

## ACT 165

H.B. NO. 2359-76

A Bill for an Act Relating to the Public Utilities Commission and Making an Appropriation Therefor.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“Sec. 269-2 Public utilities commission; number, appointment of commissioners, qualifications; compensation; persons having interest in public utilities.** There shall be a public utilities commission of three members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. All members shall be appointed for terms of six years each, except that the terms of the members first appointed shall be for two, four, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member to be chairman of the commission. Each member shall hold office until his successor is appointed and qualified. Section 26-34 shall not be applicable insofar as it relates to the number of terms and consecutive number of years a member can serve on the commission; provided that no member shall serve more than twelve consecutive years.

In appointing commissioners, the governor shall select persons who have had experience in accounting, business, engineering, government, finance, law, or other similar fields. The commissioners shall devote full time to their duties as

members of the commission and no commissioner shall hold any other public office or other employment during his term of office. No person owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility shall be appointed a commissioner.

The chairman of the commission shall be paid a salary the same as the salary of circuit court judges. Each of the other commissioners shall be paid a salary at the rate of ninety-five per cent of the chairman's salary. The commissioners shall be exempt from chapters 76 and 77 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87.

The commission is placed within the department of budget and finance for administrative purposes."

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

**"Sec. 269-3 Employment of assistants.** (a) The chairman of the public utilities commission may appoint and employ such clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as he finds necessary for the performance of the commission's functions and define their powers and duties. The chairman may appoint and at pleasure dismiss a chief administrator and, notwithstanding section 103-3, an attorney independent of the attorney general who shall act as attorney for the commission, and define their powers and duties and fix their compensation. The chief administrator and attorney shall be exempt from chapters 76 and 77. Other employees, except the public utilities commission assistants, shall be appointed as may be needed by the chairman in accordance with chapters 76 and 77.

(b) For each county with a population less than 100,000, the chairman of the public utilities commission shall appoint a person who shall be designated a public utilities commission assistant, who shall reside in the county to which he is appointed and who shall be exempt from chapters 76 and 77.

The public utilities commission assistant shall report directly to the public utilities commission and shall be responsible for receiving complaints from consumers and meeting with the public utilities and transportation companies in their respective counties. In the event such complaints cannot be resolved to the satisfaction of the assistant, he shall report the matter directly to the public utilities commission. The assistant shall make arrangements for and be present at all public hearings called by the public utilities commission within the respective counties.

The chairman of the commission may direct the public utilities commission assistant of the respective counties to inquire into the operations, operating rights, rates, or direct inquiry and investigation into public utilities or transportation activities regulated under governing statutes, or hold conferences with the parties involved and submit a written report of the results of such inquiry or investigation to the commission setting forth his findings of fact and recommendations of the subject matter and serve a copy upon the person, public utility, or transportation company.

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

SECTION 3. Section 269-4, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 269-5, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 269-5 Annual report and register of orders.** The public utilities commission shall prepare and present to the governor, through the director of finance in the month of January in each year a report respecting its actions during the preceding fiscal year. This report shall include summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements, and rates; utility company performance in terms of efficiency and quality of services rendered; environmental matters having a significant impact upon public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission’s recommendations respecting legislation and other matters requiring executive and legislative consideration. Copies of the annual reports shall be furnished by the governor to the legislature. In addition, the commission shall establish and maintain a register of all its orders and decisions, which shall be open and readily available for public inspection, and no order or decision of the commission shall take effect until it is filed and recorded in this register.”

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

“**Sec. 269-6 General powers and duties.** The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter.

The chairman of the commission may appoint one of its members as a hearings officer to hear and decide any proceeding before it other than a proceeding involving the rates or any other matters covered in the tariffs filed by the public utilities. The hearings officer shall have the power to take testimony, make findings of fact and conclusions of law and recommend a decision; provided that the findings of fact, the conclusions of law and the recommended decision shall be reviewed and approved by the commission after notice to the parties and an opportunity to be heard. The hearings officer shall have all of the powers conferred upon the public utilities commission under section 269-10.”

SECTION 6. Section 269-15, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 269-15 Commission may institute proceedings to enforce chapter.** If the public utilities commission is of the opinion that any public utility is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission, or of any provisions of its franchise, charter, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to insure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing inform the public utility and may institute such proceedings before it as may be necessary to require the utility to correct any such deficiency. In such event, the commission may by order direct the director of regulatory agencies to appear in such proceeding, to carry out the purposes of this section. The commission may examine into any of the matters referred to in section 269-7, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of any such court or other body.”

