

---

---

# A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

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

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



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

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

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



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

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

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



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

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



1 interest and protect our island communities from the risk of  
2 harm caused by disruptions in service.

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

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

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



1 this section shall be provided at least thirty days before the  
2 date fixed by the commission for the public hearing.

3 (b) Notice provided pursuant to this section shall plainly  
4 state the proposed operations, routes, and services of the  
5 applicant and their proposed effective date. Notice under this  
6 section shall be effective upon compliance with subsection (c);  
7 provided that the commission shall retain and make available for  
8 public inspection copies of all notices and related documents  
9 issued pursuant to this section.

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



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

3 **"§269-2 Public utilities commission; number, appointment**  
4 **of commissioners, qualifications; compensation; establishment**  
5 **and composition of panels; persons having interest in public**  
6 **utilities.** (a) There shall be a public utilities commission  
7 composed of [three] five members, to be called commissioners,  
8 [~~and~~] who shall be appointed in the manner prescribed in section  
9 26-34, except as otherwise provided in this section. All  
10 members shall be appointed for terms of six years each, except  
11 that the terms of the members first appointed shall be for two,  
12 four, and six years, respectively, as designated by the governor  
13 at the time of appointment. [~~The governor shall designate a~~  
14 ~~member to be chairperson of the commission.~~] The commission  
15 shall elect its chairperson from one of its members. Each  
16 member shall hold office until the member's successor is  
17 appointed and qualified. Section 26-34 shall not apply insofar  
18 as it relates to the number of terms and consecutive number of  
19 years a member can serve on the commission; provided that no  
20 member shall serve more than twelve consecutive years.

21 In appointing commissioners, the governor shall select  
22 persons who have had experience in accounting, business,



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

18 (b) The commission shall establish two panels with  
19 membership consisting of two commissioners and the chairperson.  
20 One panel shall have jurisdiction over issues relating to energy  
21 and the private water and sewage utilities and the other panel  
22 shall have jurisdiction over issues relating to motor and water





1 carrier transportation services, telecommunications, and  
2 warehousing of goods. Each panel shall meet, confer, and take  
3 action pursuant to the requirements of this chapter on each  
4 matter under its subject matter jurisdiction; provided that an  
5 action by a panel shall constitute an action of the commission.  
6 Proceedings of the panels shall be conducted pursuant to this  
7 chapter and rules adopted by the commission pursuant to chapter  
8 91; provided that all proceedings of the panels shall be public  
9 meetings subject to the requirements of chapter 92.

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

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



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

3 "~~§269-3 [Employment]~~ Executive officer; appointment of  
4 assistants. (a) The commission shall employ a staff, which  
5 shall include an executive officer, administrative personnel,  
6 and other personnel as specified in this section and as  
7 otherwise necessary to carry out the duties of the commission.  
8 The executive officer shall have sufficient administrative,  
9 managerial, and supervisory experience to carry out the duties  
10 established by this section.

11 [~~(a) The chairperson of the public utilities commission~~  
12 ~~may]~~ (b) Subject to the supervision of the commission, the  
13 executive officer shall appoint [and], employ, and define the  
14 powers and duties of clerks, stenographers, agents, engineers,  
15 accountants, and other assistants for the public utilities  
16 commission as the [chairperson] executive officer finds  
17 necessary for the performance of the commission's functions [and  
18 define their powers and duties]. The [chairperson] commission  
19 may appoint and, at pleasure, dismiss [a chief administrator  
20 and] hearings officers as may be necessary. Notwithstanding  
21 section 103D-209[, the chairperson] and subject to the  
22 supervision of the commission, the executive officer shall



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

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



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

3 **"§269-7.5 Certificates of public convenience and**  
4 **necessity.** (a) No public utility, as defined in section 269-1,  
5 shall commence its business without first having obtained from  
6 the commission a certificate of public convenience and  
7 necessity. Applications for certificates shall be made in  
8 writing to the commission and shall comply with the requirements  
9 prescribed in the commission's rules. The application shall  
10 include the type of service to be performed, the geographical  
11 scope of the operation, the type of equipment to be employed in  
12 the service, the name of competing utilities for the proposed  
13 service, a statement of [~~its~~] the applicant's financial ability  
14 to render the proposed service, a current financial statement of  
15 the applicant, and the rates or charges proposed to be charged  
16 including the rules governing the proposed service.

