
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 (commission), as it is presently composed, has proven
3 to be unable to fulfill its administrative and adjudicative
4 duties under chapter 269, Hawaii Revised Statutes. The office
5 of the auditor has conducted multiple management audits of the
6 public utilities commission over the past thirty-six years and
7 has consistently found serious and pervasive problems with
8 staffing, management, and planning. The initial audit,
9 conducted in 1975 and published in three volumes, found
10 "considerable confusion" within the commission regarding
11 staffing, roles, regulations, and the relevant law. The next
12 audit, conducted in 1989, found that "numerous and serious
13 problems with organization and personnel management" first
14 identified fourteen years earlier continued within the
15 commission and that the commission "lacked adequate
16 policymaking, enforcement, and administrative capabilities".
17 Most recently, in 2004, the auditor found that problems first
18 identified more than three decades earlier continued to plague



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

6 The legislature notes that the regulatory structures and
7 the regulated industries that the commission manages have grown
8 increasing more complex since the formation of the commission.
9 The regulatory environment now includes increasing development
10 of the neighbor islands and accompanying new demands for public
11 utilities services. Despite these new challenges, the structure
12 and composition of the commission and the process for approving
13 new public utilities has changed little since the commission's
14 creation at statehood, even given the findings of the 1975,
15 1989, and 2004 management audits. The legislature finds that
16 serious, structural changes in the composition of the
17 commission, the provision of experienced professional staff, and
18 greater transparency in the approval process for certain public
19 utilities are necessary to ensure that the commission both
20 accurately responds to the interests of the entire State and
21 holds sufficient expertise in the relevant issue areas.



1 The legislature finds that problems identified in the 2004
2 audit of the commission have still not been resolved, despite
3 attempts by the legislature to work with the commission towards
4 reform. In 2007, the legislature enacted Acts 177 and 183,
5 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. In the four years
11 since legislative approval, the commission's progress in
12 implementing its plans for reform have been stymied by budget
13 reductions and other economic factors beyond the commission's
14 control. As a result of long-standing fiscal constraints and
15 despite the best efforts of commission staff, the commission has
16 still been unable to overcome long delays and backlogs that
17 stifle economic development. To remedy past financial
18 shortfalls, the legislature passed Act 130, Session Laws of
19 Hawaii 2010, to appropriate additional funds and reauthorize
20 staff positions for the purpose of enabling the commission to
21 become fully functional. The legislature finds that the
22 creation of a new staff position authorized to function with a



1 large degree of autonomy to coordinate all of the administrative
2 functions of the commission will further the goals of increasing
3 professionalism and enabling efficient functioning of the
4 commission envisioned by the reorganization plan contained in
5 Acts 177 and 183.

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



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

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

13 "§271G- Notice of hearing required. (a) Whenever the
14 commission conducts a public hearing on an application for a
15 certificate pursuant to section 271G-10, the commission shall
16 provide reasonable notice in writing to the applicant for a
17 certificate and to the public on each island that will be
18 affected by the proposed service of the fact of the public
19 hearing and the matter to be considered. Notice pursuant to
20 this section shall be provided at least thirty days before the
21 date fixed by the commission for the public hearing.



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

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

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



1 "§269-2 Public utilities commission; number, appointment
2 of commissioners, qualifications; compensation; establishment
3 and composition of panels; persons having interest in public
4 utilities. (a) There shall be a public utilities commission
5 composed of [three] five members, to be called commissioners,
6 [and] who shall be appointed in the manner prescribed in section
7 26-34, except as otherwise provided in this section. All
8 members shall be appointed for terms of six years each, except
9 that the terms of the members first appointed shall be for two,
10 four, and six years, respectively, as designated by the governor
11 at the time of appointment. [~~The governor shall designate a~~
12 ~~member to be chairperson of the commission.~~] The commission
13 shall elect its chairperson from one of its members. Each
14 member shall hold office until the member's successor is
15 appointed and qualified. Section 26-34 shall not apply insofar
16 as it relates to the number of terms and consecutive number of
17 years a member can serve on the commission; provided that no
18 member shall serve more than twelve consecutive years.

19 In appointing commissioners, the governor shall select
20 persons who have had experience in accounting, business,
21 engineering, government, finance, law, or other similar
22 fields[-]; provided that no more than two commissioners shall



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

16 (b) The commission shall establish two panels with
17 membership consisting of two commissioners plus the chairperson.
18 One panel shall be devoted to issues relating to energy and the
19 private water and sewage utilities and the other panel shall be
20 devoted to issues relating to motor and water carrier
21 transportation services, telecommunications, and warehousing of
22 goods. Each panel established pursuant to this subsection shall



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

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

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

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



1 "§269-3 [Employment] Executive officer; appointment of
2 assistants. (a) The commission shall employ a staff, which
3 shall include an executive officer, administrative personnel,
4 and other personnel as specified in this section and as
5 otherwise necessary to carry out the duties of the commission.
6 The executive officer shall have sufficient administrative,
7 managerial, and supervisory experience to carry out the duties
8 established by this section.

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



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

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

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



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

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

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



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

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

1 the commission during the same proceeding examining the present
2 and future conveniences and needs of the public and
3 qualifications of the applicant, in accordance with the
4 standards set forth in section 269-16.

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

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

20 (f) The commission shall post a link on the front page of
21 the commission's website to a publicly accessible electronic
22 version of each application for a certificate pursuant to this



1 section and to each order of the commission regarding posted
 2 applications, including the commission's final decision and
 3 order. Links posted pursuant to this subsection shall include a
 4 short description of the document to which the link refers,
 5 shall be active within twenty-four hours of filing of an
 6 application or issuance of an order, and shall remain active for
 7 at least thirty days from the filing of the application or the
 8 issuance of the order or decision and order."

