
A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1 SECTION 1. Through Act 2 of the first special session of
2 2007, the legislature created the Hawaii broadband task force to
3 provide recommendations on how to advance Hawaii's broadband
4 capabilities and use. The legislature finds that advanced
5 broadband services are essential infrastructure for an
6 innovation economy and a knowledge society in the twenty-first
7 century. High-speed broadband services at affordable prices are
8 essential for the advancement of education, health, public
9 safety, research and innovation, civic participation,
10 e-government, economic development and diversification, and
11 public safety and services. The legislature also recognizes the
12 evolution in the manner in which communications and information
13 services are delivered to the consumer, including by wireline,
14 wireless, cable television, and satellite infrastructures, and
15 that the voice, video, and data services provided over these
16 infrastructures are converging. In order to position Hawaii for

1 global competitiveness in the twenty-first century, this Act
2 promotes the following goals:

- 3 (1) Access to broadband communications to all households,
4 businesses, and organizations throughout the State by
5 2012 at speeds and prices comparable to the average
6 speeds and prices available in the top three
7 performing countries in the world;
- 8 (2) Availability of advanced broadband communications
9 service on a competitive basis to reduce prices,
10 increase service penetration, and improve service to
11 all persons in the State;
- 12 (3) Increased broadband availability at affordable costs
13 to low income and other disadvantaged groups,
14 including by making low-cost, broadband-capable
15 computers available to eligible recipients;
- 16 (4) Increased sharing of the infrastructure used to deploy
17 broadband in order to speed up implementation, reduce
18 costs to providers, reduce underlying costs to
19 providers through incentives rather than eminent
20 domain procedures, ease deployment of broadband, and
21 ease entry into a competitive broadband marketplace;

1 (5) Increased, flexible, timely, and responsible access to
2 public rights-of-way and public facilities for
3 broadband service providers; and

4 (6) A more streamlined permit approval process that
5 reduces the time and cost of infrastructure
6 deployment, to be created jointly by disparate
7 permitting agencies, stakeholders, and other
8 interested parties.

9 SECTION 2. The purpose of this Act is to establish the
10 Hawaii broadband commissioner as an independent agency that is
11 attached to the department of commerce and consumer affairs for
12 administrative purposes only and require the commissioner to:

13 (1) Investigate, promote, and ensure the growth and
14 development of broadband infrastructure within the
15 State in accordance with the aforementioned goals;

16 (2) Champion the State's broadband, telecommunications,
17 and video programming services interests before the
18 federal government, including the United States
19 Congress, the executive branch of the United States,
20 and the Federal Communications Commission; and state
21 and local agencies, including the governor, the
22 legislature, and county governments;

- 1 (3) Maintain close working relationships with community
2 groups, civic associations, industry trade
3 organizations, industry leaders, and other
4 stakeholders to ensure that the State's interests and
5 concerns are understood;
- 6 (4) Develop state policies relating to the provision of
7 broadband communications services and interstate and
8 international communications services and facilities
9 serving or transiting the State of Hawaii;
- 10 (5) Facilitate the construction of shared
11 telecommunications and broadband infrastructure and
12 expand the introduction and capabilities of advanced
13 broadband communications services;
- 14 (6) Consolidate the regulation of telecommunications
15 carriers currently regulated by the public utilities
16 commission and cable operators currently regulated by
17 the director of commerce and consumer affairs, to
18 create a unified agency to allow businesses providing
19 broadband, telecommunications, and video programming
20 services to make their services more readily available
21 to the public;

- 1 (7) Promptly examine rate regulation for
- 2 telecommunications carriers, including alternatives
- 3 such as price cap regulation; and
- 4 (8) Investigate the implementation of incentive regulation
- 5 for telecommunications carriers to increase investment
- 6 in broadband infrastructure within the State.

7 SECTION 3. The Hawaii Revised Statutes is amended by
 8 adding a new chapter to be appropriately designated and to read
 9 as follows:

10 **"CHAPTER**

11 **HAWAII BROADBAND COMMISSIONER**

12 **PART I. GENERAL PROVISIONS**

13 **§ -1 Definitions.** As used in this chapter, unless the
 14 context otherwise requires:

15 "Access organization" means any nonprofit organization
 16 designated by the commissioner to oversee the development,
 17 operation, supervision, management, production, or broadcasting
 18 of programs for any channels obtained under section -67, and
 19 any officers, agents, and employees of an organization with
 20 respect to matters within the course and scope of their
 21 employment by the access organization.

1 "Applicant" means a person who initiates an application or
2 proposal.

3 "Application" means an unsolicited filing.

4 "Basic cable service" means any service tier that includes
5 the retransmission of local television broadcast signals.

6 "Broadband" means an "always on" data networking service
7 that enables end users to access the Internet and use a variety
8 of applications, at minimum speeds set by the commissioner.

9 "Cable franchise" means a nonexclusive initial
10 authorization, or renewal thereof issued pursuant to this
11 chapter, whether the authorization is designated as a franchise,
12 permit, order, contract, agreement, or otherwise, which
13 authorizes the construction or operation of a cable system.

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

- 15 (1) Provides cable service over a cable system and
16 directly or through one or more affiliates owns a
17 significant interest in the cable system; or
18 (2) Otherwise controls or is responsible for, through any
19 arrangement, the management and operation of a cable
20 system.

21 "Cable service" means:

- 1 (1) The one-way transmission to subscribers of video
2 programming or other programming service; and
- 3 (2) Subscriber interaction, if any, which is required for
4 the selection of video programming or other
5 programming service.

6 "Cable system" means any facility within this State
7 consisting of a set of closed transmission paths and associated
8 signal generation, reception, and control equipment that is
9 designed to provide cable service which includes video
10 programming and which is provided to multiple subscribers within
11 a community, but does not include a facility:

- 12 (1) That serves only to retransmit the television signals
13 of one or more television broadcast stations;
- 14 (2) That serves only subscribers in one or more multiple
15 unit dwellings under common ownership, control, or
16 management, unless that facility or facilities uses
17 any public right-of-way; or
- 18 (3) Of a telecommunications carrier subject in whole or in
19 part to the provisions of part II of this chapter,
20 except to the extent that those facilities provide
21 video programming directly to subscribers.

1 "Carrier of last resort" means a telecommunications carrier
2 designated by the commissioner to provide universal service in a
3 given local exchange service area determined to be lacking in
4 effective competition.

5 "Department" means the department of commerce and consumer
6 affairs.

7 "Designated local exchange service area" means an area as
8 determined by the commissioner to be best served by designating
9 a carrier of last resort pursuant to section -43.

10 "Director" means the director of commerce and consumer
11 affairs.

12 "Facility" includes all real property, antennae, poles,
13 supporting structures, wires, cables, conduits, amplifiers,
14 instruments, appliances, fixtures, and other personal property
15 used by a cable operator in providing service to its
16 subscribers.

17 "Hawaii broadband commissioner" or "commissioner" has the
18 same meaning as in section -2.

19 "Institution of higher education" means an academic college
20 or university accredited by the Western Association of Schools
21 and Colleges.

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

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

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

6 "Public, educational, or governmental access facilities" or
7 "PEG access facility" means:

8 (1) Channel capacity designated for public, educational,
9 or governmental uses; and

10 (2) Facilities and equipment for the use of that channel
11 capacity.

12 "Public, educational, or governmental access organization"
13 or "PEG access organization" means any person or entity that
14 provides public, educational, or governmental access services.

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

18 "School" means an academic and non-college type regular or
19 special education institution of learning established and
20 maintained by the department of education or licensed and
21 supervised by that department.

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

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, signaling, or control
11 devices.

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

1 "Video programming" means programming provided by, or
2 generally considered comparable to programming provided by, a
3 television broadcast station.

4 § -2 **Hawaii broadband commissioner.** There shall be
5 established the Hawaii broadband commissioner as an independent
6 agency that is attached to the department of commerce and
7 consumer affairs for administrative purposes only. The
8 implementation of this chapter shall be placed under the
9 supervision and control of the Hawaii broadband commissioner,
10 who shall be exempt from chapter 76 and shall be appointed by
11 the governor, with the advice and consent of the senate.

12 § -3 **Deputy commissioner.** The commissioner may appoint
13 a deputy commissioner, who shall be exempt from chapter 76. The
14 commissioner may, at pleasure, dismiss the deputy commissioner.
15 The deputy commissioner shall have the power to perform any act
16 or duty assigned by the commissioner and shall be acting
17 commissioner if, for any reason, the commissioner is unable to
18 perform the duties of commissioner, until a new commissioner is
19 appointed.

20 § -4 **Employment of assistants.** (a) The commissioner
21 may appoint and employ clerks, stenographers, agents, engineers,

1 accountants, and other assistants, with or without regard to
2 chapter 76; provided that:

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

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

8 (b) The commissioner may appoint and, at pleasure, dismiss
9 hearings officers as may be necessary, with or without regard to
10 chapter 76.

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

17 (d) The commissioner may appoint one or more attorneys
18 independent of the attorney general who shall act as attorney(s)
19 for the commissioner and shall be exempt from chapter 76. The
20 commissioner shall define their powers and duties and fix their
21 compensation.

1 (e) With the consent of the director, the commissioner may
2 utilize from the department, one or more attorneys independent
3 of the attorney general who shall act as attorney(s) for the
4 commissioner and shall be exempt from chapter 76. The
5 commissioner shall define the powers and duties of the attorneys
6 and fix their compensation.

7 § -5 **Terms.** The commissioner shall be appointed for a
8 term of six years and shall not serve more than twelve
9 consecutive years. Each commissioner shall hold office until
10 the commissioner's successor is appointed and confirmed.
11 Section 26-34 shall not apply insofar as it relates to the
12 number of terms and consecutive number of years a commissioner
13 may serve.

14 § -6 **Salary.** The salary of the commissioner shall be
15 set equal to that of the chairperson of the public utilities
16 commission pursuant to section 269-2.

17 § -7 **General powers and duties.** (a) The commissioner
18 shall have the authority expressly conferred upon the
19 commissioner by, or reasonably implied from, the provisions of
20 this chapter.

21 (b) The commissioner shall have general supervision over
22 all telecommunications carriers and cable operators and shall

1 perform the duties and exercise the powers imposed or conferred
2 upon it by this chapter.

3 (c) The commissioner has the authority to adopt rules
4 pursuant to chapter 91 necessary for the purposes of this
5 chapter.

6 (d) The commissioner shall have general supervision over
7 public, educational, or governmental access facilities and
8 public, educational, or governmental access organizations.

9 § -8 **Telecommunications development duties.** (a) The
10 commissioner shall ensure that all consumers are provided with
11 nondiscriminatory, reasonable, and equitable access to high
12 quality telecommunications network facilities and capabilities
13 that provide subscribers with sufficient network capacity to
14 access information services that provide a combination of voice,
15 data, image, and video, and that are available at just,
16 reasonable, and nondiscriminatory rates.

17 (b) No later than July 1, 2011, the commissioner shall
18 study and develop a comprehensive policy to further deploy
19 broadband communications, including internet access, in the
20 State. The study shall include consideration of communications
21 by wire and radio, including satellite and wireless services.

22 The commissioner shall develop plans and strategies to increase

1 broadband affordability, penetration, and competitive
2 availability in the State. The plans may include making
3 low-cost, broadband-capable computers available to eligible
4 recipients. The commissioner shall regularly update and revise
5 the commissioner's studies and findings to ensure that the
6 State's policies and initiatives remain effective in promoting
7 the State's interests.

8 (c) The commissioner shall develop programs and
9 initiatives intended to facilitate the deployment of broadband
10 communications services in the State and access to those
11 services by users in the State. The commissioner shall fund
12 these programs and initiatives using funds collected pursuant to
13 section -51 and deposited in the commissioner special fund
14 pursuant to section -20. In conjunction with the funds, or
15 alternatively, the commissioner may seek appropriations of funds
16 from the State.

