

---

---

# 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) Increasing the balance that may be retained in the  
8 public utilities commission special fund at the end of  
9 a fiscal year;
- 10 (6) Establishing that the executive director of the  
11 division of consumer advocacy shall be the consumer  
12 advocate; and
- 13 (7) Appropriating funds to effectuate the transfer of the  
14 public utilities commission and for the hiring of an  
15 executive officer, a fiscal officer, and a personnel  
16 officer within the public utilities commission.

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

19 "(d) The [~~employees~~] employees' retirement system as  
20 constituted by chapter 88 is placed within the department of  
21 budget and finance for administrative purposes. The functions,  
22 duties, and powers, subject to the administrative control of the



1 director of finance, and the composition of the board of  
2 trustees of the employees retirement system shall be as  
3 heretofore provided by law.

4 ~~[The public utilities commission is placed within the~~  
5 ~~department of budget and finance for administrative purposes~~  
6 ~~only.]"~~

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

9 "(c) The board of acupuncture, board of public  
10 accountancy, board of barbering and cosmetology, boxing  
11 commission, board of chiropractic examiners, contractors license  
12 board, board of dental examiners, board of electricians and  
13 plumbers, elevator mechanics licensing board, board of  
14 professional engineers, architects, surveyors, and landscape  
15 architects, board of massage therapy, Hawaii medical board,  
16 motor vehicle industry licensing board, motor vehicle repair  
17 industry board, board of naturopathic medicine, board of  
18 nursing, board of examiners in optometry, pest control board,  
19 board of pharmacy, board of physical therapy, board of  
20 psychology, board of private detectives and guards, real estate  
21 commission, board of veterinary examiners, board of speech  
22 pathology and audiology, and any board, commission, program, or



1 entity created pursuant to or specified by statute in  
2 furtherance of the purpose of this section including but not  
3 limited to section 26H-4, or chapters 484, 514A, 514B, and 514E  
4 shall be placed within the department of commerce and consumer  
5 affairs for administrative purposes.

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

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

16 **"§269-2 Public utilities commission; number, appointment**  
17 **of commissioners, qualifications; compensation; persons having**  
18 **interest in public utilities[-]; authority.** (a) There shall be  
19 a public utilities commission of three members, to be called  
20 commissioners, and who shall be appointed in the manner  
21 prescribed in section 26-34, except as otherwise provided in  
22 this section. All members shall be appointed for terms of six



1 years each, except that the terms of the members first appointed  
2 shall be for two, four, and six years, respectively, as  
3 designated by the governor at the time of appointment. The  
4 governor shall designate a member to be chairperson of the  
5 commission. Each member shall hold office until the member's  
6 successor is appointed and qualified. Section 26-34 shall not  
7 apply insofar as it relates to the number of terms and  
8 consecutive number of years a member can serve on the  
9 commission; provided that no member shall serve more than twelve  
10 consecutive years.

11 In appointing commissioners, the governor shall select  
12 persons who have had experience in accounting, business,  
13 engineering, government, finance, law, or other similar fields.  
14 The commissioners shall devote full time to their duties as  
15 members of the commission and no commissioner shall hold any  
16 other public office or other employment during the  
17 commissioner's term of office. No person owning any stock or  
18 bonds of any public utility corporation, or having any interest  
19 in, or deriving any remuneration from, any public utility shall  
20 be appointed a commissioner.

21 (b) Effective July 1, 2005, the chairperson of the  
22 commission shall be paid a salary set at eighty-seven per cent



1 of the salary of the director of human resources development,  
2 and each of the other commissioners shall be paid a salary equal  
3 to ninety-five per cent of the chairperson's salary. The  
4 commissioners shall be exempt from chapters 76 and 89 but shall  
5 be members of the state employees retirement system and shall be  
6 eligible to receive the benefits of any state or federal  
7 employee benefit program generally applicable to officers and  
8 employees of the State, including those under chapter 87A.

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

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





1 and agreement by the department of commerce and consumer  
2 affairs.

3 (e) Notwithstanding section 26-35(a)(5) to the contrary,  
4 the commission's operational expenditures, such as the purchase  
5 of supplies, equipment, furniture, dues and subscriptions,  
6 travel, consultant services, and staff training, shall be  
7 determined by the chairperson and may be delegated to the  
8 executive officer appointed and employed pursuant to section  
9 269-3; provided that such expenditures shall be subject to all  
10 applicable procurement laws and procedures.

