the commission's functions and define their
6 powers and duties. Notwithstanding section 26-35(a)(4) to the
7 contrary and subject to applicable personnel laws, the
8 employment, appointment, applicable salary schedules, promotion,
9 transfer, demotion, discharge, and job descriptions of all
10 officers and employees of or under the jurisdiction of the
11 commission shall be determined by the [~~chairperson~~]
12 commissioners and may be delegated by the chairperson to the
13 executive officer appointed and employed pursuant to subsection
14 [~~(b)~~] (c); provided that determinations concerning personnel
15 matters made by the [~~chairperson~~] commissioners or the executive
16 officer, as delegated by the chairperson, may be reviewed by the
17 director of commerce and consumer affairs for completeness and
18 for compliance and conformance with applicable administrative
19 processes and procedures of the department of commerce and
20 consumer affairs. The chairperson may appoint and, at pleasure,
21 dismiss a chief administrator and attorneys as may be necessary,



1 and who shall be exempt from chapter 76. The chief counsel for
2 the commission shall report to the commissioners as a whole and
3 shall not report to the executive officer. The chairperson may
4 also appoint other staff, including a fiscal officer and a
5 personnel officer, with or without regard to chapter 76.

6 (b) Each commissioner may request and shall be provided,
7 upon request, with the services of a staff attorney and a
8 researcher to assist the requesting commissioner in drafting,
9 preparing revisions, or suggesting approaches to pending
10 decisions and orders. Attorney/client privilege shall exist
11 between the requesting commissioner and the staff attorney until
12 and if the work product is shared with other commissioners. No
13 commissioner shall request staff assistance on non-commission-
14 related work. Staff attorneys and researchers provided pursuant
15 to this section may be selected from the commission's current
16 staff allotment. The chairperson shall not refuse to provide a
17 commissioner with the requested services of a staff attorney or
18 researcher pursuant to this section.

19 (c) Each commissioner, other than the chairperson, may
20 appoint and employ a clerical or support staff person to assist
21 with that commissioner's duties. Unless specifically appointed



1 to serve a single commissioner, staff appointed pursuant to this
2 section shall function independently and serve all commissioners
3 as needed, and shall not be required to serve a single
4 commissioner.

5 (d) The chief counsel shall devote full time to the chief
6 counsel's duties for the commission and no person serving as
7 chief counsel shall hold any other public office or other
8 employment while employed with the commission. No person owning
9 any stock or bonds of any public utility corporation, or having
10 any interest in or deriving any remuneration from, any public
11 utility shall serve as chief counsel to the commission.

12 ~~[(b)]~~ (e) The chairperson of the commission shall appoint,
13 employ, and dismiss, at pleasure, an executive officer who shall
14 be responsible for managing the operations of the commission.
15 The responsibilities of the executive officer shall include
16 management and recruitment of personnel, budget planning and
17 implementation, strategic planning and implementation,
18 procurement and contract administration, and implementation of
19 administrative programs and projects. The executive officer
20 shall not be involved in the development of policy or in any



1 decision making for the commission. The executive officer shall
2 be exempt from chapter 76.

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

11 SECTION 6. (a) The chairperson of the public utilities
12 commission, in conjunction with the other members of the
13 commission, shall work with the departments of commerce and
14 consumer affairs and human resources development to develop
15 clearly defined duties and responsibilities for public utilities
16 commission staff.

17 (b) The commission shall submit a report to the
18 legislature, detailing the duties and responsibilities of public
19 utilities commission staff described in subsection (a), no later
20 than twenty days prior to the convening of the regular session
21 of 2018.



1 SECTION 7. (a) The state auditor shall conduct a
2 management audit to evaluate the efficiency and effectiveness of
3 the public utilities commission and aid in the commission's
4 transition to a better functioning entity. The management audit
5 shall include but not be limited to:

6 (1) Appropriateness and applicability of current utility
7 legislation;

8 (2) Adequacy of coverage of current public utilities
9 commission policies, rules, and procedures, including
10 the commission's current strategic plan;

11 (3) Management of the public utilities commission in terms
12 of providing technical and analytical staff support in
13 case management and enforcement of the public
14 utilities commission's rules; and

15 (4) The effectiveness of the public utilities commission
16 in dealing with telecommunications, energy, and other
17 utility issues.

18 (b) The auditor shall report to the legislature with its
19 findings and recommendations, including any proposed
20 legislation, no later than twenty days prior to the convening of
21 the regular session of 2018.



1 SECTION 8. Beginning on January 17, 2018, the governor
2 shall nominate the two additional commissioners, as required
3 pursuant to section 4 of this Act, to the public utilities
4 commission. One of the new commissioners shall serve an initial
5 term of four years, and the other new commissioner shall serve
6 an initial term of six years, to provide for the expiration of
7 terms on a staggered basis. By July 1, 2018, the public
8 utilities commission shall comprise five commissioners who
9 reflect the requisite diversity of background, experience,
10 gender, and residency, as required by section 4 of this Act.

11 SECTION 9. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 2050;
14 provided that section 4 of this Act shall take effect on July 1,
15 2050.



Report Title:

Public Utilities Commission; Commissioners; Structure;
Organization; Per Diem; Teleconference; Videoconference;
Financial Disclosure; Audit

Description:

Makes various updates to the structure and operations of the public utilities commission to increase efficiency and effectiveness, including: establishing guiding principles; establishing docket review and decision-making processes; permitting teleconference and videoconference abilities; specifying senior staff members who must file public financial disclosures; beginning 01/01/18, increasing the number of commissioners to five; updating the composition of the commission; specifying training requirements; clarifying commissioners' ability to appoint and employ staff; clarifying the roles of the executive officer and chief counsel; permitting neighbor island members to receive per diem compensation and compensation for travel expenses; requiring the commission to report to the legislature regarding certain staff duties; and requiring a management audit of the commission. Effective 07/01/2050. (SD2)

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