17 (d) The commissioner shall develop, and routinely update,
18 a state policy and formulate positions to be taken before
19 federal agencies regarding areas outside its jurisdiction. The
20 commissioner shall advocate on behalf of the State's broadband,
21 telecommunications, and video programming distribution interests
22 before the United States Congress, the executive branch of the

1 United States, and the Federal Communications Commission, and
2 locally before the governor, the state legislature, and
3 municipal and county governments. The commissioner shall also
4 maintain close working relationships with community groups,
5 civic associations, industry trade associations, industry
6 leaders, and other stakeholders to ensure that the State's
7 interests and concerns are understood.

8 § -9 **Investigative powers.** (a) The commissioner shall
9 have power to examine:

- 10 (1) The condition of each telecommunications carrier,
11 cable operator, and PEG access organization;
- 12 (2) The manner in which each telecommunications carrier,
13 cable operator, and PEG access organization is
14 operated with reference to the safety or accommodation
15 of the public;
- 16 (3) The safety, working hours, and wages of employees of
17 each telecommunications carrier, cable operator, and
18 PEG access organization;
- 19 (4) The fares and rates charged by each telecommunications
20 carrier, cable operator, and PEG access organization;

- 1 (5) The value of the physical property of each
2 telecommunications carrier, cable operator, and PEG
3 access organization;
- 4 (6) The issuance by each telecommunications carrier, cable
5 operator, and PEG access organization of stocks and
6 bonds, and the disposition of the proceeds thereof;
- 7 (7) The amount and disposition of income of each
8 telecommunications carrier, cable operator, and PEG
9 access organization, and all financial transactions of
10 each telecommunications carrier, cable operator, and
11 PEG access organization;
- 12 (8) Business relations of each telecommunications carrier,
13 cable operator, and PEG access organization with other
14 persons, companies, or corporations;
- 15 (9) Compliance of each telecommunications carrier, cable
16 operator, and PEG access organization with all
17 applicable state and federal laws and with the
18 provisions of its franchise, charter, and articles of
19 association, if any; and
- 20 (10) Classifications, rules, regulations, practices, and
21 service, and all matters of every nature affecting the
22 relations and transactions between each

1 telecommunications carrier, cable operator, and PEG
2 access organization and the public or persons or
3 corporations.

4 (b) The commissioner may investigate any person acting in
5 the capacity of or engaging in the business of a
6 telecommunications carrier within the State of Hawaii without
7 having a certificate of public convenience and necessity or
8 other authority previously obtained under and in compliance with
9 this chapter or the rules adopted under this chapter or chapter
10 269.

11 (c) Any investigation may be made by the commissioner on
12 the commissioner's own motion, and shall be made when requested
13 by the telecommunications carrier, cable operator, or PEG access
14 organization to be investigated, or by any person upon a sworn
15 written complaint to the commissioner, setting forth any prima
16 facie cause of complaint.

17 § -10 **Delegating powers.** Any power, duty, or function
18 vested in the commissioner by this chapter may be exercised,
19 discharged, or performed by any employee of the commissioner
20 employed pursuant to section -4(a), -4(b), or -4(d)
21 acting in the name and by the delegated authority of the
22 commissioner. Any power, duty, or function vested in the

1 commissioner by this chapter may be exercised, discharged, or
2 performed by any employee of the department utilized pursuant to
3 section -4(c) or -4(e) acting in the name and by the
4 delegated authority of the commissioner, with the approval of
5 the director.

6 § -11 **Annual report and register of orders.** The
7 commissioner shall prepare and present to the governor, through
8 the director, in the month of January in each year a report
9 respecting the commissioner's actions during the preceding
10 fiscal year. This report shall include:

- 11 (1) Summary information and analytical, comparative, and
12 trend data concerning major regulatory issues acted
13 upon and pending before the commissioner;
- 14 (2) Cases processed by the commissioner, including their
15 dispositions;
- 16 (3) Telecommunications carrier and cable operator
17 operations, capital improvements, and rates;
- 18 (4) Telecommunications carrier and cable operator
19 performance in terms of efficiency and quality of
20 services rendered;
- 21 (5) Environmental matters having a significant impact upon
22 telecommunications carriers and cable operators;

- 1 (6) Actions of the federal government affecting the
2 regulation of telecommunications carriers and cable
3 operators in the State;
- 4 (7) Long- and short-range plans and objectives of the
5 commissioner; and
- 6 (8) The commissioner's recommendations respecting
7 legislation and other matters requiring executive and
8 legislative consideration.

9 Copies of the annual reports shall be furnished by the governor
10 to the legislature. In addition, the commissioner shall
11 establish and maintain a register of all of the commissioner's
12 orders and decisions, which shall be open and readily available
13 for public inspection.

14 § -12 **Commissioner's investigative authorities.** In all
15 investigations made by the commissioner, and in all proceedings
16 before the commissioner, the commissioner shall have the same
17 powers respecting administering of oaths, compelling the
18 attendance of witnesses and the production of documentary
19 evidence, examining witnesses, and punishing for contempt, as
20 are possessed by circuit courts. In case of disobedience by any
21 person to any order of the commissioner, or any subpoena issued
22 by the commissioner, or of the refusal of any witness to testify

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

1 out of any appropriation available for the expenses of the
2 commissioner.

3 § **-13 Notices.** Whenever an investigation is undertaken
4 and a hearing is scheduled by the commissioner, reasonable
5 notice in writing of such fact and of the subject or subjects to
6 be investigated shall be given to the telecommunications
7 carrier, cable operator, PEG access organization, or the person
8 concerned, and when based upon complaints made to the
9 commissioner as prescribed section -9, a copy of the
10 complaint, and a notice in writing of the date and place fixed
11 by the commissioner for beginning the investigation, shall be
12 served upon the telecommunications carrier, cable operator, PEG
13 access organization, or the person concerned, or other
14 respondent and the complainant not less than two weeks before
15 the date designated for the hearing.

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

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

12 (b) In addition to any other available remedy, the
13 commissioner or its enforcement officer may issue citations to
14 any person acting in the capacity of or engaging in the business
15 of a telecommunications carrier or cable operator within the
16 State, 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. Citations issued and persons cited pursuant to this
20 subsection shall be subject to the following:

21 (1) The citation may contain an order of abatement and an
22 assessment of civil penalties as provided in section

1 -23. All penalties collected under this subsection
2 shall be deposited in the treasury of the State.
3 Service of a citation issued under this subsection
4 shall be made by personal service whenever possible,
5 or by certified mail, restricted delivery, sent to the
6 last known business or residence address of the person
7 cited;

8 (2) Any person served with a citation under this
9 subsection may submit a written request to the
10 commissioner for a hearing, within twenty days from
11 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 commissioner of the request for a
16 hearing, the commissioner shall afford an opportunity
17 for a hearing under chapter 91. The hearing shall be
18 conducted by the commissioner or the commissioner may
19 designate a hearings officer to hold the hearing;

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

1 citation, the citation shall be deemed a final order
2 of the commissioner. The commissioner may apply to
3 the appropriate court for a judgment to enforce the
4 provisions of any final order, issued by the
5 commissioner or designated hearings officer pursuant
6 to this subsection, including the provisions for
7 abatement and civil penalties imposed. In any
8 proceeding to enforce the provisions of the final
9 order of the commissioner or designated hearings
10 officer, the commissioner need only show that the
11 notice was given, that a hearing was held or the time
12 granted for requesting the hearing has run without a
13 request, and a certified copy of the final order of
14 the commissioner or designated hearings officer; and
15 (4) If any party is aggrieved by the decision of the
16 commissioner or the designated hearings officer, the
17 party may appeal to the intermediate appellate court,
18 in the manner provided for in chapter 602; provided
19 that the operation of an abatement order shall not be
20 stayed on appeal unless specifically ordered by the
21 intermediate appellate court after applying the stay
22 criteria enumerated in section 91-14(c). The

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

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

1 judicial proceedings in no way limits the participation of
2 persons otherwise qualified to be parties on appeal. The appeal
3 shall not of itself stay the operation of the order appealed
4 from, but the appellate court may stay the order after a hearing
5 upon a motion therefor and may impose conditions it deems
6 proper, including but not limited to requiring a bond, requiring
7 that accounts be kept, or requiring that other measures be taken
8 as ordered to secure restitution of the excess charges, if any,
9 made during the pendency of the appeal, in case the order
10 appealed from is sustained, reversed, or modified in whole or in
11 part.

12 § -17 **Alternative dispute resolution.** The commissioner
13 may require the parties in any matter before the commissioner to
14 participate in nonbinding arbitration, mediation, or other
15 alternative dispute resolution process prior to the hearing.

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

21 § -19 **Telecommunications carriers, cable operators, and**
22 **PEG access organizations, to furnish information.** Every

1 telecommunications carrier, cable operator, PEG access
2 organization, or other person subject to investigation by the
3 commissioner, shall at all times, upon request, furnish to the
4 commissioner all information that the commissioner may require
5 respecting any of the matters concerning which the commissioner
6 is given power to investigate, and shall permit the examination
7 of its books, records, contracts, maps, and other documents by
8 the commissioner or any person authorized by the commissioner in
9 writing to make the examination, and shall furnish the
10 commissioner with a complete inventory of property under its
11 control or management in the form as the commissioner may
12 direct.

13 § -20 **Commissioner special fund.** (a) There is
14 established in the state treasury a commissioner special fund to
15 be administered by the commissioner. The proceeds of the fund
16 shall be used by the commissioner and the division of consumer
17 advocacy of the department for all expenses incurred in the
18 administration of this chapter, including, without limitation,
19 the operation of programs developed by the commissioner to
20 promote universal availability of communications services. The
21 expenditures of the commissioner shall be in accordance with
22 legislative appropriations. On a quarterly basis an amount not

1 to exceed thirty per cent of the proceeds remaining in the fund
2 shall be allocated to the division of consumer advocacy and
3 deposited in the compliance resolution fund established pursuant
4 to section 26-9(o).

5 (b) All moneys appropriated to, received, and collected by
6 the commissioner that are not otherwise pledged, obligated, or
7 required by law to be placed in any other special fund or
8 expended for any other purpose shall be deposited into the
9 commissioner special fund including, but not limited to, all
10 moneys received and collected by the commissioner pursuant to
11 sections -23, -51, and 92-21.

12 (c) The commissioner shall submit a report to the
13 legislature detailing all funds received and all moneys
14 disbursed out of the fund prior to the convening of each regular
15 session.

16 § -21 **Consumer advocate.** As the director serves as the
17 consumer advocate to the public utilities commission pursuant to
18 sections 269-51 through 269-55, the commissioner shall recognize
19 the director as the consumer advocate in hearings and
20 proceedings before the commissioner.

21 § -22 **Communications advisory committee.** There is
22 established the communications advisory committee. The

1 committee shall consist of five members appointed by the
2 governor as provided in section 26-34. The committee shall
3 advise the commissioner, telecommunications carriers, and cable
4 operators on matters within the jurisdiction of this chapter at
5 the request of the commissioner or any telecommunications
6 carrier or cable operator. The members of the committee shall
7 serve without pay but shall be entitled to reimbursement for
8 necessary expenses, including travel expenses, while attending
9 meetings and while in discharge of their duties.

10 § -23 **Penalties.** (a) Any telecommunications carrier,
11 cable operator, or PEG access organization violating,
12 neglecting, or failing in any particular way to conform to or
13 comply with this chapter or any lawful order of the
14 commissioner, including, but not limited to the grounds
15 specified in section -68 for cable operators and PEG access
16 organizations, shall be subject to a civil penalty not to exceed
17 \$25,000 for each day the violation, neglect, or failure
18 continues, to be assessed by the commissioner after a hearing in
19 accordance with chapter 91. The commissioner may order the
20 telecommunications carrier or cable operator to cease carrying
21 on its business while the violation, neglect, or failure
22 continues.

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

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

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

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

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

15 (c) No telecommunications carrier that, as of July 1,
16 2009, holds a valid certificate of public convenience and
17 necessity, franchise, or charter enacted or granted by the
18 legislative or executive authority of the State or its
19 predecessor governments, or has a bona fide operation as a
20 telecommunications carrier recognized by the public utilities
21 commission, shall be required to obtain, as a result of the

1 enactment of this Act, a new certificate of public convenience
2 and necessity under this section.

