

**Report to the Twenty-Fourth Legislature
2007 Regular Session**

Pursuant to
Act 143, Session Laws of Hawaii 2006

**Report of the Comprehensive Review of the Division of
Consumer Advocacy, Department of Commerce and
Consumer Affairs**

**Department of Commerce and Consumer Affairs
State of Hawaii**

December 2006

I. Introduction

Act 143, Session Laws of Hawaii 2006 (“Act 143”), requested that the Division of Consumer Advocacy (“Division”) conduct an in-depth review of its organization to develop a comprehensive plan to restructure and supplement the Division’s resources to allow the Division to function more effectively and efficiently. Act 143 also required: (1) the filing of this report, specifying the specific types and numbers of positions, and the amounts necessary to restructure the Division and supplement its resources; and (2) the proposal of necessary legislation.

II. Positions

A. Current Organizational Structure of the Division

The Division consists of twenty-three employees, ranging from an administrator, a secretary, a utilities/transportation officer, a utilities/transportation specialist, Integrated Resource Planning (“IRP”), telecommunications, and education specialists, an economist, statisticians, a tariff analyst, auditors, engineers, attorneys, and clerical support. See organizational chart, attached. Only fourteen of the twenty-three positions are currently filled.

The majority of the Division’s professional staff is divided among the Financial Analysis Branch, the Economics and Pricing Branch, the Engineering Branch, and the Legal Branch.

The *Financial Analysis Branch* examines and analyzes the financial accounts, records and transactions of public utility and transportation companies under differing financial and operational assumptions. This data is utilized in developing projections and determining the reasonableness of companies’ operating expenses and rate base for rate-setting purposes. The Branch also reviews current accounting pronouncements to ensure that the financial information presented by the regulated companies is appropriate.

The *Economics and Pricing Branch* reviews and analyzes economic conditions and trends, investor requirements and returns, and other aspects relating to the capital structure of regulated public utilities and transportation companies. In addition, the Branch evaluates and develops recommendations relating to rate schedules, effects of rates, sales levels, and other pertinent considerations in establishing rates.

The *Engineering Branch* analyzes and makes recommendations on technical matters such as production capacity and efficiency, depreciation allowances, maintenance cost factors, engineering safety standards, plans for capital improvements, purchased power agreements, and quality of service standards.

The *Legal Branch* provides legal representation before regulatory agencies. The branch also provides general clerical support by updating and maintaining the Division’s docket, general office, and electronic data base files, formatting draft documents prepared

by the technical staff and attorneys for filing with regulatory agencies and utility companies, and maintaining the office library, among other things.

Although the Division is authorized to have four exempt positions, pursuant to HRS § 269-52(1), there presently is funding for only three exempt staff positions – the IRP Specialist, Telecommunications Specialist, and Education Specialist. The Division also has a staff level position – the Public Utilities/Transportation Specialist – that assists the Public Utilities/Transportation Officer in managing the overall workload pertaining to matters filed before the regulatory agencies such as the Public Utilities Commission (“PUC”) and Federal Communications Commission. The IRP Specialist primarily focuses on filings pertaining to the electric companies, and has primary responsibility for reviewing the integrated resource plans and related demand-side management program applications. The Telecommunications Specialist primarily focuses on filings pertaining to the telecommunications industry. The Education Specialist is responsible for consumer education and outreach, which is accomplished by attending various community events throughout the State to gain public input about specific issues affecting consumers and to provide information on utility services. The Education Specialist is also responsible for updating and maintaining the Division’s web site.

B. Current Staffing Levels

As stated above, only fourteen of the Division’s twenty-three positions are filled, six of which have been filled by occupants who have been with the Division for one year or less. As discussed in Act 143 and evidenced by the difficulty we have experienced in filling vacant positions, the Division currently has challenges in timely meeting its statutory mandate of representing, protecting, and advancing utility consumers’ interest with the current staffing level. To complete its work, the Division relies heavily on: (1) the skeleton staff’s willingness, due to their professionalism and dedication, to do whatever it takes to complete the analysis within the prescribed time allotted (without requesting compensation for hours that may exceed the standard work week); (2) outside consultants for assistance with work that could otherwise be conducted by the current professional staff, but for the excess workload that must be distributed among the few staff members; (3) the focus on utility dockets and de-emphasis of most motor carrier matters; and (4) the PUC’s approval of numerous requests for extension of time to complete filings when there simply are not enough hours in the day to complete all that is required within the established procedural schedules.

