



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

GOV. MSG. NO. 1209

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,
A handwritten signature in black ink that reads "Neil Abercrombie". The word "Sincerely," is written above the signature.

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 20 2014

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

ACT 108
S.B. NO. 2948
S.D. 1
H.D. 1
C.D. 2

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 is undergoing a major transition due to increased
3 work complexity and program responsibilities, particularly in
4 the area of energy regulation. To ensure that the mission of
5 the public utilities commission is adequately supported, the
6 commission should transition from its current administrative
7 status within the department of budget and finance to being
8 administratively attached to the department of commerce and
9 consumer affairs; subject to certain limitations on the
10 oversight role of the department of commerce and consumer
11 affairs.

12 The legislature further finds that the commission's
13 internal management capacity needs to be updated. The
14 chairperson of the commission is in need of an executive officer
15 to assist with managing the operations of the commission. The
16 creation of an executive officer position to oversee the
17 management and recruitment of personnel, budget planning and
18 implementation, strategic planning and implementation,



1 procurement and contract administration, and implementation of
2 administrative programs and projects will enable the chairperson
3 of the commission to focus on the growing number and
4 increasingly technical complexity of issues brought before the
5 commission. Enabling the commission to establish two civil
6 service positions, a personnel officer and a fiscal officer,
7 will further support the commission and provide for a seamless
8 transition.

9 The legislature additionally finds that the division of
10 consumer advocacy of the department of commerce and consumer
11 affairs protects and advances the interests of Hawaii's
12 consumers of regulated public utilities. The executive director
13 and staff members of the division of consumer advocacy attend
14 public hearings held by the public utilities commission to get
15 input from the public, which helps them to better understand the
16 consumer's perspective on utility services and rates. Because
17 this understanding is an integral part of the division's work,
18 the legislature concludes that the executive director of the
19 division of consumer advocacy, rather than the director of
20 commerce and consumer affairs, should be the consumer advocate
21 in hearings before the public utilities commission.



1 The purpose of this Act is to adequately support the
2 mission of the public utilities commission, ensure the efficient
3 operation of the public utilities commission, address the role
4 of the consumer advocate, and ensure that important decisions
5 relating to public utilities continue to be made in the public
6 interest by:

- 7 (1) Transferring the administrative placement of the
8 public utilities commission from the department of
9 budget and finance to the department of commerce and
10 consumer affairs; subject to certain limitations on
11 the oversight and administrative support role of the
12 department of commerce and consumer affairs;
- 13 (2) Clarifying that notwithstanding section 26-35, Hawaii
14 Revised Statutes, the public utilities commission has
15 authority concerning standard administrative
16 practices, including operational expenditures and the
17 hiring of personnel;
- 18 (3) Enabling the chairperson of the public utilities
19 commission to appoint, employ, and dismiss an
20 executive officer to manage the operations of the
21 commission;



1 (4) Enabling the chairperson of the public utilities
2 commission to appoint, employ, and dismiss a fiscal
3 officer and a personnel officer to further support the
4 administrative activities of the commission and
5 fulfill the administrative support functions formerly
6 provided by the department of budget and finance;

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

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

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

16 "(d) The [~~employees~~] employees' retirement system as
17 constituted by chapter 88 is placed within the department of
18 budget and finance for administrative purposes. The functions,
19 duties, and powers, subject to the administrative control of the
20 director of finance, and the composition of the board of
21 trustees of the employees retirement system shall be as
22 heretofore provided by law.