17 (b) If the applicant for a certificate of public  
18 convenience and necessity has any known consumers or patrons at  
19 the time of the filing of the application, the applicant shall  
20 notify these consumers or patrons of the rates and charges  
21 proposed to be established by the application; provided that:



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

4 (2) The manner and the fact of the notification shall be  
5 reported to the commission,  
6 within seven days from the filing of the application.

7 (c) A certificate shall be issued to any qualified  
8 applicant[7] authorizing the whole or any part of the operations  
9 covered by the application[7] if it is found that the applicant  
10 is fit, willing, and able [~~properly~~] to properly perform the  
11 service proposed and to conform to the terms, conditions, and  
12 rules adopted by the commission, and that the proposed service  
13 is[7] or will be[7] required by the present or future public  
14 convenience and necessity[7, otherwise]. If the application does  
15 not meet the criteria established by this subsection, it shall  
16 be denied. Any certificate issued shall specify the service to  
17 be rendered and [~~there shall be attached to the exercise of the~~  
18 ~~privileges granted by the certificate at the time of issuance~~  
19 ~~and from time to time thereafter, such]~~ any reasonable  
20 conditions and limitations to the exercise of the privileges  
21 granted by the certificate as [a] the public convenience and  
22 necessity may require[-] at the time of issuance of the



1 certificate or at any later time as determined by the  
2 commission. The reasonableness of the rates, charges, and  
3 tariff rules proposed by the applicant shall be determined by  
4 the commission during the same proceeding examining the present  
5 and future conveniences and needs of the public and  
6 qualifications of the applicant, in accordance with the  
7 standards set forth in section 269-16.

8 (d) No public utility that holds a franchise or charter  
9 enacted or granted by the legislative or executive authority of  
10 the State or its predecessor governments, or that has a bona  
11 fide operation as a public utility heretofore recognized by the  
12 commission, shall be required to obtain a certificate of public  
13 convenience and necessity under this section.

14 (e) Any certificate, upon application of the holder and at  
15 the discretion of the public utilities commission, may be  
16 amended, suspended, or revoked, in whole or in part. The  
17 commission after notice and hearing may suspend, amend, or  
18 revoke any certificate, in part or in whole, if the holder is  
19 found to be in wilful violation of any of the provisions of this  
20 chapter [~~or with~~], any lawful order or rule of the commission  
21 [~~adopted thereunder~~], or with any term, condition, or limitation  
22 of the certificate.



1       (f) The commission shall post a link on the front page of  
2 the commission's website to a publicly accessible electronic  
3 version of each application for a certificate pursuant to this  
4 section and to each order of the commission regarding posted  
5 applications, including the commission's final decision and  
6 order. Links posted pursuant to this subsection shall include a  
7 short description of the document to which the link refers,  
8 shall be active within twenty-four hours of filing of an  
9 application or issuance of an order, and shall remain active for  
10 at least thirty days from the filing of the application or the  
11 issuance of the order or decision and order."

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

14       "~~§~~271G-10~~§~~ **Applications for certificates of public**  
15 **convenience and necessity.** (a) Except as otherwise provided in  
16 this section and in sections 271G-6 and 271G-12, no water  
17 carrier shall engage in operations between points within the  
18 State~~[-]~~ unless ~~[such]~~ the carrier holds a certificate of public  
19 convenience and necessity issued by the public utilities  
20 commission authorizing ~~[such]~~ the operation~~[-]~~; provided that no  
21 new application shall be required for any common carrier by



1 water who is the holder of a certificate of public convenience  
2 and necessity issued by the public utilities commission.

3 (b) Applications for certificates shall be made in writing  
4 to the commission, be verified under oath, and ~~[shall]~~ be  
5 presented in ~~[such]~~ a form ~~[and]~~, contain ~~[such]~~ the  
6 information, and be accompanied by proof of service upon  
7 interested parties as the commission shall, by rule or  
8 regulation, require.

9 (c) The commission shall not approve an application for a  
10 certificate or otherwise grant authorization pursuant to an  
11 application to operate as a water carrier under this chapter  
12 until the commission has given notice and held public hearings  
13 conducted in accordance with the procedures outlined in section  
14 271G- .

