

JAN 19 2018

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's primary purpose is to provide effective, proactive,
3 and informed oversight of all regulated companies to ensure
4 these companies efficiently and safely provide their customers
5 with adequate and reliable services at just and reasonable
6 rates, while providing regulated companies with a fair
7 opportunity to earn a reasonable rate of return. However, the
8 public utilities commission has several long and short term
9 goals that reflect the commission's increased work complexity
10 and program responsibilities, which go beyond the commission's
11 traditional regulatory role, including in the area of energy
12 regulation. Furthermore, with the advent of new and emerging
13 technology, the market, and other forces, the regulatory
14 landscape throughout the country is rapidly changing. However,
15 the commission's current structure and operations have prevented
16 it from quickly adapting to these changes.



1 The legislature further finds that due to the commission's
2 increasing responsibilities and the evolution of the regulatory
3 landscape, it is essential that the structure and operations of
4 the public utilities commission be updated to enable the
5 commission to operate more efficiently and effectively,
6 consistent with best practices. For example, updating the
7 operations of the commission by adopting best practices ensures
8 that the commission functions in a more inclusive and
9 collaborative manner. Updating the structure of the commission
10 will also be beneficial. Increasing the number of commissioners
11 from three to five promotes diversity and is in line with the
12 number of commissioners in many other jurisdictions.
13 Furthermore, requiring the commission to be composed of women
14 and men, at least one member from a neighbor island, and members
15 from fields other than just the legal profession will enable the
16 commission to consider a wider variety of backgrounds,
17 perspectives, and expertise in its deliberations to better serve
18 Hawaii's geographic and demographic diversity. The legislature
19 notes that, in contrast to administrative agencies, commissions
20 throughout the country are impaneled to provide for collective
21 deliberation, as well as diversified perspective across



1 geopolitical, demographic, professional, and other criteria.
2 The legislature also notes that a diverse commission and staff
3 can provide a stronger, more robust foundation for decision-
4 making. A commission made up of individuals with diverse
5 educational and geographic backgrounds and diverse
6 representation of genders will have a broader range of
7 knowledge, skills, and abilities than a more homogeneous
8 commission. Commissioners from diverse backgrounds will provide
9 greater access to a variety of relevant information, opinions,
10 expertise, and perspectives, which will enhance deliberations
11 and decision-making.

12 The legislature additionally finds that the public
13 utilities commission and its commissioners must fill three
14 equally essential and nonexclusive roles. In their quasi-
15 administrative capacity, commissioners interpret policy and
16 apply technical expertise to the routines of rulemaking,
17 implementation, and enforcement. In their quasi-legislative
18 capacity, commissioners craft policy and inform and support
19 policymaking by other bodies. In their quasi-judicial capacity,
20 commissioners must make findings and rulings in the context of
21 particular cases, in accordance with established law and legal



1 procedures. Commissioners serving on the public utilities
2 commission therefore fill a unique role, and as such, have a
3 responsibility to regulate in the public interest with the
4 highest ethical standards. The legislature notes that this
5 adherence to high ethical standards necessarily extends to
6 commission staff, but in particular, the senior staff members of
7 the commission, including its chief counsel, executive officer,
8 chief of policy and research, and other staff who must engage in
9 discussions with outside parties.

10 The legislature encourages the commission to engage in
11 appropriate conversations with the consumer advocate and the
12 State's regulated industries, even when there is no current case
13 involved, which will enable the commission to gain a better
14 understanding of the regulated industries. The legislature also
15 encourages the commission to take steps toward a more
16 collaborative working environment, such as more face to face
17 meetings and by ensuring that research and analysis of cases and
18 proposals of settlements are circulated amongst all
19 commissioners to aid in the commissioners' deliberations of an
20 issue.



1 In keeping with the idea of a more collaborative
2 commission, the legislature also finds that advancements in
3 technology have enabled people to participate and work remotely,
4 without having to be physically present in the same location as
5 their colleagues. Permitting the use of teleconference or
6 videoconference technology for public hearings and briefings
7 before the commission, or meetings with other commissioners and
8 staff, will enable commissioners to participate in public
9 hearings and commissioner or staff meetings in a convenient
10 manner and be fully engaged.