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

11 "[+]§271G-10[+] **Applications for certificates of public**
 12 **convenience and necessity.** (a) Except as otherwise provided in
 13 this section and in sections 271G-6 and 271G-12, no water
 14 carrier shall engage in operations between points within the
 15 State[-] unless [such] the carrier holds a certificate of public
 16 convenience and necessity issued by the public utilities
 17 commission authorizing [such] the operation[-]; provided that no
 18 new application shall be required for any common carrier by
 19 water who is the holder of a certificate of public convenience
 20 and necessity issued by the public utilities commission.

21 (b) Applications for certificates shall be made in writing
 22 to the commission, be verified under oath, and [~~shall~~] be



1 presented in [~~such~~] a form [~~and~~], contain [~~such~~] the
2 information, and be accompanied by proof of service upon
3 interested parties as the commission shall, by rule or
4 regulation, require.

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

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

16 (1) The applicant is fit, willing, and able properly to
17 perform the service proposed and to conform to this
18 chapter and the requirements, rules, and regulations
19 of the commission [thereunder,]; and [that the]

20 (2) The proposed service, to the extent to be authorized
21 by the certificate, is or will be required by the



1 present or future public convenience and necessity[+
2 otherwise the application shall be denied].

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

8 (1) Existing water carrier services are inadequate to
9 presently service the public or meet demonstrated and
10 quantifiable future demands for service;

11 (2) The proposed service is designed for and necessary to
12 meet demonstrated and quantifiable unmet public needs
13 for present water carrier service or demonstrated and
14 quantifiable future demands for service;

15 (3) The proposed service will provide demonstrated and
16 quantifiable benefits to the general public, business
17 community, and the economy of all islands that are
18 entitled to notice under section 271G- , including
19 demonstrated and quantifiable benefits with respect to
20 reliability, affordability, and security of the
21 service line;



- 1 (4) The specific, identified benefits of the proposed
2 service outweigh its detrimental impact to the
3 public's interest in maintaining services, including
4 but not limited to:
- 5 (A) Economies of scale and scope of current water
6 carriers;
- 7 (B) Future capital costs of existing water carriers;
- 8 (C) Ability of existing water carriers to make
9 necessary capital and resource investments;
- 10 (D) The financial health, stability, and revenue
11 stream of existing water carriers; and
- 12 (E) The likelihood that existing levels of service
13 will be maintained after the enactment of the
14 proposed service; and
- 15 (5) If the commission's finding of public convenience and
16 necessity differs from the recommendation of the
17 consumer advocate, specific findings to address each
18 grounds for objection articulated by the consumer
19 advocate.

20 The commission shall not make a finding of public
21 convenience and necessity nor issue a certificate if the
22 evidence in the record indicates that the issuance of the



1 certificate will diminish an existing water carrier's ability to
2 realize its allowed rate of return or if the certificate would
3 allow an applicant to serve only high-margin or high-profit
4 ports or lines of service that are currently served by an
5 existing carrier.

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

12 (g) The commission shall not issue any certificate that is
13 designated as interim or temporary or that otherwise does not
14 conform to the requirements of this chapter except in response
15 to an emergency situation; provided that an emergency situation
16 shall mean a state-declared emergency including disaster relief
17 pursuant to chapter 127 or a civil defense emergency pursuant to
18 chapter 128. Any certificate issued pursuant to this subsection
19 shall expire upon the expiration of the state-declared emergency
20 or an earlier date determined by the commission in response to
21 prevailing conditions. An extension of a certificate granted
22 pursuant to this subsection beyond the expiration of the state



1 declared emergency or date determined by the commission shall be
2 granted only subject to the notice, hearing, and findings
3 requirements of this chapter.

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

15 SECTION 7. By July 1, 2012, the public utilities
16 commission shall comprise five commissioners who reflect the
17 requisite geographical and professional diversity as provided by
18 section 269-2; provided that to transition to the
19 five-commissioner public utilities commission, the governor
20 shall nominate new commissioners as needed to meet the
21 requirements of section 269-2. The governor may reduce the term



1 of any commissioner as necessary to provide, as nearly as can
2 be, for the expiration of terms on a staggered basis.

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

14 SECTION 9. There is appropriated out of the public
15 utilities commission special fund created pursuant to section
16 269-33, Hawaii Revised Statutes, the sum of \$ or so
17 much thereof as may be necessary for fiscal year 2011-2012 and
18 the same sum or so much thereof as may be necessary for fiscal
19 year 2012-2013 for the salaries of the two additional
20 commissioners added to the public utilities commission by
21 section 3 of this Act and the executive officer created by
22 section 4 of this Act.



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

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

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

8 SECTION 12. This Act shall take effect on July 1, 2011;
9 provided that the amendment adding a new subsection (b) to
10 section 269-2, Hawaii Revised Statutes, which is contained in
11 sections 3 and 8 of this Act shall be repealed on July 1, 2017.

12



Report Title:

Public Utilities Commission; Commissioners; Staff; Appropriation

Description:

Establishes notice and fact-finding requirements for the issuance of certificates of public convenience and necessity for water carriers; expands the composition of the PUC to five members with a representative from each county plus one at-large member; creates specialized subject-matter panels within the PUC; mandates the hiring of sufficient staff; creates the position of executive officer; requires electronic posting of information in connection with applications for certificates of public convenience and necessity; bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies. (SD1)

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