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

11 § -32 **Location of records.** A telecommunications carrier
12 shall keep and maintain records, books, papers, accounts, and
13 other documents as the commissioner may determine are necessary
14 to effectively regulate the telecommunications carrier, that can
15 be made immediately accessible when requested by the
16 commissioner; provided that the original copies are made
17 available when requested by the commissioner.

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

1 accounts adopted by the commissioner. The commissioner shall
2 adopt 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 commissioner, upon the commissioner's own motion or upon the
6 application of any person, and upon notice and hearing, may
7 exempt a telecommunications carrier or a telecommunications
8 service from any or all of the provisions of this chapter,
9 except the requirements of section -36, upon a determination
10 that the exemption is in the public interest. In determining
11 whether an exemption is in the public interest, the commissioner
12 shall 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 commissioner may
19 consider are:

20 (1) The responsiveness of the exemption to changes in the
21 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 commissioner;
- 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 of Hawaii;

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

18 (c) The commissioner may condition or limit any exemption
19 as the commissioner deems necessary in the public interest. The
20 commissioner may provide a trial period for any exemption and
21 may terminate the exemption or continue it for a period and

1 under conditions and limitations as the commissioner deems
2 appropriate.

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

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

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

1 basic local exchange service shall ensure that all customers
2 affected by the termination receive basic local exchange
3 service. The commissioner, upon notice and hearing or by rule,
4 shall determine the party or parties who shall bear the cost, if
5 any, of access to the basic local exchange service by the
6 customers of the terminated exempt service.

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

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

1 § **-35 Application of this chapter.** This chapter shall
2 not apply to commerce with foreign nations, or commerce with the
3 several states of the United States, except insofar as the same
4 may be permitted under the Constitution and laws of the United
5 States; nor shall it apply to telecommunications carriers owned
6 and operated by the State.

7 § **-36 Obligations of telecommunications carriers.** In
8 accordance with conditions and guidelines established by the
9 commissioner to facilitate the introduction of competition into
10 the State's telecommunications marketplace, each
11 telecommunications carrier, upon bona fide request, shall
12 provide services or information services, on reasonable terms
13 and conditions, to an entity seeking to provide intrastate
14 telecommunications, including:

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

20 (2) The current interstate tariff used as the access rate
21 until such time that the commissioner may adopt a new

- 1 intrastate local service interconnection tariff
2 pursuant to section -37;
- 3 (3) Nondiscriminatory and equal access to any
4 telecommunications carrier's telecommunications
5 facilities, functions, and the information necessary
6 to the transmission and routing of any
7 telecommunications service and the interoperability of
8 both carriers' networks;
- 9 (4) Nondiscriminatory access among all telecommunications
10 carriers, where technically feasible and economically
11 reasonable, and where safety or the provision of
12 existing electrical service is not at risk, to the
13 poles, ducts, conduits, and rights-of-way owned or
14 controlled by the telecommunications carrier, or the
15 commissioner shall authorize access to electric
16 utilities' poles as provided by the joint pole
17 agreement, tariffs, rules, orders, or Federal
18 Communications Commission rules and regulations;
- 19 (5) Nondiscriminatory access to the network functions of
20 the telecommunications carrier's telecommunications
21 network, which shall be offered on an unbundled,
22 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 commissioner shall
8 determine the equitable distribution of costs among
9 the authorized telecommunications carriers that will
10 use such access and shall establish rules to ensure
11 access.

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

18 § **-37 Compensation agreements.** The commissioner shall
19 ensure that telecommunications carriers are compensated on a
20 fair basis for termination of telecommunications services on
21 each other's networks, taking into account, among other things,
22 reasonable and necessary costs to each telecommunications

1 carrier of providing the services in question.
2 Telecommunications carriers may negotiate compensation
3 arrangements, which may include "bill and keep", mutual and
4 equal compensation, or any other reasonable division of revenues
5 pending tariff access rates to be set by the commissioner. Upon
6 failure of the negotiations, the commissioner shall determine
7 the proper methodology and amount of compensation.

8 **§ -38 Regulation of telecommunications carrier rates;**
9 **ratemaking procedures.** (a) Notwithstanding any law to the
10 contrary, except for the rates, fares, and charges applicable
11 for intrastate switched and special access with respect to
12 wholesale customers, this chapter shall not apply to the rates,
13 fares, and charges of the telecommunications carrier, and the
14 classifications, rules, and practices implementing the rates,
15 fares, and charges. The telecommunications carrier shall not be
16 required to obtain approval or provide any cost support or other
17 information to establish or otherwise modify in any manner its
18 rates, fares, and charges or to bundle any service offerings
19 into a single or combined pricing package. Notwithstanding the
20 above, all rates, fares, charges, and bundled service offerings
21 shall be filed with the public utilities commission for
22 informational purposes only and become effective immediately

1 upon filing, while providing for a six month transition period
2 for incumbent local exchange carrier regulation by the public
3 utilities commission to assist the transfer to the Hawaii
4 broadband commissioner.

5 (b) All rates, fares, charges, classifications, schedules,
6 rules, and practices made, charged, or observed by any
7 telecommunications carrier or by two or more telecommunications
8 carriers jointly for intrastate switched and special access with
9 respect to wholesale customers, shall be just and reasonable and
10 shall be filed with the commissioner.

11 § -39 **Cross-subsidies.** (a) The commissioner shall
12 ensure that noncompetitive services shall not cross-subsidize
13 competitive services. Cross-subsidization shall be deemed to
14 have occurred:

15 (1) If any competitive service is priced below the total
16 service long-run incremental cost of providing the
17 service as determined by the commissioner in
18 subsection (b); or

19 (2) If competitive services, taken as a whole, fail to
20 cover their direct and allocated joint and common
21 costs as determined by the commissioner.

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

9 § -40 **Separate affiliate audits.** The commissioner shall
10 receive the results of joint federal and state audits required
11 for companies to operate separate affiliates, and obtain and pay
12 for a joint federal and state audit every two years from an
13 independent auditor pursuant to title 47 United States Code
14 section 272(d). The commissioner shall make the results of
15 joint federal and state audits available for public inspection.

16 § -41 **Unfair or deceptive acts or practices.** The
17 commissioner shall adopt rules prohibiting unfair or deceptive
18 acts or practices by telecommunications carriers and
19 telecommunications service providers including resellers and
20 aggregators of telecommunications services. Unfair or deceptive
21 acts or practices may include unauthorized changes in subscriber
22 carrier selections.

1 § **-42 Lifeline telephone rates.** (a) The commissioner
2 shall implement a program to achieve lifeline telephone rates
3 for residential telephone users. The commissioner may achieve
4 lifeline telephone rates by using funds collected pursuant to
5 section -51 and deposited in the commissioner special fund
6 pursuant to section -20. In conjunction with such funds, or
7 alternatively, the commissioner may seek appropriations of funds
8 from the State.

9 (b) For the purposes of this section, "lifeline telephone
10 rate" means a discounted rate for residential telephone users
11 identified as elders with limited income and the handicapped
12 with limited income as designated by the commissioner.

13 (c) The commissioner shall require every
14 telecommunications carrier providing local telephone service to
15 file a schedule of rates and charges providing a rate for
16 lifeline telephone subscribers.

17 (d) Nothing in this section shall preclude the
18 commissioner from changing any rate established pursuant to
19 subsection (a) either specifically or pursuant to any general
20 restructuring of all telephone rates, charges, and
21 classifications.

1 § **-43 Carriers of last resort.** (a) The commissioner
2 may define and designate local exchange service areas where the
3 commissioner has determined that a single provider will be the
4 most appropriate way to ensure service for these areas.

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

16 (c) The commissioner shall adopt rules pursuant to
17 chapter 91 to carry out this section or adopt the rules provided
18 in chapter 6-81 of the Hawaii Administrative Rules, which were
19 in effect on July 1, 2009.

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

1 telecommunications relay services for the deaf, persons with
2 hearing disabilities, and persons with speech disabilities.

3 (b) The commissioner 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 commissioner to the
9 provider or providers the commissioner determines to be best
10 qualified to provide these services. In reviewing the
11 qualifications of the provider or providers, the commissioner
12 shall consider the factors of cost, quality of services, and
13 experience, and other factors as the commissioner deems
14 appropriate.

15 (c) If the commissioner determines that the
16 telecommunications relay service can be provided in a cost-
17 effective manner by a service provider or service providers, the
18 commissioner may require every intrastate telecommunications
19 carrier to contract with the provider or providers for the
20 provision of the telecommunications relay service under the
21 terms established by the commissioner.

1 (d) The commissioner may establish a surcharge to collect
2 customer contributions for telecommunications relay services
3 required under this section.

4 (e) The commissioner 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 commissioner 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
14 commissioner from changing any rate established pursuant to this
15 section either specifically or pursuant to any general
16 restructuring of all telephone rates, charges, and
17 classifications.

18 (h) As used in this section:

19 "Telecommunications relay services" means telephone
20 transmission services that provide an individual who has a
21 hearing or speech disability, the ability to engage in
22 communication by wire or radio with a hearing individual in a

1 manner that is functionally equivalent to the ability of an
2 individual who does not have a hearing or speech disability to
3 communicate using wire or radio voice communication services.
4 "Telecommunications relay services" includes services that
5 enable two-way communication using text telephones or other
6 non-voice terminal devices, speech-to-speech services, video
7 relay services, and non-English relay services.

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

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

20 (b) The commissioner shall require every
21 telecommunications carrier providing statewide enhanced 911
22 emergency telephone service to maintain a separate accounting of

1 the costs of providing an enhanced 911 emergency service and the
2 revenues received from related surcharges. The commissioner
3 shall further require that every telecommunications carrier
4 imposing a surcharge shall identify on all customer billing
5 statements the separate line item for enhanced 911 emergency
6 service.

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

11 § -47 **Issuance of securities.** A telecommunications
12 carrier corporation may, on securing the prior approval of the
13 commissioner, and not otherwise, issue stocks and stock
14 certificates, bonds, notes, and other evidences of indebtedness,
15 payable at periods of more than twelve months after the date
16 thereof, for the following purposes and no other, namely:

- 17 (1) For the acquisition of property;
- 18 (2) For the construction, completion, extension, or
19 improvement of or addition to its facilities or
20 service;
- 21 (3) For the discharge or lawful refunding of its
22 obligations;

1 (4) For the reimbursement of moneys actually expended from
2 income or from any other moneys in its treasury not
3 secured by or obtained from the issue of its stocks or
4 stock certificates, or bonds, notes, or other
5 evidences of indebtedness; and

6 (5) For any of the aforesaid purposes except maintenance
7 of service, replacements, and substitutions not
8 constituting capital expenditure in cases where the
9 corporation has kept its accounts for such
10 expenditures in such manner as to enable the
11 commissioner to ascertain the amount of moneys so
12 expended and the purposes for which the expenditures
13 were made, and the sources of the funds in its
14 treasury applied to the expenditures.

15 As used in this section, "property" and "facilities", mean
16 property and facilities used in all operations of a
17 telecommunications carrier corporation whether or not included
18 in its operations or rate base. A telecommunications carrier
19 corporation may not issue securities to acquire property or to
20 construct, complete, extend, improve, or add to its facilities
21 or service if the commissioner determines that the proposed

1 purpose will have a materially adverse effect on its
2 telecommunications carrier operations.

3 All stocks and every stock certificate, bond, note, or
4 other evidence of indebtedness of a telecommunications carrier
5 corporation not payable within twelve months, issued without an
6 order of the commissioner authorizing the same, then in effect,
7 shall be void.

8 § -48 **Issuance of voting stock; restrictions.** (a) For
9 the purposes of this section:

10 "Foreign corporation" means a foreign corporation as
11 defined in section 235-1 or a corporation in which a majority of
12 the voting stock is held by a single foreign corporation as
13 defined in section 235-1.

14 "Nonresident alien" means a person not a citizen of the
15 United States who is not defined as a resident alien by the
16 United States Citizenship and Immigration Services.