11 The purpose of this Act is to update the structure and
12 operation of the commission to increase efficiency and
13 effectiveness by:

- 14 (1) Establishing guiding principles of the commission;
- 15 (2) Requiring the commission to establish a docket review
16 and decision-making process that encourages
17 collaboration;
- 18 (3) Allowing a commissioner to attend a public hearing,
19 meeting, or work with staff by teleconference or
20 videoconference in specific situations;



- 1 (4) Requiring the executive officer, chief counsel, chief
2 of policy and research, and any individual employed as
3 or in the role of a hearings officer of the public
4 utilities commission to annually file a disclosure of
5 financial interests with the state ethics commission
6 and requiring these disclosures to be public;
- 7 (5) Increasing the number of members on the commission,
8 specifying the composition of commission members, and
9 ensuring that members who are residents of a county
10 other than the city and county of Honolulu receive per
11 diem compensation and travel expenses;
- 12 (6) Requiring new commissioners to attend pertinent
13 educational or training seminars within the first year
14 of the commissioner's appointment and permitting
15 commissioners and key staff to take advantage of
16 relevant training opportunities;
- 17 (7) Clarifying the ability of the commissioners to appoint
18 and employ staff;
- 19 (8) Clarifying the roles of the executive officer and
20 chief counsel to the commission; and



(9) Requiring the commissioners to work with the departments of commerce and consumer affairs and human resources development to develop clearly defined duties and responsibilities for public utilities commission staff and report the staff duties to the legislature.

The legislature notes that due to unforeseen circumstances, the auditor's report on the management audit of the public utilities commission, requested pursuant to Act 198, Session Laws of Hawaii 2017, has been delayed. The contents of the present Act will be amended, as appropriate, once the auditor's report is released.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§269- Guiding principles of the public utilities commission. The guiding principles of the public utilities commission shall be to:

(1) Ensure reliability and delivery of all essential services provided by regulated entities at all times;



(2) Provide oversight of resource planning efforts to ensure adequacy and resiliency to ensure essential services are available when needed;

(3) Strive for affordability for consumers while allowing regulated entities an opportunity to maintain reasonable earnings;

(4) Align private interest with public interest through the proactive, aggressive pursuit of factual information and technical competency to result in fair and timely decisions and orders in pursuit of the public interest;

(5) Regulate in the public interest; and

(6) Encourage and facilitate competition for the benefit of consumers.

§269- Commission; docket review; decision-making; process. (a) The chairperson shall implement a docket review and decision-making process that engages all commissioners in a collegial, face-to-face manner, where commissioners shall have the opportunity to review, discuss, and offer input to any order or decision and order requiring a consensus of commissioners. Commissioners shall work collaboratively to reach consensus on



1 pending matters in a timely fashion, utilizing, at a minimum,
2 weekly meetings when necessary.

3 (b) To empower all commissioners to fully participate in
4 the work of the commission, any commissioner may call for a
5 meeting with the other commissioners for a deliberative
6 discussion on any docket or topic before the commission or
7 likely to come before the commission. Within twenty-four hours
8 of the request, the executive officer shall calendar such a
9 meeting. No commissioner shall refuse such a meeting request
10 without reasonable justification, such as illness.

11 (c) A commissioner who discusses relevant commission-
12 related information at a meeting with an outside party shall
13 inform the other commissioners of the meeting.

14 (d) Once the commission is composed of five commissioners
15 who have been appointed and confirmed by the senate, the
16 commission may form panels of three commissioners to handle
17 smaller dockets.

18 (e) Commissioners shall be guided by the public interest
19 principle of regulation.

20 §269- Hearing attendance by teleconference or video

21 conference. (a) A commissioner may attend a public hearing of



1 the public utilities commission, or a meeting scheduled by other
2 commissioners, by teleconference or videoconference to allow a
3 commissioner residing on an island other than Oahu to attend a
4 public hearing of the commission, or a meeting scheduled by
5 other commissioners, held on Oahu and a commissioner residing on
6 the island of Oahu to attend a public hearing of the commission,
7 or a meeting scheduled by other commissioners, held on an island
8 other than Oahu by teleconference or videoconference; provided
9 that commissioner participation by teleconference or
10 videoconference shall not be permitted at contested case or
11 evidentiary hearings.

12 (b) Each commissioner participating in a public hearing by
13 teleconference or videoconference shall be considered present at
14 the meeting for purposes of determining quorum and participating
15 in all proceedings.

16 (c) A public hearing held by teleconference or
17 videoconference:

18 (1) Need not have a quorum present at any one location;

19 and

20 (2) Is subject to the notice requirements under section

21 269-12.



1 (d) The notice of each teleconference or videoconference
2 public hearing shall specify all physical locations from which
3 the commissioners will participate.