1 ~~[The public utilities commission is placed within the~~
2 ~~department of budget and finance for administrative purposes~~
3 ~~only.] "~~

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

6 "(c) The board of acupuncture, board of public
7 accountancy, board of barbering and cosmetology, boxing
8 commission, board of chiropractic examiners, contractors license
9 board, board of dental examiners, board of electricians and
10 plumbers, elevator mechanics licensing board, board of
11 professional engineers, architects, surveyors, and landscape
12 architects, board of massage therapy, Hawaii medical board,
13 motor vehicle industry licensing board, motor vehicle repair
14 industry board, board of naturopathic medicine, board of
15 nursing, board of examiners in optometry, pest control board,
16 board of pharmacy, board of physical therapy, board of
17 psychology, board of private detectives and guards, real estate
18 commission, board of veterinary examiners, board of speech
19 pathology and audiology, and any board, commission, program, or
20 entity created pursuant to or specified by statute in
21 furtherance of the purpose of this section including but not
22 limited to section 26H-4, or chapters 484, 514A, 514B, and 514E



1 shall be placed within the department of commerce and consumer
2 affairs for administrative purposes.

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

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

13 "§269-2 Public utilities commission; number, appointment
14 of commissioners, qualifications; compensation; persons having
15 interest in public utilities[-]; authority. (a) There shall be
16 a public utilities commission of three members, to be called
17 commissioners, and who shall be appointed in the manner
18 prescribed in section 26-34, except as otherwise provided in
19 this section. All members shall be appointed for terms of six
20 years each, except that the terms of the members first appointed
21 shall be for two, four, and six years, respectively, as
22 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 In appointing commissioners, the governor shall select
9 persons who have had experience in accounting, business,
10 engineering, government, finance, law, or other similar fields.
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) Effective July 1, 2005, the chairperson of the
19 commission shall be paid a salary set at eighty-seven per cent
20 of the salary of the director of human resources development,
21 and each of the other commissioners shall be paid a salary equal
22 to ninety-five per cent of the chairperson's salary. The



1 commissioners shall be exempt from chapters 76 and 89 but shall
2 be members of the state employees retirement system and shall be
3 eligible to receive the benefits of any state or federal
4 employee benefit program generally applicable to officers and
5 employees of the State, including those under chapter 87A.

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

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

21 (e) Notwithstanding section 26-35(a)(5) to the contrary,
22 the commission's operational expenditures, such as the purchase



1 of supplies, equipment, furniture, dues and subscriptions,
2 travel, consultant services, and staff training, shall be
3 determined by the chairperson and may be delegated to the
4 executive officer appointed and employed pursuant to section
5 269-3; provided that such expenditures shall be subject to all
6 applicable procurement laws and procedures.

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

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

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

20 "§269-3 **Employment of assistants.** (a) The chairperson of
21 the public utilities commission may appoint and employ
22 professional staff and other assistants for the public utilities



1 commission as the chairperson finds necessary for the
2 performance of the commission's functions and define their
3 powers and duties. Notwithstanding section 26-35(a)(4) to the
4 contrary and subject to applicable personnel laws, the
5 employment, appointment, applicable salary schedules, promotion,
6 transfer, demotion, discharge, and job descriptions of all
7 officers and employees of or under the jurisdiction of the
8 commission shall be determined by the chairperson and may be
9 delegated to the executive officer appointed and employed
10 pursuant to subsection (b); provided that determinations
11 concerning personnel matters made by the chairperson or the
12 executive officer, as delegated by the chairperson, may be
13 reviewed by the director of commerce and consumer affairs for
14 completeness and for compliance and conformance with applicable
15 administrative processes and procedures of the department of
16 commerce and consumer affairs. The chairperson may appoint and,
17 at pleasure, dismiss a chief administrator and attorneys as may
18 be necessary, and who shall be exempt from chapter 76. The
19 chairperson may also appoint other staff, including a fiscal
20 officer and a personnel officer, with or without regard to
21 chapter 76.



1 (b) The chairperson of the commission shall appoint,
2 employ, and dismiss, at pleasure, an executive officer who shall
3 be responsible for managing the operations of the commission.
4 The responsibilities of the executive officer shall include
5 management and recruitment of personnel, budget planning and
6 implementation, strategic planning and implementation,
7 procurement and contract administration, and implementation of
8 administrative programs and projects. The executive officer
9 shall be exempt from chapter 76.