17 (b) No more than twenty-five per cent of the issued and
18 outstanding voting stock of a corporation that is organized
19 under the laws of the State and that owns, controls, operates,
20 or manages any plant or equipment, or any part thereof, as a
21 telecommunications carrier within the definition set forth in
22 section -1 shall be held, whether directly or indirectly, by

1 any single foreign corporation or any single nonresident alien,
2 or held by any person, unless prior written approval is obtained
3 from the commissioner, or unless a transaction is exempt. An
4 exempt transaction is:

- 5 (1) Any purchase or sale by an underwriter; or
- 6 (2) A transaction to acquire shares of a corporation with
7 less than one hundred shareholders and less than
8 \$1,000,000 in assets.

9 Every assignment, transfer, contract, or agreement for
10 assignment or transfer of any shares in violation of this
11 section shall be void and of no effect; and no such transfer
12 shall be made on the books of the corporation. Nothing in this
13 section shall be construed to make illegal the holding of stock
14 lawfully held, directly or indirectly, prior to June 4, 1977.

15 **§ -49 Acquisition of stock of another telecommunications**
16 **carrier.** No person or entity shall purchase or acquire, take or
17 hold, any part of the capital stock of any telecommunications
18 carrier corporation, organized or existing under or by virtue of
19 the laws of the State, without having been first authorized to
20 do so by the order of the commissioner. Every assignment,
21 transfer, contract, or agreement for assignment or transfer of
22 any stock by or through any person or corporation to any

1 corporation or otherwise in violation of this section shall be
2 void and of no effect; and no such transfer shall be made on the
3 books of any telecommunications carrier. Nothing in this
4 section shall be construed to make illegal the holding of stock
5 lawfully acquired before July 1, 1933.

6 § -50 **Merger and consolidation of telecommunications**
7 **carriers.** No telecommunications carrier corporation shall sell,
8 lease, assign, mortgage, or otherwise dispose of or encumber the
9 whole or any part of its road, line, plant, system, or other
10 property necessary or useful in the performance of its duties to
11 the public, or any franchise or permit, or any right thereunder,
12 nor by any means, directly or indirectly, merge or consolidate
13 with any other person or entity without first having secured
14 from the commissioner an order authorizing it so to do. Every
15 sale, lease, assignment, mortgage, disposition, encumbrance,
16 merger, or consolidation, made other than in accordance with the
17 order of the commissioner shall be void.

18 § -51 **Finances; regulatory fee.** (a) There shall be
19 paid to the commissioner in the months of July and December of
20 each year, by each telecommunications carrier subject to this
21 chapter, a fee set by the commissioner not to exceed three-
22 tenths of one per cent of the gross income from the

1 telecommunications carrier's business during the preceding year,
2 or the sum of \$30, whichever is greater. The commissioner shall
3 set the fee amount based on its projected budget for the year to
4 administer and enforce this chapter. This fee shall be
5 deposited with the director of finance to the credit of the
6 commissioner special fund created pursuant to section -20.

7 (b) Each telecommunications carrier paying a fee under
8 subsection (a) may impose a surcharge to recover the amount paid
9 above one-eighth of one per cent of gross income. The surcharge
10 imposed shall not be subject to the notice, hearing, and
11 approval requirements of this chapter; provided that the
12 surcharge may be imposed by the telecommunications carrier only
13 after thirty days' notice to the commissioner.

14 (c) The commissioner, in the commissioner's discretion,
15 may impose additional fees on telecommunications carriers,
16 including to facilitate deployment of broadband communications
17 services in the State, and the fees shall be deposited with the
18 director of finance to the credit of the commissioner special
19 fund created pursuant to section -20.

20 § -52 **Injury to carrier property.** Any person who
21 injures or destroys, through want of proper care, any necessary
22 or useful facility, equipment, or property of any

1 telecommunications carrier shall be liable to the
 2 telecommunications carrier for all damages sustained thereby.
 3 The measure of damages to the facility, equipment, or property
 4 injured or destroyed shall be the cost to repair or replace the
 5 property injured or destroyed including direct and allocated
 6 costs for labor, materials, supervision, supplies, tools, taxes,
 7 transportation, administrative and general expense, and other
 8 indirect or overhead expenses, less credit, if any, for salvage.
 9 The specifying of the measure of damages for the facility,
 10 equipment, or property shall not preclude the recovery of other
 11 damages occasioned thereby as may be authorized by law.

12 **§ -53 One call center; advance warning to excavators.**

13 To finance the establishment and operation of the one call
 14 center, pursuant to chapter 269E, and the administrative costs
 15 of the commissioner, the commissioner shall direct
 16 telecommunications carriers to pay to the public utilities
 17 commission a fee in an amount and at a schedule determined by
 18 the public utilities commission.

19 **PART III. CABLE**

20 **§ -61 Issuance of cable franchises and regulation of**

21 **cable operators by the commissioner.** The commissioner shall be

1 empowered to issue cable franchises and otherwise administer and
2 enforce this part.

3 **§ -62 Cable franchise required.** (a) No person shall
4 construct, operate, or acquire a cable system, or extend an
5 existing cable system outside its designated service area,
6 without first obtaining a cable franchise as provided in this
7 part.

8 (b) No cable operator that, as of July 1, 2009, holds a
9 franchise or charter enacted or granted by the legislative or
10 executive authority of the State or its predecessor governments,
11 or has a bona fide operation as a cable operator heretofore
12 recognized by the department, shall be required to obtain, as a
13 result of the enactment of this chapter, a new franchise under
14 this section.

15 **§ -63 Application or proposal for cable franchise; fee;**
16 **certain requirements.** (a) No cable franchise shall be issued
17 except upon written application or proposal therefor to the
18 commissioner, accompanied by a fee set by the commissioner.

19 (b) An application for issuance of a cable franchise shall
20 be made in a form prescribed by the commissioner. The
21 application shall set forth the facts as required by the
22 commissioner to determine in accordance with section -65

1 whether a cable franchise should be issued, including facts as
2 to:

- 3 (1) The citizenship and character of the applicant;
- 4 (2) The financial, technical, and other qualifications of
5 the applicant;
- 6 (3) The principals and ultimate beneficial owners of the
7 applicant;
- 8 (4) The public interest to be served by the requested
9 issuance of a cable franchise; and
- 10 (5) Any other matters deemed appropriate and necessary by
11 the commissioner including, but not limited to, the
12 proposed plans and schedule of expenditures for or in
13 support of the use of public, educational, and
14 governmental access facilities, and the competitive
15 availability and affordability of broadband and other
16 advanced services to consumers.

17 (c) A proposal for issuance of a cable franchise shall be
18 accepted for filing in accordance with section -64 only when
19 made in response to the written request of the commissioner for
20 the submission of proposals.

1 § -64 **Cable franchise application or proposal procedure;**
2 **public hearing; notice.** An application or proposal for a cable
3 franchise shall be processed as follows:

4 (1) After the application or proposal and required fee are
5 received by the commissioner and within a time frame
6 established by rule, the commissioner shall notify the
7 applicant in writing of the acceptance or
8 non-acceptance for filing of the application or
9 proposal for issuance of a cable franchise required by
10 this part;

11 (2) After the issuance of a notice of acceptance for
12 filing and within a time frame established by rule,
13 the commissioner shall hold a public hearing on the
14 application or proposal to afford interested persons
15 the opportunity to submit data, views, or arguments,
16 orally or in writing. Notice thereof shall be given
17 to the governing council and mayor of the county and
18 to any telephone or other utility and cable company in
19 the county in which the proposed service area is
20 located. The commissioner shall also give public
21 notice of the application and hearing at least once in
22 each of two successive weeks in the county in which

1 the proposed service area is located. The last notice
2 shall be given at least fifteen days prior to the date
3 of the hearing;

4 (3) After holding a public hearing, the commissioner shall
5 approve the application or proposal in whole or in
6 part, with or without conditions or modifications, or
7 shall deny the application or proposal, with reasons
8 for denial sent in writing to the applicant. If the
9 commissioner does not take final action after the
10 issuance of a notice of acceptance for filing and
11 within a time frame established by rule, the
12 application or proposal shall be deemed denied; and

13 (4) The time limit for final action may be extended, on
14 the commissioner's approval of the applicant's request
15 and justification in writing for an extension of time
16 to the commissioner at least two weeks in advance of
17 the requested effective date of the extension, or by
18 mutual agreement.

19 § -65 **Issuance of cable franchise authority; criteria;**
20 **content.** (a) The commissioner is empowered to issue a cable
21 franchise to construct or operate facilities for a cable system
22 upon the terms and conditions provided in this part.

1 (b) The commissioner, after a public hearing as provided
2 in this part, shall issue a cable franchise to the applicant
3 when the commissioner is convinced that it is in the public
4 interest to do so. In determining whether a cable franchise
5 shall be issued, the commissioner shall take into consideration,
6 among other things, the content of the application or proposal,
7 the public need for the proposed service, the ability of the
8 applicant to offer safe, adequate, and reliable service at a
9 reasonable cost to the subscribers, the suitability of the
10 applicant, the financial responsibility of the applicant, the
11 technical and operational ability of the applicant to perform
12 efficiently the service for which authority is requested, any
13 objections arising from the public hearing, the communications
14 advisory committee established by this chapter, or elsewhere,
15 and any other matters as the commissioner deems appropriate in
16 the circumstances.

17 (c) In determining the area that is to be serviced by the
18 applicant, the commissioner shall take into account the
19 geography and topography of the proposed service area, and the
20 present, planned, and potential expansion in facilities or cable
21 services of the applicant's proposed cable system and existing
22 cable systems.

1 (d) In issuing a cable franchise under this part, the
2 commissioner is not restricted to approving or disapproving the
3 application or proposal but may issue it for only partial
4 exercise of the privilege sought or may attach to the exercise
5 of the right granted by the cable franchise terms, limitations,
6 and conditions which the commissioner deems the public interest
7 may require. The cable franchise shall be nonexclusive, shall
8 include a description of the service area in which the cable
9 system is to be constructed, extended, or operated and the
10 approximate date on which the service is to commence and shall
11 authorize the cable operator to provide service for a term of
12 fifteen years or any other term that the commissioner determines
13 to be appropriate.

14 § -66 **Requirement for adequate service; terms and**
15 **conditions of service.** (a) Every cable operator shall provide
16 safe, adequate, and reliable service in accordance with
17 applicable laws, rules, franchise requirements, and its filed
18 schedule of terms and conditions of service.

19 (b) The commissioner shall require each cable operator to
20 submit a schedule of all terms and conditions of service in the
21 form and with the notice that the commissioner may prescribe.

1 (c) The commissioner shall ensure that the terms and
2 conditions upon which cable service is provided are fair both to
3 the public and to the cable operator, taking into account the
4 geographic, topographic, and economic characteristics of the
5 service area and the economics of providing cable service to
6 subscribers in the service area.

7 § -67 Cable system installation, construction,
8 operation, removal; general provisions. (a) A cable franchise
9 shall be construed to authorize the construction or operation of
10 a cable system within the service area above, below, on, in, or
11 along any highway or other public place and through easements
12 that have been dedicated for compatible purposes.

13 (b) The technical specifications, general routes of the
14 distribution system, and the schedule for construction of the
15 cable system shall be subject to the commissioner's approval.

16 (c) In installing, operating, and maintaining facilities,
17 the cable operator shall avoid all unnecessary damage and injury
18 to any trees, structures, and improvements in and along the
19 routes authorized by the commissioner.

20 (d) The cable operator shall indemnify and hold the State
21 and the county harmless at all times from any and all claims for
22 injury and damage to persons or property, both real and

1 personal, caused by the installation, operation, or maintenance
2 of its cable system, notwithstanding any negligence on the part
3 of the State or county, or their employees or agents. Upon
4 receipt of notice in writing from the State or county, the cable
5 operator shall, at its own expense, defend any action or
6 proceeding against the State or county in which it is claimed
7 that personal injury or property damage was caused by activities
8 of the cable operator in the installation, operation, or
9 maintenance of its cable system.

10 (e) The cable operator shall install and provide basic
11 cable television service at no cost to any school or institution
12 of higher education within its service area as determined by the
13 commissioner; provided that service is actually being delivered
14 within a reasonable distance from the school or institution of
15 higher education which may request service.

