June 20, 2014

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 20, 2014, the following bill was signed into law:

SB2948 SD1 HD1 CD2 RELATING TO THE PUBLIC UTILITIES COMMISSION
ACT 108 (14)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii
A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

SECTION 1. The legislature finds that the public utilities commission is undergoing a major transition due to increased work complexity and program responsibilities, particularly in the area of energy regulation. To ensure that the mission of the public utilities commission is adequately supported, the commission should transition from its current administrative status within the department of budget and finance to being administratively attached to the department of commerce and consumer affairs; subject to certain limitations on the oversight role of the department of commerce and consumer affairs.

The legislature further finds that the commission's internal management capacity needs to be updated. The chairperson of the commission is in need of an executive officer to assist with managing the operations of the commission. The creation of an executive officer position to oversee the management and recruitment of personnel, budget planning and implementation, strategic planning and implementation,
procurement and contract administration, and implementation of administrative programs and projects will enable the chairperson of the commission to focus on the growing number and increasingly technical complexity of issues brought before the commission. Enabling the commission to establish two civil service positions, a personnel officer and a fiscal officer, will further support the commission and provide for a seamless transition.

The legislature additionally finds that the division of consumer advocacy of the department of commerce and consumer affairs protects and advances the interests of Hawaii's consumers of regulated public utilities. The executive director and staff members of the division of consumer advocacy attend public hearings held by the public utilities commission to get input from the public, which helps them to better understand the consumer's perspective on utility services and rates. Because this understanding is an integral part of the division's work, the legislature concludes that the executive director of the division of consumer advocacy, rather than the director of commerce and consumer affairs, should be the consumer advocate in hearings before the public utilities commission.
The purpose of this Act is to adequately support the mission of the public utilities commission, ensure the efficient operation of the public utilities commission, address the role of the consumer advocate, and ensure that important decisions relating to public utilities continue to be made in the public interest by:

1. Transferring the administrative placement of the public utilities commission from the department of budget and finance to the department of commerce and consumer affairs; subject to certain limitations on the oversight and administrative support role of the department of commerce and consumer affairs;

2. Clarifying that notwithstanding section 26-35, Hawaii Revised Statutes, the public utilities commission has authority concerning standard administrative practices, including operational expenditures and the hiring of personnel;

3. Enabling the chairperson of the public utilities commission to appoint, employ, and dismiss an executive officer to manage the operations of the commission;
(4) Enabling the chairperson of the public utilities commission to appoint, employ, and dismiss a fiscal officer and a personnel officer to further support the administrative activities of the commission and fulfill the administrative support functions formerly provided by the department of budget and finance;

(5) Establishing that the executive director of the division of consumer advocacy shall be the consumer advocate; and

(6) Appropriating funds to effectuate the transfer of the public utilities commission and for the hiring of an executive officer, a fiscal officer, and a personnel officer within the public utilities commission.

SECTION 2. Section 26-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The employees' retirement system as constituted by chapter 88 is placed within the department of budget and finance for administrative purposes. The functions, duties, and powers, subject to the administrative control of the director of finance, and the composition of the board of trustees of the employees retirement system shall be as heretofore provided by law."
[The public utilities commission is placed within the department of budget and finance for administrative purposes only.]

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, Hawaii medical board, motor vehicle industry licensing board, motor vehicle repair industry board, board of naturopathic medicine, board of nursing, board of examiners in optometry, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, 514B, and 514E
shall be placed within the department of commerce and consumer
affairs for administrative purposes.

The public utilities commission shall be placed, for
administrative purposes only, within the department of commerce
and consumer affairs. Notwithstanding section 26-9(e), (f),
(g), (h), (j), (k), (l), (m), (n), (p), (q), (r), and (s), and
except as permitted by sections 269-2 and 269-3, the department
of commerce and consumer affairs shall not direct or exert
authority over the day to day operations or functions of the
commission."