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

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

20 "**§269-5 Annual report and register of orders.** The public
21 utilities commission shall prepare and present to the governor[
22 ~~through the director of finance,~~] in the month of January in



1 each year a report respecting its actions during the preceding
2 fiscal year. This report shall include summary information and
3 analytical, comparative, and trend data concerning major
4 regulatory issues acted upon and pending before the commission;
5 cases processed by the commission, including their dispositions;
6 utility company operations, capital improvements, and rates;
7 utility company performance in terms of efficiency and quality
8 of services rendered; financing orders issued, adjustments made
9 to the public benefits fee, and repayments or credits provided
10 to electric utility customers pursuant to part X or chapter 196,
11 part IV; a summary of power purchase agreements, including
12 pricing, in effect during the fiscal year; environmental matters
13 having a significant impact upon public utilities; actions of
14 the federal government affecting the regulation of public
15 utilities in Hawaii; long and short-range plans and objectives
16 of the commission; together with the commission's
17 recommendations respecting legislation and other matters
18 requiring executive and legislative consideration. Copies of
19 the annual reports shall be furnished by the governor to the
20 legislature. In addition, the commission shall establish and
21 maintain a register of all its orders and decisions, which shall
22 be open and readily available for public inspection, and no



1 order or decision of the commission shall take effect until it
2 is filed and recorded in this register."

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

5 "(a) There is established in the state treasury a public
6 utilities commission special fund to be administered by the
7 public utilities commission. The proceeds of the fund shall be
8 used by the public utilities commission and the division of
9 consumer advocacy of the department of commerce and consumer
10 affairs for all expenses incurred in the administration of
11 chapters 269, 271, 271G, 269E, and 486J[+], and for costs
12 incurred by the department of commerce and consumer affairs to
13 fulfill the department's limited oversight and administrative
14 support functions; provided that the expenditures of the public
15 utilities commission shall be in accordance with legislative
16 appropriations. On a quarterly basis, an amount not exceeding
17 thirty per cent of the proceeds remaining in the fund after the
18 deduction for central service expenses, pursuant to section 36-
19 27, shall be allocated by the public utilities commission to the
20 division of consumer advocacy and deposited in the compliance
21 resolution fund established pursuant to section 26-9(o);
22 provided that all moneys allocated by the public utilities



1 commission from the fund to the division of consumer advocacy
2 shall be in accordance with legislative appropriations."

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

5 "~~§269-51 Consumer advocate; [director of commerce and~~
6 ~~consumer affairs.] executive director of the division of~~
7 ~~consumer advocacy.~~ The ~~[director of the department of commerce~~
8 ~~and consumer affairs]~~ executive director of the division of
9 consumer advocacy shall be the consumer advocate in hearings
10 before the public utilities commission. The consumer advocate
11 shall represent, protect, and advance the interests of all
12 consumers, including small businesses, of utility services.
13 ~~[The consumer advocate shall not receive any salary in addition~~
14 ~~to the salary received as director of commerce and consumer~~
15 ~~affairs.]~~

16 The responsibility of the consumer advocate for advocating
17 the interests of the consumer of utility services shall be
18 separate and distinct from the responsibilities of the public
19 utilities commission and those assistants employed by the
20 commission. ~~[As]~~ The consumer advocate ~~[, the director of~~
21 ~~commerce and consumer affairs]~~ shall have full rights to



1 participate as a party in interest in all proceedings before the
2 public utilities commission."