16 (f) The cable operator shall designate five or more
17 channels for public, educational, or governmental use, and this
18 designation shall be re-evaluated every other year based on
19 input solicited from the public, PEG access organizations, and
20 cable franchise holders on how best to configure public,
21 educational, or governmental capacity in order to maximize the

1 achievement of the objectives of public, educational, and
2 government access.

3 The Hawaii broadband commissioner shall have the authority
4 to designate the PEG access organization consistent with
5 administrative rules that shall be adopted by the commissioner.
6 These administrative rules shall be adopted with input from the
7 public and with recognition of the First Amendment rights of
8 individuals who utilize PEG access services. Board of director
9 positions on PEG access organizations shall be managed by each
10 designated PEG access organization, including but not limited to
11 the selection of directors, length of terms, and number of
12 directors.

13 PEG access organization assets include, but are not limited
14 to equipment, facilities, cash, financial assets and
15 instruments, land, and buildings. These assets will be
16 available to the PEG access organization designated by the
17 Hawaii broadband commissioner to provide PEG services in a
18 particular service area. If the contract between Hawaii
19 broadband commissioner and a PEG access organization is
20 terminated or cancelled, these PEG assets will be held in trust
21 for the benefit of PEG services until a new PEG access
22 organization is designated by the Hawaii broadband commissioner.

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

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

13 (1) All applicable state statutes and all applicable rules
14 and orders of the public utilities commission and the
15 commissioner governing the construction, maintenance,
16 and removal of overhead and underground facilities of
17 public utilities;

18 (2) For county highways, all applicable public welfare
19 rules adopted by the governing body of the county in
20 which the county highways are situated;

21 (3) For state or federal-aid highways, all public welfare
22 rules adopted by the director of transportation; and

1 (4) For the relocation of cable facilities, the provisions
2 of section 264-33 concerning the allocation of
3 expenses for the relocation of utility facilities.

4 (i) In the use of easements dedicated to compatible
5 purposes, the cable operator shall ensure:

6 (1) That the safety, functioning, and appearance of the
7 property and the convenience and safety of other
8 persons are not adversely affected by the installation
9 or construction of facilities necessary for a cable
10 system;

11 (2) That the cost of the installation, construction,
12 operation, or removal of facilities is borne by the
13 cable operator or subscribers, or a combination of
14 both; and

15 (3) That the owner of the property is justly compensated
16 by the cable operator for any damages caused by the
17 installation, construction, operation, or removal of
18 facilities by the cable operator.

19 (j) The expenditure of cable franchise fee revenues by a
20 PEG access organization shall not be subject to the requirements
21 set forth in chapter 103D. Any revenues derived from cable

1 franchise fees shall not be considered appropriations or public
2 funds of the State or be expended by the State in any manner.

3 § -68 **Complaints; violations; revocation, alteration, or**
4 **suspension of cable franchise.** (a) Subscriber complaints
5 regarding the operation of a cable system may be made orally or
6 in writing to the commissioner. The commissioner shall resolve
7 complaints informally when possible.

8 (b) Any cable franchise issued hereunder after hearing in
9 accordance with chapter 91 may be revoked, altered, or suspended
10 by the commissioner as the commissioner deems necessary on any
11 of the following grounds:

- 12 (1) For making material false or misleading statements in,
13 or for material omissions from, any application or
14 proposal or other filing made with the commissioner;
- 15 (2) For failure to maintain signal quality under the
16 standards prescribed by the commissioner;
- 17 (3) For any sale, lease, assignment, or other transfer of
18 its cable franchise without consent of the
19 commissioner;
- 20 (4) Except when commercially impracticable, for
21 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 commissioner;
- 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 part may be renewed by the commissioner
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 commissioner. The periods of renewal shall be
15 not less than five nor more than fifteen years each. The
16 commissioner 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 public, educational, or governmental
19 access facilities and 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 commissioner. The
5 form of the application shall be prescribed by the commissioner.

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

8 § -71 **Rate, filed with the commissioner; approval.** (a)

9 The commissioner 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 commissioner may prescribe.

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

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

1 collected under this section shall be deposited into the
2 commissioner special fund established under section -20.

3 (b) The commissioner 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 public,
9 educational, or governmental access organizations pursuant to
10 the federal, state, or local laws regarding libel, slander,
11 obscenity, incitement, invasions of privacy, false or misleading
12 advertising, or other similar laws, except that no public,
13 educational, or governmental access organization shall incur any
14 liability arising from, based on, or related to any program not
15 created by the public, educational, or governmental access
16 organization, which is broadcast on any channel obtained under
17 section -65, or under similar arrangements.

18 § -75 **Use of American Recovery and Reinvestment Act of**
19 **2009, federal funds from fiscal year 2009 and fiscal year 2010**
20 **appropriation measures, and other federal moneys.** (a) The
21 commissioner may apply for, and expend, federal moneys from the
22 American Recovery and Reinvestment Act of 2009, federal funds

1 from fiscal year 2009 and fiscal year 2010 appropriation
2 measures, and other applicable federal acts.

3 (b) The commissioner may purchase broadband facilities,
4 services, or equipment and may enter into contracts for
5 broadband-related projects, through the compliance resolution
6 fund, using moneys from the American Recovery and Reinvestment
7 Act of 2009, federal funds from fiscal year 2009 and fiscal year
8 2010 appropriation measures, and other applicable federal acts.

9 (c) The commissioner may establish a separate account
10 within the Hawaii broadband commissioner special fund and assign
11 to that account federal moneys appropriated under federal laws
12 that authorize principal forgiveness, zero and negative interest
13 loans, and grants, including without limitation the American
14 Recovery and Reinvestment Act of 2009, federal funds from fiscal
15 year 2009 and fiscal year 2010 appropriation measures, and other
16 applicable federal acts. The commissioner may use those moneys
17 and, in so doing, may include additional requirements and
18 subsidization not applicable to the remainder of the Hawaii
19 broadband commissioner special fund, including forgiveness of
20 principal and zero and negative interest loans.

21 (d) Any moneys applied for or received by the department
22 under the American Recovery and Reinvestment Act of 2009 or

1 federal funds from fiscal year 2009 and fiscal year 2010
2 appropriation measures for uses related to the purpose of this
3 chapter shall be transferred to the Hawaii broadband
4 commissioner upon its establishment.

5 (e) The commissioner shall certify that a project is
6 entitled to priority over other eligible projects on the basis
7 of the overall public benefit associated with the project and
8 financial needs, as well as a preference to those projects that
9 can be started and completed expeditiously as stipulated under
10 the American Recovery and Reinvestment Act of 2009.

11 (f) Contracts or purchases hereunder using moneys from the
12 American Recovery and Reinvestment Act of 2009 or federal funds
13 from fiscal year 2009 and fiscal year 2010 appropriation
14 measures shall be exempt from chapter 103D.

15 (g) For the purposes of this section:

16 "American Recovery and Reinvestment Act of 2009" means
17 the federal law, P.L. 111-5, making appropriations for various
18 purposes, including job preservation and creation,
19 infrastructure investment, energy efficiency and science,
20 assistance to the unemployed, and state and local fiscal
21 stabilization purposes.

1 § **-76 Broadband inventory maps.** The Hawaii broadband
2 commissioner shall be designated as the entity within the State
3 responsible for developing and maintaining broadband inventory
4 maps, as described in the American Recovery and Reinvestment Act
5 of 2009 and the Broadband Data Improvement Act. Subject only to
6 any limitations imposed by federal law, all providers of
7 broadband infrastructure and services in Hawaii shall be
8 required to furnish information requested by the broadband
9 commissioner in support of broadband mapping, reporting, and
10 data-driven policy support. Proprietary data on private
11 infrastructure furnished by private providers shall be protected
12 from disclosure under the Freedom of Information Act or Uniform
13 Information Practices Act and shall be made available to the
14 public only in a summarized form that appropriately protects the
15 proprietary concerns of those private providers.

16 The Hawaii broadband commissioner shall have the authority
17 to designate economic zones anywhere in the State at a location
18 that may be identified as a strategic site to create facilities
19 that will stimulate job growth."

20 SECTION 4. Section 26-9, Hawaii Revised Statutes, is
21 amended by amending subsection (o) to read as follows:

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

1 application for renewal, restoration, reactivation, or
2 reinstatement of the license. If the fees are not paid, the
3 director may deny renewal, restoration, reactivation, or
4 reinstatement of the license. The director may establish,
5 increase, decrease, or repeal the fees when necessary pursuant
6 to rules adopted under chapter 91. The director may also
7 increase or decrease the fees pursuant to section 92-28.

8 There is created in the state treasury a special fund to be
9 known as the compliance resolution fund to be expended by the
10 director's designated representatives as provided by this
11 subsection. Notwithstanding any law to the contrary, all
12 revenues, fees, and fines collected by the department shall be
13 deposited into the compliance resolution fund. Unencumbered
14 balances existing on June 30, 1999, in the cable television fund
15 under chapter 440G, the division of consumer advocacy fund under
16 chapter 269, the financial institution examiners' revolving
17 fund, section 412:2-109, the special handling fund, section
18 414-13, and unencumbered balances existing on June 30, 2002, in
19 the insurance regulation fund, section 431:2-215, shall be
20 deposited into the compliance resolution fund. This provision
21 shall not apply to any fee imposed by the Hawaii broadband
22 commissioner pursuant to chapter , including the regulatory

1 fee in section -51, the drivers education fund underwriters
2 fee, section 431:10C-115, insurance premium taxes and revenues,
3 revenues of the workers' compensation special compensation fund,
4 section 386-151, the captive insurance administrative fund,
5 section 431:19-101.8, the insurance commissioner's education and
6 training fund, section 431:2-214, the medical malpractice
7 patients' compensation fund as administered under section 5 of
8 Act 232, Session Laws of Hawaii 1984, and fees collected for
9 deposit in the office of consumer protection restitution fund,
10 section 487-14, the real estate appraisers fund, section 466K-1,
11 the real estate recovery fund, section 467-16, the real estate
12 education fund, section 467-19, the contractors recovery fund,
13 section 444-26, the contractors education fund, section 444-29,
14 the condominium management education fund, section 514A-131, and
15 the condominium education trust fund, section 514B-71. Any law
16 to the contrary notwithstanding, the director may use the moneys
17 in the fund to employ, without regard to chapter 76, hearings
18 officers and attorneys. All other employees may be employed in
19 accordance with chapter 76. Any law to the contrary
20 notwithstanding, the moneys in the fund shall be used to fund
21 the operations of the department. The moneys in the fund may be

1 used to train personnel as the director deems necessary and for
2 any other activity related to compliance resolution.

3 As used in this subsection, unless otherwise required by
4 the context, "compliance resolution" means a determination of
5 whether:

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

9 (2) Any person subject to chapter 485A has complied with
10 that chapter;

11 (3) Any person submitting any filing required by chapter
12 514E or section 485A-202(a)(26) has complied with
13 chapter 514E or section 485A-202(a)(26);

14 (4) Any person has complied with the prohibitions against
15 unfair and deceptive acts or practices in trade or
16 commerce; or

17 (5) Any person subject to chapter 467B has complied with
18 that chapter;

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

1 The director shall prepare and submit an annual report to
2 the governor and the legislature on the use of the compliance
3 resolution fund. The report shall describe expenditures made
4 from the fund including non-payroll operating expenses."

