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# 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 or  
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



1           (9) Requiring the commissioners to work with the  
2           department of commerce and consumer affairs and the  
3           department of human resources development to develop  
4           clearly defined duties and responsibilities for public  
5           utilities commission staff and report the staff duties  
6           to the legislature.

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

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

16          "§269-            Guiding principles of the public utilities  
17          commission. The guiding principles of the public utilities  
18          commission shall be to:

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



- 1        (2) Provide oversight of resource planning efforts to  
2            ensure adequacy and resiliency to ensure essential  
3            services are available when needed;
- 4        (3) Strive for affordability for consumers, while also  
5            allowing regulated entities an opportunity to maintain  
6            reasonable earnings;
- 7        (4) Align private interest with public interest through  
8            the proactive, aggressive pursuit of factual  
9            information and technical competency to result in fair  
10           and timely decisions and orders in pursuit of the  
11           public interest;
- 12        (5) Regulate in the public interest; and
- 13        (6) Encourage and facilitate competition for the benefit  
14           of consumers.

15        **§269-        Commission; docket review; decision-making;**

16 **process.**    (a) The chairperson shall implement a docket review  
17 and decision-making process that engages all commissioners in a  
18 collegial, face-to-face manner, where commissioners shall have  
19 the opportunity to review, discuss, and offer input to any order  
20 or decision and order requiring a consensus of commissioners.  
21 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 a meeting.  
9 No commissioner shall refuse a meeting request without  
10 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;



- 1 (J) The natural area reserves system commission  
2 established under section 195-6;
- 3 (K) The board of directors of the natural energy  
4 laboratory of Hawaii authority established under  
5 section 227D-2;
- 6 (L) The board of directors of the Hawaii public  
7 housing authority established under section  
8 356D-3;
- 9 (M) The public utilities commission established under  
10 section 269-2; and
- 11 (N) The commission on water resource management  
12 established under section 174C-7[-]; and
- 13 (9) The executive officer, chief counsel, chief of policy  
14 and research, and any individual employed as or in the  
15 role of a hearings officer of the public utilities  
16 commission."

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

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

20 "(a) There shall be a public utilities commission of  
21 [~~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, for days on which actual service is  
9 rendered, at an allowance equal to the maximum federal employee  
10 rate for Hawaii, as established by the United States Department  
11 of Defense, on the date that the member incurs the expense. The  
12 governor shall designate a member to be chairperson of the  
13 commission. Each member shall hold office until the member's  
14 successor is appointed and ~~[qualified.]~~ confirmed by the senate;  
15 provided that a vacancy occurring during a commissioner's term  
16 shall be filled for the unexpired term thereof, subject to  
17 article V, section 6, of the Constitution of the State of  
18 Hawaii. Section 26-34 shall not apply insofar as it relates to  
19 the number of terms and consecutive number of years a member can  
20 serve on the commission; provided that no member shall serve  
21 more than twelve consecutive years.



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

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

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

20 Each newly appointed commissioner shall attend at least one  
21 pertinent educational or training seminar offered by the



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

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

15 "(e) Notwithstanding section 26-35(a)(5) to the contrary,  
16 the commission's operational expenditures, such as the purchase  
17 of supplies, equipment, furniture, dues and subscriptions,  
18 travel, consultant services, and staff training, shall be  
19 determined by the chairperson and may be delegated to the  
20 executive officer appointed and employed pursuant to section  
21 269-3; provided that such expenditures shall be subject to all



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

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

11 "**§269-3 Employment of assistants.** (a) The chairperson of  
12 the public utilities commission may appoint and employ  
13 professional staff and other assistants for the public utilities  
14 commission as the chairperson finds necessary for the  
15 performance of the commission's functions and define their  
16 powers and duties. Notwithstanding section 26-35(a)(4) to the  
17 contrary and subject to applicable personnel laws, the  
18 employment, appointment, applicable salary schedules, promotion,  
19 transfer, demotion, discharge, and job descriptions of all  
20 officers and employees of or under the jurisdiction of the  
21 commission shall be determined by the [~~chairperson~~]



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

16 (b) Each commissioner may request and, upon request, shall  
17 be provided with the services of a staff attorney and a  
18 researcher to assist the commissioner in drafting, preparing  
19 revisions, or suggesting approaches to pending decisions and  
20 orders. Attorney/client privilege shall exist between the  
21 commissioner and the staff attorney until, and if, the work



1 product is shared with other commissioners. No commissioner  
2 shall request staff assistance on non-commission-related work.  
3 Staff attorneys and researchers provided pursuant to this  
4 section may be selected from the commission's current staff  
5 allotment. The chairperson shall not refuse to provide a  
6 commissioner with the services of a staff attorney or researcher  
7 pursuant to this section.

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

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



1 remuneration from, any public utility shall serve as chief  
2 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 department of commerce and  
4 consumer affairs and the department of human resources  
5 development to develop clearly defined duties and  
6 responsibilities for public utilities 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, pursuant to  
14 section 269-2, Hawaii Revised Statutes, as amended by section 4  
15 of this Act, to the public utilities commission. One of the new  
16 commissioners shall serve an initial term of four years, and the  
17 other new commissioner shall serve an initial term of six years,  
18 to provide for the expiration of terms on a staggered basis. By  
19 July 1, 2019, the public utilities commission shall be composed  
20 of five commissioners who shall reflect the requisite diversity  
21 of background, experience, gender, and residency, as required by



1 section 269-2, Hawaii Revised Statutes, as amended by section 4  
2 of this Act.

3 SECTION 8. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect on July 1, 2050;  
6 provided that section 4 of this Act shall take effect on  
7 January 1, 2019.



**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 1/1/2019, increasing the number of commissioners to 5; 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. Effective 7/1/2050.  
(SD2)

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