4 (e) Each commissioner may work with staff via
5 teleconference or videoconference on commission-related
6 matters."

7 SECTION 3. Section 84-17, Hawaii Revised Statutes, is
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) The following persons shall file annually with the
10 state ethics commission a disclosure of financial interests:

11 (1) The governor, the lieutenant governor, the members of
12 the legislature, and delegates to the constitutional
13 convention; provided that delegates to the
14 constitutional convention shall only be required to
15 file initial disclosures;

16 (2) The directors and their deputies, the division chiefs,
17 the executive directors and the executive secretaries
18 and their deputies, the purchasing agents and the
19 fiscal officers, regardless of the titles by which the
20 foregoing persons are designated, of every state
21 agency and department;



- 1 (3) The permanent employees of the legislature and its
2 service agencies, other than persons employed in
3 clerical, secretarial, or similar positions;
- 4 (4) The administrative director of the State, and the
5 assistants in the office of the governor and the
6 lieutenant governor, other than persons employed in
7 clerical, secretarial, or similar positions;
- 8 (5) The hearings officers of every state agency and
9 department;
- 10 (6) The president, the vice presidents, assistant vice
11 presidents, the chancellors, and the provosts of the
12 University of Hawaii and its community colleges;
- 13 (7) The superintendent, the deputy superintendent, the
14 assistant superintendents, the complex area
15 superintendents, the state librarian, and the deputy
16 state librarian of the department of education;
- 17 (8) The administrative director and the deputy director of
18 the courts;
- 19 (9) The members of every state board or commission whose
20 original terms of office are for periods exceeding one
21 year and whose functions are not solely advisory;



1 (10) Candidates for state elective offices, including
2 candidates for election to the constitutional
3 convention, provided that candidates shall only be
4 required to file initial disclosures;

5 (11) The administrator and assistant administrator of the
6 office of Hawaiian affairs; [and]

7 (12) The Hawaii unmanned aerial systems test site chief
8 operating officer[-]; and

9 (13) The individuals employed as or in the role of
10 executive officer, chief counsel, chief of policy and
11 research, or hearings officers of the public utilities
12 commission.

13 (d) The financial disclosure statements of the following
14 persons shall be public records and available for inspection and
15 duplication:

16 (1) The governor, the lieutenant governor, the members of
17 the legislature, candidates for and delegates to the
18 constitutional convention, the trustees of the office
19 of Hawaiian affairs, and candidates for state elective
20 offices;



- 1 (2) The directors of the state departments and their
2 deputies, regardless of the titles by which the
3 foregoing persons are designated; provided that with
4 respect to the department of the attorney general, the
5 foregoing shall apply only to the attorney general and
6 the first deputy attorney general;
- 7 (3) The administrative director of the State;
- 8 (4) The president, the vice presidents, the assistant vice
9 presidents, the chancellors, members of the board of
10 regents, and the provosts of the University of Hawaii;
- 11 (5) The members of the board of education and the
12 superintendent, the deputy superintendent, the state
13 librarian, and the deputy state librarian of the
14 department of education;
- 15 (6) The administrative director and the deputy director of
16 the courts;
- 17 (7) The administrator and the assistant administrator of
18 the office of Hawaiian affairs; [and]
- 19 (8) The members of the following state boards,
20 commissions, and agencies:



- 1 (A) The board of directors of the agribusiness
2 development corporation established under section
3 163D-3;
- 4 (B) The board of agriculture established under
5 section 26-16;
- 6 (C) The state ethics commission established under
7 section 84-21;
- 8 (D) The Hawaii community development authority
9 established under section 206E-3;
- 10 (E) The Hawaiian homes commission established under
11 the Hawaiian Homes Commission Act of 1920, as
12 amended, and section 26-17;
- 13 (F) The board of directors of the Hawaii housing
14 finance and development corporation established
15 under section 201H-3;
- 16 (G) The board of land and natural resources
17 established under section 171-4;
- 18 (H) The state land use commission established under
19 section 205-1;
- 20 (I) The legacy land conservation commission
21 established under section 173A-2.4;



(J) The natural area reserves system commission established under section 195-6;

(K) The board of directors of the natural energy laboratory of Hawaii authority established under section 227D-2;

(L) The board of directors of the Hawaii public housing authority established under section 356D-3;

(M) The public utilities commission established under section 269-2; and

(N) The commission on water resource management established under section 174C-7 ~~[-]~~ ; and

(9) The executive officer, chief counsel, chief of policy and research, and any individual employed as or in the role of a hearings officer of the public utilities commission."