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

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



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

3 **"§269-3 Employment of assistants.** (a) The chairperson of  
4 the public utilities commission may appoint and employ  
5 professional staff and other assistants for the public utilities  
6 commission as the chairperson finds necessary for the  
7 performance of the commission's functions and define their  
8 powers and duties. Notwithstanding section 26-35(a)(4) to the  
9 contrary and subject to applicable personnel laws, the  
10 employment, appointment, applicable salary schedules, promotion,  
11 transfer, demotion, discharge, and job descriptions of all  
12 officers and employees of or under the jurisdiction of the  
13 commission shall be determined by the chairperson and may be  
14 delegated to the executive officer appointed and employed  
15 pursuant to subsection (b); provided that determinations  
16 concerning personnel matters made by the chairperson or the  
17 executive officer, as delegated by the chairperson, may be  
18 reviewed by the director of commerce and consumer affairs for  
19 completeness and for compliance and conformance with applicable  
20 administrative processes and procedures of the department of  
21 commerce and consumer affairs. The chairperson may appoint and,  
22 at pleasure, dismiss a chief administrator and attorneys as may



1 be necessary, and who shall be exempt from chapter 76. The  
2 chairperson may also appoint other staff, including a fiscal  
3 officer and a personnel officer, with or without regard to  
4 chapter 76.

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

14 ~~(b)~~ (c) Notwithstanding section 91-13, the commission  
15 may consult with its assistants appointed under authority of  
16 this section in any contested case or agency hearing concerning  
17 any issue of facts. Neither the commission nor any of its  
18 assistants 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 6. Section 269-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§269-5 Annual report and register of orders.** The public  
4 utilities commission shall prepare and present to the governor[  
5 ~~through the director of finance,~~] in the month of January in  
6 each year a report respecting its actions during the preceding  
7 fiscal year. This report shall include summary information and  
8 analytical, comparative, and trend data concerning major  
9 regulatory issues acted upon and pending before the commission;  
10 cases processed by the commission, including their dispositions;  
11 utility company operations, capital improvements, and rates;  
12 utility company performance in terms of efficiency and quality  
13 of services rendered; financing orders issued, adjustments made  
14 to the public benefits fee, and repayments or credits provided  
15 to electric utility customers pursuant to part X or chapter 196,  
16 part IV; a summary of power purchase agreements, including  
17 pricing, in effect during the fiscal year; environmental matters  
18 having a significant impact upon public utilities; actions of  
19 the federal government affecting the regulation of public  
20 utilities in Hawaii; long and short-range plans and objectives  
21 of the commission; together with the commission's  
22 recommendations respecting legislation and other matters



1 requiring executive and legislative consideration. Copies of  
2 the annual reports shall be furnished by the governor to the  
3 legislature. In addition, the commission shall establish and  
4 maintain a register of all its orders and decisions, which shall  
5 be open and readily available for public inspection, and no  
6 order or decision of the commission shall take effect until it  
7 is filed and recorded in this register."

8 SECTION 7. Section 269-33, Hawaii Revised Statutes, is  
9 amended as follows:

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

11 "(a) There is established in the state treasury a public  
12 utilities commission special fund to be administered by the  
13 public utilities commission. The proceeds of the fund shall be  
14 used by the public utilities commission and the division of  
15 consumer advocacy of the department of commerce and consumer  
16 affairs for all expenses incurred in the administration of  
17 chapters 269, 271, 271G, 269E, and 486J[+], and for costs  
18 incurred by the department of commerce and consumer affairs to  
19 fulfill the department's limited oversight and administrative  
20 support functions; provided that the expenditures of the public  
21 utilities commission shall be in accordance with legislative  
22 appropriations. On a quarterly basis, an amount not exceeding



1 thirty per cent of the proceeds remaining in the fund after the  
2 deduction for central service expenses, pursuant to section 36-  
3 27, shall be allocated by the public utilities commission to the  
4 division of consumer advocacy and deposited in the compliance  
5 resolution fund established pursuant to section 26-9(o);  
6 provided that all moneys allocated by the public utilities  
7 commission from the fund to the division of consumer advocacy  
8 shall be in accordance with legislative appropriations."

9 2. By amending subsection (d) to read:

10 "(d) All moneys in excess of [~~\$1,000,000~~] \$4,000,000  
11 remaining on balance in the public utilities commission special  
12 fund on June 30 of each year shall lapse to the credit of the  
13 state general fund."

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

16 "~~§269-51 Consumer advocate; [director of commerce and~~  
17 ~~consumer affairs.]~~ executive director of the division of  
18 consumer advocacy. The [~~director of the department of commerce~~  
19 ~~and consumer affairs]~~ executive director of the division of  
20 consumer advocacy shall be the consumer advocate in hearings  
21 before the public utilities commission. The consumer advocate  
22 shall represent, protect, and advance the interests of all



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

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

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

15 "**§269-52 Division of consumer advocacy; personnel.** There  
16 shall be a division of consumer advocacy within the department  
17 of commerce and consumer affairs ~~[to provide administrative~~  
18 ~~support to the director of commerce and consumer affairs acting~~  
19 ~~in the capacity of consumer advocate]~~. The director of commerce  
20 and consumer affairs may ~~[employ and at pleasure dismiss an~~  
21 ~~executive administrator,]~~ appoint an executive director, who  
22 shall be exempt from chapter 76, ~~[may define the executive~~