5 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
6 amended as follows:

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

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

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

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

- 1 speaker of the house of representatives and the
2 president of the senate jointly, and the attorney
3 general declines to provide such representation on the
4 grounds of conflict of interest, the attorney general
5 shall retain an attorney for the court, judicial, or
6 legislative office, subject to approval by the court,
7 judicial, or legislative office;
- 8 (3) By the legislative reference bureau;
- 9 (4) By any compilation commission that may be constituted
10 from time to time;
- 11 (5) By the real estate commission for any action involving
12 the real estate recovery fund;
- 13 (6) By the contractors license board for any action
14 involving the contractors recovery fund;
- 15 (7) By the trustees for any action involving the travel
16 agency recovery fund;
- 17 (8) By the office of Hawaiian affairs;
- 18 (9) By the department of commerce and consumer affairs for
19 the enforcement of violations of chapters 480 and
20 485A;
- 21 (10) As grand jury counsel;

- 1 (11) By the Hawaiian home lands trust individual claims
2 review panel;
- 3 (12) By the Hawaii health systems corporation, or its
4 regional system boards, or any of their facilities;
- 5 (13) By the auditor;
- 6 (14) By the office of ombudsman;
- 7 (15) By the insurance division;
- 8 (16) By the University of Hawaii;
- 9 (17) By the Kahoolawe island reserve commission;
- 10 (18) By the division of consumer advocacy;
- 11 (19) By the office of elections;
- 12 (20) By the campaign spending commission;
- 13 (21) By the Hawaii tourism authority, as provided in
14 section 201B-2.5; [~~or~~]
- 15 (22) By the Hawaii broadband commissioner; or
- 16 [~~(22)~~] (23) By a department, in the event the attorney
17 general, for reasons deemed by the attorney general
18 good and sufficient, declines to employ or retain an
19 attorney for a department; provided that the governor
20 thereupon waives the provision of this section."
- 21 2. By amending subsection (c) to read:

1 "(c) Every attorney employed by any department on a
2 full-time basis, except an attorney employed by the public
3 utilities commission, the Hawaii broadband commissioner, the
4 labor and industrial relations appeals board, the Hawaii labor
5 relations board, the office of Hawaiian affairs, the Hawaii
6 health systems corporation or its regional system boards, the
7 department of commerce and consumer affairs in prosecution of
8 consumer complaints, insurance division, the division of
9 consumer advocacy, the University of Hawaii, the Hawaii tourism
10 authority as provided in section 201B-2.5, the Hawaiian home
11 lands trust individual claims review panel, or as grand jury
12 counsel, shall be a deputy attorney general."

13 SECTION 6. Section 46-15, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The mayor of each county, after holding a public
16 hearing on the matter and receiving the approval of the
17 respective council, shall be empowered to designate areas of
18 land for experimental and demonstration housing projects, the
19 purposes of which are to research and develop ideas that would
20 reduce the cost of housing in the State. Except as hereinafter
21 provided, the experimental and demonstration housing projects
22 shall be exempt from all statutes, ordinances, charter

1 provisions, and rules or regulations of any governmental agency
2 or public utility relating to planning, zoning, construction
3 standards for subdivisions, development and improvement of land,
4 and the construction and sale of homes thereon; provided that
5 the experimental and demonstration housing projects shall not
6 affect the safety standards or tariffs approved by the public
7 utility commissions or the Hawaii broadband commissioner for
8 such public utility.

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

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

1 preliminary plans and specifications. The final plans and
2 specifications shall constitute the standards for the particular
3 project.

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

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

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

1 SECTION 7. Section 91-13.5, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

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

4 (1) Any proceedings of the public utilities commission;

5 [~~or~~]

6 (2) Any county or county agency that is exempted by county
7 ordinance from this section[~~or~~]; or

8 (3) Any proceedings of the Hawaii broadband commissioner."

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

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

1 in accordance with rules adopted by the agency having charge or
2 control of that data. [~~Such~~] The reproduction cost shall
3 include but shall not be limited to labor cost for search and
4 actual time for reproducing, material cost, including
5 electricity cost, equipment cost, including rental cost, cost
6 for certification, and other related costs. All fees shall be
7 paid in by the public officer receiving or collecting the same
8 to the state director of finance, the county director of
9 finance, or to the agency or department by which the officer is
10 employed, as government realizations; provided that fees
11 collected by the public utilities commission pursuant to this
12 section shall be deposited in the public utilities commission
13 special fund established under section 269-33[~~7~~], and fees
14 collected by the Hawaii broadband commissioner shall be
15 deposited in the commissioner special fund established under
16 section -20."

17 SECTION 9. Section 101-43, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§101-43 Requirements prior to exercise of power.** Any
20 corporation having the power of eminent domain under section
21 101-41 may continue to exercise the power, provided that prior
22 to the exercise of the power:

1 (1) The corporation submits to the public utilities
2 commission or, in the case of telecommunications
3 carriers or telecommunications common carriers, to the
4 Hawaii broadband commissioner, its intention to
5 exercise the power, with a description of the property
6 to be condemned; and

7 (2) The public utilities commission or the Hawaii
8 broadband commissioner, as the case may be, finds that
9 the proposed condemnation is in the public interest,
10 that the proposed condemnation is necessary, and that
11 the corporation will use the property for its
12 operations as a public utility."

13 SECTION 10. 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 broadband commissioner under chapter ____."

11 SECTION 11. Section 166-4, Hawaii Revised Statutes, is
12 amended to read as follows:

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

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
12 501-85 and 502-17, the chairperson of the board
13 of 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 12. 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 broadband commissioner;

- 1 (3) The county in which the non-agricultural park
2 development is proposed shall approve the
3 non-agricultural park development; and provided
4 further 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 13. 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 broadband commissioner;

10 (3) The legislative body of the county in which the
11 industrial park is proposed to be situated approves
12 the industrial park[~~;~~] in accordance with the
13 following:

14 (A) The legislative body shall approve or disapprove
15 the industrial park within forty-five days after
16 the department has submitted preliminary plans
17 and specifications for the industrial park to the
18 legislative body. If after the forty-fifth day,
19 an industrial park is not disapproved, it shall
20 be deemed approved by the legislative body[~~;~~];

21 (B) No action shall be prosecuted or maintained
22 against any county, its officials, or employees,

1 on account of actions taken by them in reviewing,
2 approving, or disapproving the plans and
3 specifications[~~-~~]; and
4 (C) The final plans and specifications for the
5 industrial park shall be deemed approved by the
6 legislative body if the final plans and
7 specifications for the industrial park do not
8 substantially deviate from the preliminary plans
9 and specifications. The determination that the
10 final plans and specifications do not
11 substantially deviate from the preliminary plans
12 and specifications of the industrial park shall
13 rest with the board. The final plans and
14 specifications for the park shall constitute the
15 planning, zoning, building, improvement,
16 construction, and subdivision standards for that
17 industrial park. For the purposes of sections
18 501-85 and 502-17, the chairperson of the board
19 or the responsible county official may certify
20 maps and plans of land connected with the
21 industrial park as having complied with
22 applicable laws and ordinances relating to

1 consolidation and subdivision of lands, and such
2 maps and plans shall be accepted for registration
3 or recordation by the land court and registrar;
4 and

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

9 SECTION 14. Section 196D-10, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

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

14 SECTION 15. Section 201H-13, Hawaii Revised Statutes, is
15 amended to read as follows:

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

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

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

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

3 SECTION 16. 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 broadband
12 commissioner, 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 17. 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 broadband commissioner or of the various boards
4 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
20 205-4. If, on the forty-sixth day, the petition is
21 not disapproved, it shall be deemed approved by the
22 commission."

1 SECTION 18. 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 19. 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 before July 1, 2009, or
5 by the Hawaii broadband commissioner on or after July 1, 2009,
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 broadband commissioner. The tax
11 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 20. 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 21. Section 269-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By repealing the definitions of "carrier of last
15 resort" and "designated local exchange service area":

16 [~~"Carrier of last resort" means a telecommunications~~
17 ~~carrier designated by the commission to provide universal~~
18 ~~service in a given local exchange service area determined to be~~
19 ~~lacking in effective competition.~~

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

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

2 ""Public utility":

3 (1) Includes every person who may own, control, operate,
4 or manage as owner, lessee, trustee, receiver, or
5 otherwise, whether under a franchise, charter,
6 license, articles of association, or otherwise, any
7 plant or equipment, or any part thereof, directly or
8 indirectly for public use, for the transportation of
9 passengers or freight, or the conveyance or
10 transmission of telecommunications messages, or the
11 furnishing of facilities for the transmission of
12 intelligence by electricity by land or water or air
13 within the State, or between points within the State,
14 or for the production, conveyance, transmission,
15 delivery, or furnishing of light, power, heat, cold,
16 water, gas, or oil, or for the storage or warehousing
17 of goods, or the disposal of sewage; provided that the
18 term shall include:

19 (A) Any person insofar as that person owns or
20 operates a private sewer company or sewer
21 facility; and

- 1 (B) Any telecommunications carrier or
2 telecommunications common carrier;
- 3 (2) Shall not include:
- 4 (A) Any person insofar as that person owns or
5 operates an aerial transportation enterprise;
- 6 (B) Persons owning or operating taxicabs, as defined
7 in this section;
- 8 (C) Common carriers transporting only freight on the
9 public highways, unless operating within
10 localities or along routes or between points that
11 the public utilities commission finds to be
12 inadequately serviced without regulation under
13 this chapter;
- 14 (D) Persons engaged in the business of warehousing or
15 storage unless the commission finds that
16 regulation thereof is necessary in the public
17 interest;
- 18 (E) The business of any carrier by water to the
19 extent that the carrier enters into private
20 contracts for towage, salvage, hauling, or
21 carriage between points within the State and the
22 carriage is not pursuant to either an established

- 1 schedule or an undertaking to perform carriage
2 services on behalf of the public generally;
- 3 (F) The business of any carrier by water,
4 substantially engaged in interstate or foreign
5 commerce, transporting passengers on luxury
6 cruises between points within the State or on
7 luxury round-trip cruises returning to the point
8 of departure;
- 9 (G) Any person who:
- 10 (i) Controls, operates, or manages plants or
11 facilities for the production, transmission,
12 or furnishing of power primarily or entirely
13 from nonfossil fuel sources; and
- 14 (ii) Provides, sells, or transmits all of that
15 power, except such power as is used in its
16 own internal operations, directly to a
17 public utility for transmission to the
18 public;
- 19 (H) A telecommunications provider only to the extent
20 determined by the [~~commission~~] Hawaii broadband
21 commissioner pursuant to section [~~269-16.9~~]

- 1 (I) Any person who controls, operates, or manages
2 plants or facilities developed pursuant to
3 chapter 167 for conveying, distributing, and
4 transmitting water for irrigation and such other
5 purposes that shall be held for public use and
6 purpose;
- 7 (J) Any person who owns, controls, operates, or
8 manages plants or facilities for the reclamation
9 of wastewater; provided that:
- 10 (i) The services of the facility shall be
11 provided pursuant to a service contract
12 between the person and a state or county
13 agency and at least ten per cent of the
14 wastewater processed is used directly by the
15 State or county which has entered into the
16 service contract;
- 17 (ii) The primary function of the facility shall
18 be the processing of secondary treated
19 wastewater that has been produced by a
20 municipal wastewater treatment facility that
21 is owned by a state or county agency;

- 1 (iii) The facility shall not make sales of water
2 to residential customers;
- 3 (iv) The facility may distribute and sell
4 recycled water or reclaimed water to
5 entities not covered by a state or county
6 service contract; provided that, in the
7 absence of regulatory oversight and direct
8 competition, the distribution and sale of
9 recycled or reclaimed water shall be
10 voluntary and its pricing fair and
11 reasonable. For purposes of this
12 subparagraph, "recycled water" and
13 "reclaimed water" mean treated wastewater
14 that by design is intended or used for a
15 beneficial purpose; and
- 16 (v) The facility shall not be engaged, either
17 directly or indirectly, in the processing of
18 food wastes; and
- 19 (K) Any person who owns, controls, operates, or
20 manages any seawater air conditioning district
21 cooling project; provided that at least fifty per
22 cent of the energy required for the seawater air

1 conditioning district cooling system is provided
2 by a renewable energy resource, such as cold,
3 deep seawater.

4 If the application of this chapter is ordered by the
5 commission or the Hawaii broadband commissioner, as the case may
6 be, in any case provided in paragraphs (2) (C), (2) (D), (2) (H),
7 and (2) (I), the business of any public utility that presents
8 evidence of bona fide operation on the date of the commencement
9 of the proceedings resulting in the order shall be presumed to
10 be necessary to public convenience and necessity, but any
11 certificate issued under this proviso shall nevertheless be
12 subject to ~~[such]~~ terms and conditions as the commission or the
13 Hawaii broadband commissioner, respectively, may prescribe, as
14 provided in sections ~~[269-16.9]~~ _____34 and 269-20."