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

1. By amending subsection (a) to read:

"(a) There shall be a public utilities commission of ~~[three]~~ five members, to be called commissioners, and who shall



1 be appointed in the manner prescribed in section 26-34, except
2 as otherwise provided in this section. All members shall be
3 appointed for terms of six years each, except that the terms of
4 the members first appointed shall be for two, four, and six
5 years, respectively, as designated by the governor at the time
6 of appointment. A member who is a resident of a county other
7 than the city and county of Honolulu shall receive per diem
8 compensation for expenses, incurred on the day or days on which
9 actual service is rendered at an allowance equal to the maximum
10 federal employee rate for Hawaii as established by the United
11 States Department of Defense on the date that the member incurs
12 the expense. The governor shall designate a member to be
13 chairperson of the commission. Each member shall hold office
14 until the member's successor is appointed and ~~[qualified.]~~
15 confirmed by the senate; provided that a vacancy occurring
16 during a commissioner's term shall be filled for the unexpired
17 term thereof, subject to article V, section 6, of the
18 Constitution of the State of Hawaii. Section 26-34 shall not
19 apply insofar as it relates to the number of terms and
20 consecutive number of years a member can serve on the



1 commission; provided that no member shall serve more than twelve
2 consecutive years.

3 In appointing commissioners, the governor shall select
4 persons who have had experience in accounting, business,
5 engineering, government, finance, law, economics, or other
6 similar fields[-]; provided that the commission shall:

- 7 (1) Be composed of members who represent various
8 disciplines and experiences and whose skills reflect a
9 diversity of professional knowledge and expertise;
- 10 (2) Include a diverse representation of genders;
- 11 (3) Include at least one member who is a resident of a
12 county other than the city and county of Honolulu; and
- 13 (4) Not include more than two commissioners who have a
14 solely legal background.

15 The commissioners shall devote full time to their duties as
16 members of the commission and no commissioner shall hold any
17 other public office or other employment during the
18 commissioner's term of office. No person owning any stock or
19 bonds of any public utility corporation, or having any interest
20 in, or deriving any remuneration from, any public utility shall
21 be appointed a commissioner.



1 Newly appointed commissioners shall attend at least one
2 pertinent educational or training seminar offered by the
3 National Association of Regulatory Utility Commissioners within
4 the first year of the commissioner's appointment. Commissioners
5 may attend additional education and training seminars offered by
6 organizations such as the National Association of Regulatory
7 Utility Commissioners, educational institutions, or other
8 organizations that involve public utilities during the remainder
9 of the commissioners' terms of office to further the
10 commissioners' understanding of changes in the regulatory
11 environment or enhance the commissioners' ability to discharge
12 their duties. The public utilities commission shall make
13 training opportunities available to key staff to further the
14 staff's abilities to assist in the commission's regulatory
15 functions."

16 2. By amending subsection (e) to read:

17 "(e) Notwithstanding section 26-35(a)(5) to the contrary,
18 the commission's operational expenditures, such as the purchase
19 of supplies, equipment, furniture, dues and subscriptions,
20 travel, consultant services, and staff training, shall be
21 determined by the chairperson and may be delegated to the



1 executive officer appointed and employed pursuant to section
2 269-3; provided that such expenditures shall be subject to all
3 applicable procurement laws and procedures. In addition to the
4 per diem permitted under subsection 269-2(a), the commission's
5 budget shall provide for travel expenses equal to at least one
6 round trip per week for any commissioner who is a resident of a
7 county other than the city and county of Honolulu; provided that
8 the chairperson of the commission shall not have the authority
9 to withhold basic travel requirements from any commissioner who
10 is not a resident of the city and county of Honolulu."

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

13 "§269-3 **Employment of assistants.** (a) The chairperson of
14 the public utilities commission may appoint and employ
15 professional staff and other assistants for the public utilities
16 commission as the chairperson finds necessary for the
17 performance of the commission's functions and define their
18 powers and duties. Notwithstanding section 26-35(a)(4) to the
19 contrary and subject to applicable personnel laws, the
20 employment, appointment, applicable salary schedules, promotion,
21 transfer, demotion, discharge, and job descriptions of all