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

5 "§269-52 Division of consumer advocacy; personnel. There
6 shall be a division of consumer advocacy within the department
7 of commerce and consumer affairs [~~to provide administrative~~
8 ~~support to the director of commerce and consumer affairs acting~~
9 ~~in the capacity of consumer advocate~~]. The director of commerce
10 and consumer affairs may [~~employ and at pleasure dismiss an~~
11 ~~executive administrator,~~] appoint an executive director, who
12 shall be exempt from chapter 76, [~~may define the executive~~
13 ~~administrator's powers and duties,~~] and fix the executive
14 [~~administrator's~~] director's compensation. The executive
15 director shall supervise and control the operations and
16 personnel of the division. The executive director shall be
17 responsible for the performance of the duties imposed upon the
18 division and shall be the consumer advocate as specified in
19 section 269-51. The executive director may employ engineers,
20 accountants, investigators, clerks, and stenographers as may be
21 necessary for the performance of the consumer advocate's
22 functions, in accordance with chapter 76; provided that:



1 (1) The executive director may employ up to ten utility
2 analysts exempt from chapter 76; and

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

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

8 "§269-53 **Legal counsel.** The executive director of the
9 division of consumer advocacy may appoint or retain, without
10 regard to chapter 76, attorneys to provide legal services for
11 the division of consumer advocacy. Nothing in this section
12 precludes the director of commerce and consumer affairs or the
13 executive director of the division of consumer advocacy from
14 requesting and securing legal services from the attorney general
15 and the department of the attorney general."

16 SECTION 11. There is appropriated out of the public
17 utilities commission special fund established pursuant to
18 section 269-33, Hawaii Revised Statutes, the sum of \$450,000 or
19 so much thereof as may be necessary for fiscal year 2014-2015 to
20 effectuate the transfer of the public utilities commission from
21 the department of budget and finance to the department of
22 commerce and consumer affairs; enable the chairperson of the



1 public utilities commission to appoint and employ an executive
2 officer who shall be responsible for managing the operations of
3 the public utilities commission; and enable the chairperson of
4 the public utilities commission to appoint and employ a fiscal
5 officer and a personnel officer to support the administrative
6 activities of the commission.

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

9 SECTION 12. (a) No later than July 1, 2015, all rights,
10 powers, functions, and duties of the department of budget and
11 finance as they relate to the public utilities commission are
12 transferred to the public utilities commission or the department
13 of commerce and consumer affairs in accordance with sections 26-
14 9(c), 269-2, and 269-3, Hawaii Revised Statutes, as amended by
15 this Act.

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

21 No officer or employee of the State having tenure shall
22 suffer any loss of salary, seniority, prior service credit,



1 vacation, sick leave, or other employee benefit or privilege as
2 a consequence of this Act, and such officer or employee may be
3 transferred or appointed to a civil service position without the
4 necessity of examination; provided that the officer or employee
5 possesses the minimum qualifications for the position to which
6 transferred or appointed; and provided that subsequent changes
7 in status may be made pursuant to applicable civil service and
8 compensation laws.

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

18 If an office or position held by an officer or employee
19 having tenure is abolished, the officer or employee shall not
20 thereby be separated from public employment, but shall remain in
21 the employment of the State with the same pay and classification
22 and shall be transferred to some other office or position for



1 which the officer or employee is eligible under the personnel
2 laws of the State as determined by the head of the department or
3 the governor.

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

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

21 SECTION 15. All appropriations, records, equipment,
22 machines, files, supplies, contracts, books, papers, documents,



1 maps, and other personal property heretofore made, used,
2 acquired, or held by the department of budget and finance
3 relating to the functions transferred to the department of
4 commerce and consumer affairs shall be transferred with the
5 functions to which they relate.

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

21 SECTION 17. All deeds, leases, contracts, loans,
22 agreements, permits, or other documents executed or entered into



1 by or on behalf of the public utilities commission prior to the
2 effective date of this Act shall remain in full force and effect
3 notwithstanding the commission's administrative transfer to the
4 department of commerce and consumer affairs.

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

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

21 SECTION 20. The provisions of this Act are to be liberally
22 construed to effectuate its purpose.



1 SECTION 21. All acts passed by the legislature during the
2 regular session of 2014, whether enacted before, on, or after
3 July 1, 2014, shall be amended to conform to this Act unless
4 such acts specifically provide that this Act is being amended.

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

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

APPROVED this 20 day of JUN, 2014



GOVERNOR OF THE STATE OF HAWAII