15 3. By amending the definition of "telecommunications
16 carrier" or "telecommunications common carrier" to read:

17 ""Telecommunications carrier" or "telecommunications common
18 carrier" ~~[means any person that owns, operates, manages, or~~
19 ~~controls any facility used to furnish telecommunications~~
20 ~~services for profit to the public, or to classes of users as to~~
21 ~~be effectively available to the public, engaged in the provision~~
22 ~~of services, such as voice, data, image, graphics, and video~~

1 ~~services, that make use of all or part of their transmission~~
2 ~~facilities, switches, broadcast equipment, signalling, or~~
3 ~~control devices.] has the same meaning as in section -1."~~

4 4. By amending the definition of "telecommunications
5 service" or "telecommunications" to read:

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

16 SECTION 22. Section 269-6, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The public utilities commission shall have the
19 general supervision hereinafter set forth over all public
20 utilities, and shall perform the duties and exercise the powers
21 imposed or conferred upon it by this chapter. Included among
22 the general powers of the commission is the authority to adopt

1 rules pursuant to chapter 91 necessary for the purposes of this
2 chapter. Chapter 269 shall apply to telecommunications carriers
3 or telecommunications common carriers until such time as the
4 Hawaii broadband commissioner is sworn in and the Hawaii
5 broadband commissioner issues an order accepting the
6 commissioner's authority and undertaking to enforce
7 chapter _____."

8 SECTION 23. Section 269-16, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§269-16 Regulation of utility rates; ratemaking**
11 **procedures.** (a) All rates, fares, charges, classifications,
12 schedules, rules, and practices made, charged, or observed by
13 any public utility or by two or more public utilities jointly
14 shall be just and reasonable and shall be filed with the public
15 utilities commission. The rates, fares, classifications,
16 charges, and rules of every public utility shall be published by
17 the public utility in [~~such~~] the manner as the public utilities
18 commission may require, and copies shall be furnished to any
19 person on request.

20 To the extent the contested case proceedings referred to in
21 chapter 91 are required in any rate proceeding to ensure
22 fairness and to provide due process to parties that may be

1 affected by rates approved by the commission, the evidentiary
2 hearings shall be conducted expeditiously and shall be conducted
3 as a part of the ratemaking proceeding.

4 (b) No rate, fare, charge, classification, schedule, rule,
5 or practice, other than one established pursuant to an automatic
6 rate adjustment clause previously approved by the commission,
7 shall be established, abandoned, modified, or departed from by
8 any public utility, except after thirty days' notice to the
9 commission as prescribed in section 269-12(b), and prior
10 approval by the commission for any increases in rates, fares, or
11 charges. The commission, in its discretion and for good cause
12 shown, may allow any rate, fare, charge, classification,
13 schedule, rule, or practice to be established, abandoned,
14 modified, or departed from upon notice less than that provided
15 for in section 269-12(b). A contested case hearing shall be
16 held in connection with any increase in rates, and the hearing
17 shall be preceded by a public hearing as prescribed in section
18 269-12(c), at which the consumers or patrons of the public
19 utility may present testimony to the commission concerning the
20 increase. The commission, upon notice to the public utility,
21 may:

- 1 (1) Suspend the operation of all or any part of the
2 proposed rate, fare, charge, classification, schedule,
3 rule, or practice or any proposed abandonment or
4 modification thereof or departure therefrom;
- 5 (2) After a hearing, by order:
- 6 (A) Regulate, fix, and change all [~~such~~] rates,
7 fares, charges, classifications, schedules,
8 rules, and practices so that the same shall be
9 just and reasonable;
- 10 (B) Prohibit rebates and unreasonable discrimination
11 between localities or between users or consumers
12 under substantially similar conditions;
- 13 (C) Regulate the manner in which the property of
14 every public utility is operated with reference
15 to the safety and accommodation of the public;
- 16 (D) Prescribe its form and method of keeping
17 accounts, books, and records, and its accounting
18 system;
- 19 (E) Regulate the return upon its public utility
20 property;
- 21 (F) Regulate the incurring of indebtedness relating
22 to its public utility business; and

1 (G) Regulate its financial transactions; and
2 (3) Do all things that are necessary and in the exercise
3 of the commission's power and jurisdiction, all of
4 which as so ordered, regulated, fixed, and changed are
5 just and reasonable, and provide a fair return on the
6 property of the utility actually used or useful for
7 public utility purposes.

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

1 (d) The commission shall make every effort to complete its
2 deliberations and issue its decision as expeditiously as
3 possible and before nine months from the date the public utility
4 filed its completed application; provided that in carrying out
5 this mandate, the commission shall require all parties to a
6 proceeding to comply strictly with procedural time schedules
7 that it establishes. If a decision is rendered after the nine-
8 month period, the commission shall report in writing the reasons
9 therefor to the legislature within thirty days after rendering
10 the decision.

11 Notwithstanding subsection (c), if the commission has not
12 issued its final decision on a public utility's rate application
13 within the nine-month period stated in this section, the
14 commission, within one month after the expiration of the nine-
15 month period, shall render an interim decision allowing the
16 increase in rates, fares and charges, if any, to which the
17 commission, based on the evidentiary record before it, believes
18 the public utility is probably entitled. The commission may
19 postpone its interim rate decision for thirty days if the
20 commission considers the evidentiary hearings incomplete. In
21 the event interim rates are made effective, the commission shall
22 require by order the public utility to return, in the form of an

1 adjustment to rates, fares, or charges to be billed in the
2 future, any amounts with interest, at a rate equal to the rate
3 of return on the public utility's rate base found to be
4 reasonable by the commission, received under the interim rates
5 that are in excess of the rates, fares, or charges finally
6 determined to be just and reasonable by the commission.
7 Interest on any excess shall commence as of the date that any
8 rate, fare, or charge goes into effect that results in the
9 excess and shall continue to accrue on the balance of the excess
10 until returned.

11 The nine-month period in this subsection shall begin only
12 after a completed application has been filed with the commission
13 and a copy served on the consumer advocate. The commission
14 shall establish standards concerning the data required to be set
15 forth in the application in order for it to be deemed a
16 completed application. The consumer advocate may, within
17 twenty-one days after receipt, object to the sufficiency of any
18 application, and the commission shall hear and determine any
19 objection within twenty-one days after it is filed. If the
20 commission finds that the objections are without merit, the
21 application shall be deemed to have been completed upon original
22 filing. If the commission finds the application to be

1 incomplete, it shall require the applicant to submit an amended
2 application consistent with its findings, and the nine-month
3 period shall not commence until the amended application is
4 filed.

5 (e) In any case of two or more organizations, trades, or
6 businesses (whether or not incorporated, whether or not
7 organized in the State of Hawaii, and whether or not affiliated)
8 owned or controlled directly or indirectly by the same
9 interests, the commission may distribute, apportion, or allocate
10 gross income, deductions, credits, or allowances between or
11 among the organizations, trades, or businesses, if it determines
12 that the distribution, apportionment, or allocation is necessary
13 to adequately reflect the income of any [~~such~~] of the
14 organizations, trades, or businesses to carry out the regulatory
15 duties imposed by this section.

16 (f) Notwithstanding any law to the contrary, for public
17 utilities having annual gross revenues of less than \$2,000,000,
18 the commission may make and amend its rules and procedures to
19 provide the commission with sufficient facts necessary to
20 determine the reasonableness of the proposed rates without
21 unduly burdening the utility company and its customers. In the

1 determination of the reasonableness of the proposed rates, the
2 commission shall:

- 3 (1) Require the filing of a standard form application to
4 be developed by the commission. The standard form
5 application for general rate increases shall describe
6 the specific facts that shall be submitted to support
7 a determination of the reasonableness of the proposed
8 rates, and require the submission of financial
9 information in conformance with a standard chart of
10 accounts to be approved by the commission, and other
11 commission guidelines to allow expeditious review of a
12 requested general rate increase application;
- 13 (2) Hold a public hearing as prescribed in section
14 269-12(c) at which the consumers or patrons of the
15 public utility may present testimony to the commission
16 concerning the increase. The public hearing shall be
17 preceded by proper notice, as prescribed in section
18 269-12; and
- 19 (3) Make every effort to complete its deliberations and
20 issue a proposed decision and order within six months
21 from the date the public utility files a completed
22 application with the commission; provided that all

1 parties to the proceeding strictly comply with the
2 procedural schedule established by the commission and
3 no person is permitted to intervene. If a proposed
4 decision and order is rendered after the six-month
5 period, the commission shall report in writing the
6 reasons therefor to the legislature within thirty days
7 after rendering the proposed decision and order.
8 Prior to the issuance of the commission's proposed
9 decision and order, the parties shall not be entitled
10 to a contested case hearing.

11 If all parties to the proceeding accept the
12 proposed decision and order, the parties shall not be
13 entitled to a contested case hearing, and section
14 269-15.5 shall not apply. If the commission permits a
15 person to intervene, the six-month period shall not
16 apply and the commission shall make every effort to
17 complete its deliberations and issue its decision
18 within the nine-month period from the date the public
19 utility's completed application was filed, pursuant to
20 subsections (b), (c), and (d).

21 If a party does not accept the proposed decision
22 and order, either in whole or in part, that party

1 shall give notice of its objection or nonacceptance
2 within the timeframe prescribed by the commission in
3 the proposed decision and order, setting forth the
4 basis for its objection or nonacceptance; provided
5 that the proposed decision and order shall have no
6 force or effect pending the commission's final
7 decision. If notice is filed, the above six-month
8 period shall not apply and the commission shall make
9 every effort to complete its deliberations and issue
10 its decision within the nine-month period from the
11 date the public utility's completed application was
12 filed as set forth in subsection (d). Any party that
13 does not accept the proposed decision and order under
14 this paragraph shall be entitled to a contested case
15 hearing; provided that the parties to the proceeding
16 may waive the contested case hearing.

17 Public utilities subject to this subsection shall follow
18 the standard chart of accounts to be approved by the commission
19 for financial reporting purposes. The public utilities shall
20 file a certified copy of the annual financial statements in
21 addition to an updated chart of accounts used to maintain their
22 financial records with the commission and consumer advocate

1 within ninety days from the end of each calendar or fiscal year,
2 as applicable, unless this timeframe is extended by the
3 commission. The owner, officer, general partner, or authorized
4 agent of the utility shall certify that the reports were
5 prepared in accordance with the standard chart of accounts.

6 (g) Any automatic fuel rate adjustment clause requested by
7 a public utility in an application filed with the commission
8 shall be designed, as determined in the commission's discretion,
9 to:

- 10 (1) Fairly share the risk of fuel cost changes between the
11 public utility and its customers;
- 12 (2) Provide the public utility with sufficient incentive
13 to reasonably manage or lower its fuel costs and
14 encourage greater use of renewable energy;
- 15 (3) Allow the public utility to mitigate the risk of
16 sudden or frequent fuel cost changes that cannot
17 otherwise reasonably be mitigated through other
18 commercially available means, such as through fuel
19 hedging contracts;
- 20 (4) Preserve, to the extent reasonably possible, the
21 public utility's financial integrity; and

1 (5) Minimize, to the extent reasonably possible, the
2 public utility's need to apply for frequent
3 applications for general rate increases to account for
4 the changes to its fuel costs.

5 (h) Notwithstanding any law to the contrary, this chapter
6 shall not apply to the rates, fares, and charges of the
7 incumbent local exchange carrier, and the incumbent local
8 exchange carrier shall not be required to obtain approval or
9 provide any cost support or other information to establish or
10 otherwise modify in any manner its rates, fares, and charges and
11 shall not be required to bundle any service offerings into a
12 single or combined pricing package. Notwithstanding the above,
13 all rates, fares, charges, and bundled service offerings shall
14 be filed with the commission for informational purposes only and
15 become effective immediately upon filing."