1 ~~administrator's powers and duties,~~] and fix the executive  
2 [~~administrator's~~] director's compensation. The executive  
3 director shall supervise and control the operations and  
4 personnel of the division. The executive director shall be  
5 responsible for the performance of the duties imposed upon the  
6 division and shall be the consumer advocate as specified in  
7 section 269-51. The executive director may employ engineers,  
8 accountants, investigators, clerks, and stenographers as may be  
9 necessary for the performance of the consumer advocate's  
10 functions, in accordance with chapter 76; provided that:

- 11 (1) The executive director may employ up to ten utility  
12 analysts exempt from chapter 76; and  
13 (2) Each analyst shall possess at least the minimum  
14 qualifications required of comparable experts in the  
15 relevant industry."

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

18 "**§269-53 Legal counsel.** The executive director of the  
19 division of consumer advocacy may appoint or retain, without  
20 regard to chapter 76, attorneys to provide legal services for  
21 the division of consumer advocacy. Nothing in this section  
22 precludes the director of commerce and consumer affairs or the





1 executive director of the division of consumer advocacy from  
2 requesting and securing legal services from the attorney general  
3 and the department of the attorney general."

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

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

19 SECTION 12. (a) No later than July 1, 2015, all rights,  
20 powers, functions, and duties of the department of budget and  
21 finance as they relate to the public utilities commission are  
22 transferred to the public utilities commission or the department



1 of commerce and consumer affairs in accordance with sections 26-  
2 9(c), 269-2, and 269-3, Hawaii Revised Statutes, as amended by  
3 this Act.

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

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

19 An officer or employee of the State who does not have  
20 tenure and who may be transferred or appointed to a civil  
21 service position as a consequence of this Act shall become a  
22 civil service employee without the loss of salary, seniority,



1 prior service credit, vacation, sick leave, or other employee  
2 benefits or privileges and without the necessity of examination;  
3 provided that such officer or employee possesses the minimum  
4 qualifications for the position to which transferred or  
5 appointed.

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

14 SECTION 13. The department of budget and finance, with the  
15 approval of the governor and prior concurrence of the department  
16 of commerce and consumer affairs, may transfer positions and  
17 funds for the public utilities commission to the department of  
18 commerce and consumer affairs; provided that the governor shall  
19 submit a report to the legislature within five days of the use  
20 of this authority; provided further that the report shall  
21 include the date of the transfer, the positions and funding  
22 transferred, the program from which the positions were



1 transferred, the program to which the positions and funding were  
2 transferred, and the manner in which the transfer maximizes the  
3 utilization of personnel and funding.

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

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

16 SECTION 16. All rules, policies, procedures, guidelines,  
17 general orders, and other material adopted or developed by the  
18 public utilities commission prior to the effective date of this  
19 Act as an agency administratively attached to the department of  
20 budget and finance shall be applicable to the public utilities  
21 commission as an agency administratively attached to the  
22 department of commerce and consumer affairs pursuant to this



1 Act, and shall remain in full force and effect and unaffected by  
2 this Act until amended, repealed, or overruled by the public  
3 utilities commission. Every reference to the department of  
4 budget and finance or director of finance in those rules,  
5 policies, procedures, guidelines, and other material shall be  
6 deemed to refer to the department of commerce and consumer  
7 affairs or director of commerce and consumer affairs, as  
8 appropriate.

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

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

20 SECTION 19. There shall be a transition period to  
21 facilitate the transfer of the public utilities commission from  
22 the department of budget and finance to the department of



1 commerce and consumer affairs. The fiscal year beginning  
2 July 1, 2014, shall serve as a transition period, in which the  
3 state agencies affected by this Act shall assist the chairperson  
4 of the public utilities commission in implementing the transfer  
5 under this Act. Once the transfer is completed, the public  
6 utilities commission shall provide public notice that the  
7 transfer is completed in a printed publication or electronic  
8 format that is accessible statewide.

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

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

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

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



**Report Title:**

Public Utilities Commission; Transfer of Attached Agency; Personnel; Authority; Expenditures; Public Utilities Commission Special Fund; Division of Consumer Advocacy; Appropriation

**Description:**

Transfers the administrative placement of the public utilities commission from the department of budget and finance to the department of commerce and consumer affairs. Clarifies the public utilities commission's authority concerning standard administrative practices, including operational expenditures and the hiring of personnel. Enables the chair of the public utilities commission to appoint, employ, and dismiss an executive officer, fiscal officer, and personnel officer. Increases the balance that may be retained in the public utilities commission special fund at the end of a fiscal year. Establishes that the executive director of the division of consumer advocacy shall be the consumer advocate. Appropriates funds to effectuate the transfer of the public utilities commission and for the hiring of an executive officer, fiscal officer, and personnel officer. (CD1)

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