15 ~~[(c) A certificate shall be issued]~~ (d) The commission  
16 shall issue a certificate to any qualified applicant ~~[therefor,]~~  
17 authorizing the whole or any part of the operations ~~[covered by]~~  
18 proposed in the application ~~[if it is found that the]~~ only if  
19 the commission finds that:

20 (1) The applicant is fit, willing, and able properly to  
21 perform the service proposed and to conform to this





1 chapter and the requirements, rules, and regulations  
2 of the commission [~~thereunder~~]; and [~~that the~~]

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

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

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

15 (2) The proposed service is designed for and necessary to  
16 meet demonstrated and quantifiable unmet public needs  
17 for present water carrier service or demonstrated and  
18 quantifiable future demands for service;

19 (3) The proposed service will provide demonstrated and  
20 quantifiable benefits to the general public, business  
21 community, and the economy of all islands that are  
22 entitled to notice under section 271G- , including



1           demonstrated and quantifiable benefits with respect to  
2           reliability, affordability, and security of the  
3           service line;

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

8           (A) Economies of scale and scope of current water  
9           carriers;

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

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

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

15          (E) The likelihood that existing levels of service  
16          will be maintained after the enactment of the  
17          proposed service;

18          and

19          (5) If the commission's finding of public convenience and  
20          necessity differs from the recommendation of the  
21          consumer advocate, specific findings to address each



1 grounds for objection articulated by the consumer  
2 advocate.

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

11 [~~d~~] (f) Any water carrier transporting passengers under  
12 [~~any such~~] a certificate issued pursuant to this chapter may  
13 occasionally deviate from the route over which it is authorized  
14 to operate under the certificate [~~under such~~] pursuant to the  
15 rules and regulations [as the] of the commission [may  
16 prescribe].

17 (g) The commission shall not issue any certificate that is  
18 designated as interim or temporary or that otherwise does not  
19 conform to the requirements of this chapter except in response  
20 to an emergency situation; provided that an emergency situation  
21 shall mean a state-declared emergency including disaster relief  
22 pursuant to chapter 127 or a civil defense emergency pursuant to



1 chapter 128. Any certificate issued pursuant to this subsection  
2 shall expire upon the expiration of the state-declared emergency  
3 or an earlier date determined by the commission in response to  
4 prevailing conditions. An extension of a certificate granted  
5 pursuant to this subsection beyond the expiration of the state  
6 declared emergency or date determined by the commission shall be  
7 granted only subject to the notice, hearing, and findings  
8 requirements of this chapter.

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

20 SECTION 7. By July 1, 2012, the public utilities  
21 commission shall comprise five commissioners who reflect the  
22 requisite geographical and professional diversity as provided by



1 section 269-2, Hawaii Revised Statutes; provided that to  
2 transition to the five-commissioner public utilities commission,  
3 the governor shall nominate new commissioners as needed to meet  
4 the requirements of section 269-2, Hawaii Revised Statutes. The  
5 governor may reduce the term of any commissioner as necessary to  
6 provide, as nearly as is feasible, for the expiration of terms  
7 on a staggered basis.

8 SECTION 8. Beginning with an initial report to the 2012  
9 legislature, the public utilities commission shall submit a  
10 report to the legislature annually, no later than sixty days  
11 before the commencement of each regular session, detailing the  
12 implementation and operation of the subject-matter panels  
13 established by section 269-2(b), Hawaii Revised Statutes.  
14 Reports submitted pursuant to this section shall include  
15 recommendations for the continuance or abandonment of the panel  
16 structure considering the development of subject-matter  
17 expertise among the members of the panels and the efficiency of  
18 operations of the commission as a whole.

19 SECTION 9. There is appropriated out of the public  
20 utilities commission special fund created pursuant to section  
21 269-33, Hawaii Revised Statutes, the sum of \$ or so  
22 much thereof as may be necessary for fiscal year 2011-2012 and



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

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

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

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

13 SECTION 12. This Act shall take effect on July 1, 2030;  
14 provided that the amendment adding a new subsection (b) to  
15 section 269-2, Hawaii Revised Statutes, in section 3 of this Act  
16 and section 8 of this Act, shall be repealed on July 1, 2011.



**Report Title:**

Public Utilities Commission; Commissioners; Staff; Appropriation

**Description:**

Improves the structure and functioning of the Public Utilities Commission. Effective July 1, 2030. (SB99 HD1)

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