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

"§269-2 Public utilities commission; number, appointment
of commissioners, qualifications; compensation; persons having
interest in public utilities[; authority. (a) There shall be
a public utilities commission of three members, to be called
commissioners, and who shall be appointed in the manner
prescribed in section 26-34, except as otherwise provided in
this section. All members shall be appointed for terms of six
years each, except that the terms of the members first appointed
shall be for two, four, and six years, respectively, as
designated by the governor at the time of appointment. The
1 governor shall designate a member to be chairperson of the
2 commission. Each member shall hold office until the member's
3 successor is appointed and qualified. Section 26-34 shall not
4 apply insofar as it relates to the number of terms and
5 consecutive number of years a member can serve on the
6 commission; provided that no member shall serve more than twelve
7 consecutive years.
8
9 In appointing commissioners, the governor shall select
10 persons who have had experience in accounting, business,
11 engineering, government, finance, law, or other similar fields.
12 The commissioners shall devote full time to their duties as
13 members of the commission and no commissioner shall hold any
14 other public office or other employment during the
15 commissioner's term of office. No person owning any stock or
16 bonds of any public utility corporation, or having any interest
17 in, or deriving any remuneration from, any public utility shall
18 be appointed a commissioner.
19
20 (b) Effective July 1, 2005, the chairperson of the
21 commission shall be paid a salary set at eighty-seven per cent
22 of the salary of the director of human resources development,
23 and each of the other commissioners shall be paid a salary equal
24 to ninety-five per cent of the chairperson's salary.
commissioners shall be exempt from chapters 76 and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87A.

(c) The commission is placed [within the department of budget and finance for administrative purposes], for administrative purposes only, within the department of commerce and consumer affairs. The department of commerce and consumer affairs shall not direct or exert authority over the day to day operations or functions of the commission, except as provided in subsection (q) and section 269-3.

(d) Notwithstanding section 26-35(a)(1) to the contrary, the commission may communicate directly with the governor or the legislature as determined by the chairperson; provided that the department of commerce and consumer affairs may represent the commission in communications with the governor or the legislature upon request by the chairperson of the commission and agreement by the department of commerce and consumer affairs.

(e) Notwithstanding section 26-35(a)(5) to the contrary, the commission's operational expenditures, such as the purchase
of supplies, equipment, furniture, dues and subscriptions, 
travel, consultant services, and staff training, shall be 
determined by the chairperson and may be delegated to the 
executive officer appointed and employed pursuant to section 
269-3; provided that such expenditures shall be subject to all 
applicable procurement laws and procedures.

(f) Notwithstanding section 26-35(a)(6) to the contrary, 
the utilization, allocation, renovation, or other use of space 
or spaces to be occupied by the commission shall be determined 
by the chairperson and may be delegated to the executive officer 
appointed and employed pursuant to section 269-3.

(g) Determinations made under subsection (d), (e), or (f) 
by the chairperson or the executive officer as delegated by the 
chairperson, may be reviewed by the director of commerce and 
consumer affairs for completeness and for compliance and 
conformance with applicable administrative processes and 
procedures of the department of commerce and consumer affairs."

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

"§269-3 Employment of assistants. (a) The chairperson of 
the public utilities commission may appoint and employ 
professional staff and other assistants for the public utilities
commission as the chairperson finds necessary for the performance of the commission's functions and define their powers and duties. Notwithstanding section 26-35(a)(4) to the contrary and subject to applicable personnel laws, the employment, appointment, applicable salary schedules, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to subsection (b); provided that determinations concerning personnel matters made by the chairperson or the executive officer, as delegated by the chairperson, may be reviewed by the director of commerce and consumer affairs for completeness and for compliance and conformance with applicable administrative processes and procedures of the department of commerce and consumer affairs. The chairperson may appoint and, at pleasure, dismiss a chief administrator and attorneys as may be necessary, and who shall be exempt from chapter 76. The chairperson may also appoint other staff, including a fiscal officer and a personnel officer, with or without regard to chapter 76.
(b) The chairperson of the commission shall appoint, employ, and dismiss, at pleasure, an executive officer who shall be responsible for managing the operations of the commission. The responsibilities of the executive officer shall include management and recruitment of personnel, budget planning and implementation, strategic planning and implementation, procurement and contract administration, and implementation of administrative programs and projects. The executive officer shall be exempt from chapter 76.

