

---

---

# 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[~~7~~  
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.



**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. 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. (CD2)

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