16 SECTION 24. Section 269-51, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§269-51 Consumer advocate; director of commerce and**
19 **consumer affairs.** The director of commerce and consumer affairs
20 shall be the consumer advocate in hearings before the public
21 utilities commission~~[-]~~ and the Hawaii broadband commissioner.

22 The consumer advocate shall represent, protect, and advance the

1 interests of all consumers, including small businesses, of
2 utility services. The consumer advocate shall not receive any
3 salary in addition to the salary received as director of
4 commerce and consumer affairs.

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

13 SECTION 25. Section 269-54, Hawaii Revised Statutes, is
14 amended by amending subsections (d) and (e) to read as follows:

15 "(d) Whenever it appears to the consumer advocate that:
16 (1) any public utility, telecommunications carrier, or cable
17 operator has violated or failed to comply with any provision of
18 this part or of any state or federal law; (2) any public
19 utility, telecommunications carrier, or cable operator has
20 failed to comply with any rule, regulation, or other requirement
21 of the public utilities commission, the Hawaii broadband
22 commissioner, or of any other state or federal agency; (3) any

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

16 (e) The consumer advocate may file with the public
17 utilities commission or the Hawaii broadband commissioner, as
18 the case may be, and serve on any public utility,
19 telecommunications carrier, or cable operator a request in
20 writing to furnish any information reasonably relevant to any
21 matter or proceeding before the public utilities commission or
22 the Hawaii broadband commissioner or reasonably required by the

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

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

21 SECTION 26. Section 269-55, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "**§269-55 Handling of complaints.** The consumer advocate
2 shall counsel public utility, telecommunications, and cable
3 service customers in the handling of consumer complaints before
4 the public utilities commission[-] or the Hawaii broadband
5 commissioner. The public utilities commission shall provide a
6 central clearinghouse of information by collecting and compiling
7 all consumer complaints and inquiries concerning public
8 utilities. The Hawaii broadband commissioner shall provide a
9 central clearinghouse of information by collecting and compiling
10 all consumer complaints and inquiries concerning
11 telecommunications carriers and cable operators."

12 SECTION 27. Section 339K-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**[+]§339K-2[+]** **Compact administrator.** The compact
15 administrator, acting jointly with like officers of other party
16 states, may [~~promulgate~~] adopt rules and regulations to carry
17 out more effectively the terms of the compact. The compact
18 administrator shall cooperate with all departments, agencies,
19 and officers of and in the government of this State and its
20 subdivisions in facilitating the present administration of the
21 compact or of any supplementary agreement or agreements entered
22 into by this State thereunder. The compact administrator shall

1 adopt the practices and may impose the fees authorized under
2 article III of the compact, except that state and county law
3 enforcement agencies [~~and~~], the public utilities commission, and
4 the Hawaii broadband commissioner shall retain their enforcement
5 and inspection authority relating to carriers."

6 SECTION 28. Section 356D-15, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

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

21 SECTION 29. Section 448E-13, Hawaii Revised Statutes, is
22 amended to read as follows:

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1 "**§448E-13 Exemption of public utility and [~~community~~**
2 **antennae] cable television company employees.** All employees of
3 a public utility within the State under a franchise or charter
4 granted by the State [~~which~~] that is regulated by the public
5 utilities commission or the Hawaii broadband commissioner and
6 [~~community antennae television company,~~] a cable television
7 franchisee, while so employed, shall be exempt from the
8 provision of this chapter."

9 SECTION 30. Section 481-11, Hawaii Revised Statutes, is
10 amended to read as follows:

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

17 SECTION 31. 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~~] Hawaii broadband
22 commissioner or the Federal Communications Commission,

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

3 SECTION 33. 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 broadband commissioner.** (a) The public utilities
7 commission and the Hawaii broadband commissioner 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 broadband commissioner
12 deems necessary to carry out its responsibilities or otherwise
13 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 broadband commissioner, 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 broadband
6 commissioner 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 broadband commissioner, or
12 of the refusal of any witness to testify to any matter regarding
13 which the witness may be lawfully questioned, any circuit court,
14 upon application by the public utilities commission[7] or the
15 Hawaii broadband commissioner, shall compel obedience as in case
16 of disobedience of the requirements of a subpoena issued from a
17 circuit court or a refusal to testify therein."

18 SECTION 34. Section 659-3, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§659-3[+] **Forfeiture of franchise.** The several
21 circuit courts shall have jurisdiction of all proceedings in, or
22 in the nature of, quo warranto, brought by or in the name of the

1 public utilities commission, the Hawaii broadband commissioner,
2 or the State, for the forfeiture of the franchise of any
3 corporate body offending against any law relating to such
4 corporation, for misuser, for nonuser, for doing or committing
5 any act or acts amounting to a surrender of its charter and for
6 exercising rights not conferred upon it."

7 SECTION 35. Section 708-800, Hawaii Revised Statutes, is
8 amended by amending the definition of "telecommunication
9 service" to read as follows:

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

19 SECTION 36. Section 269-16.5, Hawaii Revised Statutes, is
20 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 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 50. 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 51. 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 52. 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 SECTION 53. Chapter 440G, Hawaii Revised Statutes, is
7 repealed.

8 SECTION 54. All rules, policies, procedures, orders,
9 certificates of public convenience and necessity, franchises,
10 guidelines, and other material adopted, issued, or developed by
11 the department of commerce and consumer affairs and the public
12 utilities commission to implement provisions of the Hawaii
13 Revised Statutes that are reenacted or made applicable to the
14 Hawaii broadband commissioner by this Act, shall remain in full
15 force and effect until amended or repealed by the Hawaii
16 broadband commissioner. In the interim, every reference to the
17 department of commerce and consumer affairs, director of
18 commerce and consumer affairs, public utilities commission, or
19 chairperson of the public utilities commission in those rules,
20 policies, procedures, orders, franchises, guidelines, and other
21 material is amended to refer to the Hawaii broadband
22 commissioner as appropriate.

1 SECTION 55. All deeds, leases, contracts, loans,
2 agreements, permits, or other documents executed or entered into
3 by or on behalf of the department of commerce and consumer
4 affairs and the public utilities commission pursuant to the
5 provisions of the Hawaii Revised Statutes that are reenacted or
6 made applicable to the Hawaii broadband commissioner by this
7 Act, shall remain in full force and effect. Effective upon
8 approval of this Act, every reference to the department of
9 commerce and consumer affairs, director of commerce and consumer
10 affairs, public utilities commission, or chairperson of the
11 public utilities commission therein shall be construed as a
12 reference to the Hawaii broadband commissioner as appropriate.

13 SECTION 56. During fiscal year 2009-2010, fifty per cent
14 of the moneys collected by the public utilities commission from
15 telecommunications carriers and deposited into the public
16 utilities commission special fund and cable television
17 subaccount shall be deposited into the commissioner special fund
18 to provide appropriations for the new commissioner.

19 SECTION 57. All appropriations, records, equipment,
20 machines, files, supplies, contracts, books, papers, documents,
21 maps, and other personal property heretofore made, used,
22 acquired, or held by the department of commerce and consumer

1 affairs and the public utilities commission relating to the
2 functions transferred to the Hawaii broadband commissioner shall
3 be transferred with the functions to which they relate.

4 SECTION 58. The cable television division of the
5 department of commerce and consumer affairs shall transfer four
6 existing positions and the department of commerce and consumer
7 affairs shall transfer ten existing positions to the service of
8 the Hawaii broadband commissioner. The positions selected for
9 transfer shall reasonably relate to the functions of the Hawaii
10 broadband commissioner and be paid out of existing cable
11 franchise fees or public utilities commission fee transfers.

12 All officers and employees whose functions are transferred
13 by this Act shall be transferred with their functions and shall
14 continue to perform their regular duties upon their transfer,
15 subject to the state personnel laws and this Act.

16 No officer or employee of the State having tenure shall
17 suffer any loss of salary, seniority, prior service credit,
18 vacation, sick leave, or other employee benefit or privilege as
19 a consequence of this Act, and such officer or employee may be
20 transferred or appointed to a civil service position without the
21 necessity of examination; provided that the officer or employee
22 possesses the minimum qualifications for the position to which

1 transferred or appointed; and provided that subsequent changes
2 in status may be made pursuant to applicable civil service and
3 compensation laws.

4 An officer or employee of the State who does not have
5 tenure and who may be transferred or appointed to a civil
6 service position as a consequence of this Act shall become a
7 civil service employee without the loss of salary, seniority,
8 prior service credit, vacation, sick leave, or other employee
9 benefits or privileges and without the necessity of examination;
10 provided that such officer or employee possesses the minimum
11 qualifications for the position to which transferred or
12 appointed.

13 If an office or position held by an officer or employee
14 having tenure is abolished, the officer or employee shall not
15 thereby be separated from public employment, but shall remain in
16 the employment of the State with the same pay and classification
17 and shall be transferred to some other office or position for
18 which the officer or employee is eligible under the personnel
19 laws of the State as determined by the head of the department or
20 the governor.

21 SECTION 59. The Hawaii broadband commissioner shall
22 convene a work group to develop procedures for streamlined

1 permitting functions that are applicable to the development of
2 broadband services and broadband technology which are normally
3 available to state and local governments for the use or
4 development of broadband service or broadband technology.

5 Members of the work group shall include:

- 6 (1) The Hawaii broadband commissioner established in
7 section 3 of this Act;
- 8 (2) The mayor of the county of Hawaii, or the mayor's
9 designee;
- 10 (3) The mayor of the city and county of Honolulu, or the
11 mayor's designee;
- 12 (4) The mayor of the county of Kauai, or the mayor's
13 designee;
- 14 (5) The mayor of the county of Maui, or the mayor's
15 designee;
- 16 (6) The chairperson of the Hawaii broadband task force
17 established by Act 2, First Special Session Laws of
18 Hawaii 2007; and
- 19 (7) Two representatives of state agencies with
20 jurisdiction over land use and permitting at the state
21 level.

Report Title:

Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting

Description:

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii broadband commissioner (HBC) in the department of commerce and consumer affairs (DCCA). Transfers functions relating to telecommunications from the public utilities commission to the HBC and functions relating to cable services from DCCA to the HBC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature. (SD2)

1 SECTION 60. The work group established under section 59
2 shall submit to the legislature no later than January 1, 2010, a
3 report with its recommended procedures for streamlining and
4 expediting all permitting functions normally available to state
5 and local governments for the use or development of broadband
6 service or broadband technology. The procedures shall be
7 consistent across all counties and shall provide that any
8 permitting fees and revenues traditionally accruing to the
9 counties that relate to the use or development of broadband
10 service or broadband technology will continue to accrue to the
11 counties once the procedures go into effect.

12 SECTION 61. The legislative reference bureau shall review
13 all relevant laws in the Hawaii Revised Statutes relating to
14 broadband technology, telecommunications, infrastructure
15 development, permitting requirements, and any other issues the
16 legislative reference bureau deems appropriate, including all
17 acts passed by the legislature during this regular session of
18 2009, whether enacted before or after the effective date of this
19 Act, unless such acts specifically provide that this Act is
20 being amended, and make recommendations on how these laws may be
21 amended to conform to this Act or facilitate the implementation
22 of this Act. The legislative reference bureau shall submit a

1 report of its findings and recommendations, including proposed
2 legislation, to the legislature not later than twenty days prior
3 to the convening of the 2010 regular session.

4 SECTION 62. There is appropriated out of the federal funds
5 subaccount of the commissioner special fund the sum of
6 \$ or so much thereof as may be necessary for fiscal
7 year 2008-2009 and the same sum or so much thereof as may be
8 necessary for fiscal year 2009-2010 to purchase broadband
9 facilities, services, or equipment or to fund broadband-related
10 infrastructure projects pursuant to this Act.

11 The sums appropriated shall be expended by the Hawaii
12 broadband commissioner for the purposes of this Act.

13 SECTION 63. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 64. This Act shall take effect on July 1, 2050, to
16 promote further discussion on various segments of this Act;
17 provided that any decision or order executed by the public
18 utilities commission prior to the enactment of this Act shall
19 remain in full force and effect until such time as the Hawaii
20 broadband commissioner may amend or repeal the decision or order
21 under the Hawaii broadband commissioner's jurisdiction.