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

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

"§269-5 Annual report and register of orders. The public utilities commission shall prepare and present to the governor[through the director of finance,] in the month of January in
each year a report respecting its actions during the preceding fiscal year. This report shall include summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements, and rates; utility company performance in terms of efficiency and quality of services rendered; financing orders issued, adjustments made to the public benefits fee, and repayments or credits provided to electric utility customers pursuant to part X or chapter 196, part IV; a summary of power purchase agreements, including pricing, in effect during the fiscal year; environmental matters having a significant impact upon public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission's recommendations respecting legislation and other matters requiring executive and legislative consideration. Copies of the annual reports shall be furnished by the governor to the legislature. In addition, the commission shall establish and maintain a register of all its orders and decisions, which shall be open and readily available for public inspection, and no
order or decision of the commission shall take effect until it is filed and recorded in this register."

SECTION 7. Section 269-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury a public utilities commission special fund to be administered by the public utilities commission. The proceeds of the fund shall be used by the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs for all expenses incurred in the administration of chapters 269, 271, 271G, 269E, and 486J[,] and for costs incurred by the department of commerce and consumer affairs to fulfill the department's limited oversight and administrative support functions; provided that the expenditures of the public utilities commission shall be in accordance with legislative appropriations. On a quarterly basis, an amount not exceeding thirty per cent of the proceeds remaining in the fund after the deduction for central service expenses, pursuant to section 36-27, shall be allocated by the public utilities commission to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the public utilities
commission from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations."

SECTION 8. Section 269-51, Hawaii Revised Statutes, is amended to read as follows:

"§269-51 Consumer advocate; [director of commerce and consumer affairs.] executive director of the division of consumer advocacy. The [director of the department of commerce and consumer affairs] executive director of the division of consumer advocacy shall be the consumer advocate in hearings before the public utilities commission. The consumer advocate shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services. [The consumer advocate shall not receive any salary in addition to the salary received as director of commerce and consumer affairs.]

The responsibility of the consumer advocate for advocating the interests of the consumer of utility services shall be separate and distinct from the responsibilities of the public utilities commission and those assistants employed by the commission. [As] The consumer advocate[ , the director of commerce and consumer affairs] shall have full rights to
participate as a party in interest in all proceedings before the
public utilities commission."

SECTION 9. Section 269-52, Hawaii Revised Statutes, is
amended to read as follows:

"§269-52 Division of consumer advocacy; personnel. There
shall be a division of consumer advocacy within the department
of commerce and consumer affairs [to provide administrative
support to the director of commerce and consumer affairs acting
in the capacity of consumer advocate]. The director of commerce
and consumer affairs may [employ and at pleasure dismiss an
executive administrator,] appoint an executive director, who
shall be exempt from chapter 76, [may define the executive
administrator's powers and duties,] and fix the executive
[administrator's] director's compensation. The executive
director shall supervise and control the operations and
personnel of the division. The executive director shall be
responsible for the performance of the duties imposed upon the
division and shall be the consumer advocate as specified in
section 269-51. The executive director may employ engineers,
accountants, investigators, clerks, and stenographers as may be
necessary for the performance of the consumer advocate's
functions, in accordance with chapter 76; provided that:
(1) The executive director may employ up to ten utility
analysts exempt from chapter 76; and
(2) Each analyst shall possess at least the minimum
qualifications required of comparable experts in the
relevant industry."

SECTION 10. Section 269-53, Hawaii Revised Statutes, is
amended to read as follows:

"§269-53 Legal counsel. The executive director of the
division of consumer advocacy may appoint or retain, without
regard to chapter 76, attorneys to provide legal services for
the division of consumer advocacy. Nothing in this section
precludes the director of commerce and consumer affairs or the
executive director of the division of consumer advocacy from
requesting and securing legal services from the attorney general
and the department of the attorney general."