1 officers and employees of or under the jurisdiction of the
2 commission shall be determined by the [~~chairperson~~]
3 commissioners and may be delegated by the chairperson to the
4 executive officer appointed and employed pursuant to subsection
5 [~~(b) +~~] (e); provided that determinations concerning personnel
6 matters made by the [~~chairperson~~] commissioners or the executive
7 officer, as delegated by the chairperson, may be reviewed by the
8 director of commerce and consumer affairs for completeness and
9 for compliance and conformance with applicable administrative
10 processes and procedures of the department of commerce and
11 consumer affairs. The chairperson may appoint and, at pleasure,
12 dismiss a chief administrator and attorneys as may be necessary,
13 and who shall be exempt from chapter 76. The chief counsel for
14 the commission shall report to the commissioners as a whole and
15 shall not report to the executive officer. The chairperson may
16 also appoint other staff, including a fiscal officer and a
17 personnel officer, with or without regard to chapter 76.

18 (b) Each commissioner may request and shall be provided,
19 upon request, with the services of a staff attorney and a
20 researcher to assist the requesting commissioner in drafting,
21 preparing revisions, or suggesting approaches to pending



1 decisions and orders. Attorney/client privilege shall exist
2 between the requesting commissioner and the staff attorney until
3 and if the work product is shared with other commissioners. No
4 commissioner shall request staff assistance on non-commission-
5 related work. Staff attorneys and researchers provided pursuant
6 to this section may be selected from the commission's current
7 staff allotment. The chairperson shall not refuse to provide a
8 commissioner with the requested services of a staff attorney or
9 researcher pursuant to this section.

10 (c) Each commissioner, other than the chairperson, may
11 appoint and employ a clerical or support staff person to assist
12 with that commissioner's duties. Unless specifically appointed
13 to serve a single commissioner, staff appointed pursuant to this
14 section shall function independently and serve all commissioners
15 as needed, and shall not be required to serve a single
16 commissioner.

17 (d) The chief counsel shall devote full time to the chief
18 counsel's duties for the commission and no person serving as
19 chief counsel shall hold any other public office or other
20 employment while employed with the commission. No person owning
21 any stock or bonds of any public utility corporation, or having



1 any interest in or deriving any remuneration from, any public
2 utility shall serve as chief counsel to the commission.

3 ~~[(b)]~~ (e) The chairperson of the commission shall appoint,
4 employ, and dismiss, at pleasure, an executive officer who shall
5 be responsible for managing the operations of the commission.

6 The responsibilities of the executive officer shall include
7 management and recruitment of personnel, budget planning and
8 implementation, strategic planning and implementation,
9 procurement and contract administration, and implementation of
10 administrative programs and projects. The executive officer
11 shall not be involved in the development of policy or in any
12 decision making for the commission. The executive officer shall
13 be exempt from chapter 76.

14 ~~[(e)]~~ (f) 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. (a) The chairperson of the public utilities
2 commission, in conjunction with the other members of the
3 commission, shall work with the departments of commerce and
4 consumer affairs and human resources development to develop
5 clearly defined duties and responsibilities for public utilities
6 commission staff.

7 (b) The commission shall submit a report to the
8 legislature, detailing the duties and responsibilities of public
9 utilities commission staff described in subsection (a), no later
10 than twenty days prior to the convening of the regular session
11 of 2019.

12 SECTION 7. Beginning on January 16, 2019, the governor
13 shall nominate the two additional commissioners, as required
14 pursuant to section 4 of this Act, to the public utilities
15 commission. One of the new commissioners shall serve an initial
16 term of four years, and the other new commissioner shall serve
17 an initial term of six years, to provide for the expiration of
18 terms on a staggered basis. By July 1, 2019, the public
19 utilities commission shall comprise five commissioners who
20 reflect the requisite diversity of background, experience,
21 gender, and residency, as required by section 4 of this Act.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval;
4 provided that section 4 of this Act shall take effect on
5 January 1, 2019.

6

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S.B. NO. 2648

Report Title:

Public Utilities Commission; Commissioners; Structure;
Organization; Per Diem; Teleconference; Videoconference;
Financial Disclosure

Description:

Makes various updates to the structure and operations of the public utilities commission to increase efficiency and effectiveness, including: establishing guiding principles; establishing docket review and decision-making processes; permitting teleconference and videoconference abilities; specifying senior staff members who must file public financial disclosures; beginning 01/01/19, increasing the number of commissioners to five; updating the composition of the commission; specifying training requirements; clarifying commissioners' ability to appoint and employ staff; clarifying the roles of the executive officer and chief counsel; permitting neighbor island members to receive per diem compensation and compensation for travel expenses; and requiring the commission to report to the legislature regarding certain staff duties.

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