SECTION 7. Section 26-8, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 26-8 Department of budget and finance.** The department of budget and finance shall be headed by a single executive to be known as the director of finance.

The department shall undertake the preparation and execution of the executive budget of the state government; conduct a systematic and continuous review of the finances, organization, and methods of each department of the State to assist each department in achieving the most effective expenditure of all public funds and to determine that such expenditures are in accordance with the budget laws and controls in force; have custody of state funds and be responsible for the safekeeping, management, investment, and disbursement thereof; and administer state debts.

The functions and authority heretofore exercised by the bureau of the budget (except for insurance management, surplus property management, and central purchasing transferred to the department of accounting and general services) and the funds custody, cash management, debt management, and administering of veterans loan functions of the treasurer as heretofore constituted are transferred to the department of budget and finance established by this chapter.

The employees retirement system as constituted by chapter 88 is placed within the department of budget and finance for administrative purposes. The functions, duties, and powers, subject to the administrative control of the director of finance, and the composition of the board of trustees of the employees retirement system shall be as heretofore provided by law.

The public utilities commission is placed within the department of budget and finance for administrative purposes only.”

SECTION 8. Section 26-9, Hawaii Revised Statutes, is amended to read

as follows:

**“Sec. 26-9 Department of regulatory agencies.** The department of regulatory agencies shall be headed by a single executive to be known as the director of regulatory agencies.

The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws, rules, and regulations governing the licensing and operation of, and register and supervise the conduct of trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

The board of examiners of abstract makers, board of accountants, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, collection agencies advisory board, contractors license board, board of dental examiners, board of registration for professional engineers, architects, and surveyors, board of massage, board of medical examiners, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, board of pharmacy, board of photography, board of detectives and guards, real estate commission, and board of veterinary examiners are placed within the department of regulatory agencies for administrative purposes.

Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of regulatory agencies, and the composition of each board and commission shall be as heretofore provided by law.

Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of regulatory agencies subject only to applicable personnel laws.

The director of regulatory agencies may appoint a hearings officer or officers to hear and decide any case or controversy regarding licenses and the application and enforcement of rules and regulations involving any of the boards or commissions within the department of regulatory agencies. The hearings officer or officers shall have power to hear testimony, find facts, and make conclusions of law and a recommended decision; provided, that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be upon the facts found by the hearings officer or officers and upon such additional facts as may be heard by the reviewing officer, board, or commission. Decisions of the officer, board, or commission may in turn be appealed in the manner heretofore provided by law.

The functions and authority heretofore exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as heretofore constituted are transferred to the department of regulatory agencies established by this chapter. The director of regulatory agencies shall also be the insurance commissioner, commissioner of securities, and the fire marshal of the State.”

SECTION 9. For the handling of dockets pending upon the effective date of this Act, the public utilities commission appointed pursuant to this Act, may appoint as hearing officer or officers without regard to the eight-year, two-term restriction of section 26-34, Hawaii Revised Statutes, one or more of the commissioners who held office prior to the effective date of this Act to continue hearing applications that were filed prior to the effective date of this Act. A person who is appointed a commissioner after the effective date of this Act shall not be precluded from serving as a hearing officer under this section. The hearing officer shall have the powers as provided in section 269-6, Hawaii Revised Statutes, and shall prepare his decisions in accordance with that section. Hearing officers appointed pursuant to this transition section may hear proceedings involving the rates or any other matters covered in the tariffs filed by the public utilities, notwithstanding the limitations of section 269-6, Hawaii Revised Statutes. Hearing officers appointed under this section shall receive compensation at the rate of \$50 a day while actually engaged in the performance of their duties and such reasonable travelling expenses as may be incurred in the discharge of their duties.

SECTION 10. There is appropriated from the general revenues of the State of Hawaii, not otherwise appropriated, the sum of \$385,252(16) or so much thereof as may be necessary, for the purposes of this Act. The director of regulatory agencies shall, upon approval by the governor, transfer from the amount appropriated to REG 103 by Act 195, Session Laws of Hawaii 1975, the sum of \$94,305(1) to the department of finance to be used for the purposes of this Act.

SECTION 11. Employees serving on the public utilities commission staff on loan or otherwise on the effective date of this Act shall become civil service employees as of such date without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination.

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 13. This Act shall take effect on June 1, 1976.

(Approved May 28, 1976.)

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\*Edited accordingly.