SECTION 11. There is appropriated out of the public
utilities commission special fund established pursuant to
section 269-33, Hawaii Revised Statutes, the sum of $450,000 or
so much thereof as may be necessary for fiscal year 2014-2015 to
effectuate the transfer of the public utilities commission from
the department of budget and finance to the department of
commerce and consumer affairs; enable the chairperson of the
public utilities commission to appoint and employ an executive
officer who shall be responsible for managing the operations of
the public utilities commission; and enable the chairperson of
the public utilities commission to appoint and employ a fiscal
officer and a personnel officer to support the administrative
activities of the commission.

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

SECTION 12. (a) No later than July 1, 2015, all rights,
powers, functions, and duties of the department of budget and
finance as they relate to the public utilities commission are
transferred to the public utilities commission or the department
of commerce and consumer affairs in accordance with sections 26-
9(c), 269-2, and 269-3, Hawaii Revised Statutes, as amended by
this Act.

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

No officer or employee of the State having tenure shall
suffer any loss of salary, seniority, prior service credit,
vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

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

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

SECTION 13. The department of budget and finance, with the
approval of the governor and prior concurrence of the department
of commerce and consumer affairs, may transfer positions and
funds for the public utilities commission to the department of
commerce and consumer affairs; provided that the governor shall
submit a report to the legislature within five days of the use
of this authority; provided further that the report shall
include the date of the transfer, the positions and funding
transferred, the program from which the positions were
transferred, the program to which the positions and funding were
transferred, and the manner in which the transfer maximizes the
utilization of personnel and funding.

SECTION 14. The chairperson and commissioners serving on
the public utilities commission on the date prior to the
effective date of this Act shall continue as members of the
public utilities commission and their terms shall be unaffected
by this Act.

SECTION 15. All appropriations, records, equipment,
machines, files, supplies, contracts, books, papers, documents,
maps, and other personal property heretofore made, used, acquired, or held by the department of budget and finance relating to the functions transferred to the department of commerce and consumer affairs shall be transferred with the functions to which they relate.

SECTION 16. All rules, policies, procedures, guidelines, general orders, and other material adopted or developed by the public utilities commission prior to the effective date of this Act as an agency administratively attached to the department of budget and finance shall be applicable to the public utilities commission as an agency administratively attached to the department of commerce and consumer affairs pursuant to this Act, and shall remain in full force and effect and unaffected by this Act until amended, repealed, or overruled by the public utilities commission. Every reference to the department of budget and finance or director of finance in those rules, policies, procedures, guidelines, and other material shall be deemed to refer to the department of commerce and consumer affairs or director of commerce and consumer affairs, as appropriate.

SECTION 17. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into
by or on behalf of the public utilities commission prior to the effective date of this Act shall remain in full force and effect notwithstanding the commission's administrative transfer to the department of commerce and consumer affairs.

SECTION 18. All costs and expenses associated with transferring the public utilities commission to the department of commerce and consumer affairs shall be borne by the public utilities commission. No liabilities or liens arising from such transfer shall accrue to the department of budget and finance.

SECTION 19. There shall be a transition period to facilitate the transfer of the public utilities commission from the department of budget and finance to the department of commerce and consumer affairs. The fiscal year beginning July 1, 2014, shall serve as a transition period, in which the state agencies affected by this Act shall assist the chairperson of the public utilities commission in implementing the transfer under this Act. Once the transfer is completed, the public utilities commission shall provide public notice that the transfer is completed in a printed publication or electronic format that is accessible statewide.

SECTION 20. The provisions of this Act are to be liberally construed to effectuate its purpose.
SECTION 21. All acts passed by the legislature during the regular session of 2014, whether enacted before, on, or after July 1, 2014, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2014.

APPROVED this 20 day of JUN, 2014

GOVERNOR OF THE STATE OF HAWAII