The Division’s immediate staffing dilemma results from the Division’s historic struggle with attracting and retaining professional staff to assist in the development of the evidentiary record before the PUC. The Division has difficulty hiring qualified analysts for a number of reasons.

First, the work itself is highly specialized and complex. Utility regulation requires much study to become proficient. Such proficiency is necessary to identify potential issues or concerns with the utilities’ requests before the PUC, and to develop analysis to support the stated concern and the recommendation to be presented on the Division’s behalf for the PUC’s consideration. In identifying the issues, the analysts

must be able to detect data presented in the utility's filing that may support a differing conclusion from that presented by the utility in support of the utility's request. In addition, institutional knowledge of prior applications is necessary since understanding builds from other filings. For example, a rate application may represent the accumulation of several applications filed by a utility over the past few years. The work requirements are great, since the Division, as a party to PUC proceedings, is required to develop an evidentiary record for the PUC and to proffer its analysts for cross-examination by applicants' attorneys.

Second, the current staff position descriptions are not appropriately aligned with the work of the Division's professional staff, so applicant expectations are not in sync with job duties. For example, several of the positions are identified as Auditor positions. While the skills required to perform the analysis stem from a foundation in auditing, the work itself is not auditing in the strict sense. Rather, the work is akin to budget or financial analysis, which is very different from basic auditing.

Third, the pay is grossly inadequate, given the kind of work and skill set required to complete the analyses undertaken in the normal course of work at the Division, especially when compared with identical work done by staff working at private utility companies. This makes it difficult to attract potentially qualified individuals since the Division competes with the private sector for the same qualified individuals with the requisite knowledge of public utility regulation.

Finally, specialized training to expose professional staff to all aspects (electric, gas, water, wastewater, telecommunications regulation) of utility regulation is required, since the Division is involved in all utility matters. There is limited opportunity to specialize in any one aspect of utility regulation, or in a specific industry, especially given the limited number of technical staff positions and the need to ensure continuity and dissemination of institutional knowledge should an individuals leave the Division.

By statute, the Division is an automatic party to each and every docket opened at the PUC. The Division's workload, therefore, runs parallel to that of the PUC's, although the Division's work must be completed well in advance of the PUC's, since the Division develops the record for the PUC's consideration. By way of comparison, the PUC has more than thirty employees.

The workload has been heavy, and is not expected to decrease (over the last five years, the number of dockets before the PUC ranged from approximately 714 to 817 each year, with approximately 57% to 70% of the dockets completed each year). With the passage of recent legislation, the PUC has several generic proceedings that deal with matters pertaining to utilities within a specific industry. These generic proceedings require careful consideration as the outcome results in the establishment of policy as to how various statutory provisions are to be executed. In addition, a number of complex rate increase dockets are pending or due to be filed by the end of the year, including the pending application for a general rate increase filed by Hawaii Electric Light Company, Inc. and the expected applications for general rate increases to be filed by Hawaiian

Electric Company, Inc., Maui Electric Company, Limited, and Young Brothers, Limited. In addition, the PUC was charged with increased petroleum monitoring, which the Division must also review.

C. Proposed Reorganization

The Division is working with the Department of Budget and Finance and the Department of Human Resources Development to reorganize the Division to more closely correlate the actual work of the professional staff of the Division with the descriptions of such work, and to provide those positions with, where reasonable and equitable, more compensation to attract qualified applicants to the Division.

The Division proposes to amend its structure to: (1) create a Research Branch, to house its exempt positions; and (2) create a Rate Analysis Branch, to be comprised of Rate Analysts. These re-descriptions and re-classifications are sought to provide the Division with greater compensation flexibility and to closely align the position duties with the position descriptions. See Draft Organizational Chart after Reorganization, attached.

1. Research Branch

The Division proposes to re-describe its Integrated Resource Planning Analyst, its Telecommunications Analyst, and its four Auditor positions as Researchers. In addition, the Division would like to add two more exempt Researcher positions. To fund the two additional positions, the Division has requested an appropriation of \$168,000 (or \$60,000 per person, plus fringe benefits equal to 40% of the salary). The total of eight positions would allow for one person to act in a supervisory role, and the others to address proceedings in the following general areas: energy, water and wastewater, telecommunications, and petroleum.¹

To complete this reorganization, the Division requested an increase in the total number of exempt positions it may employ from four to ten.

It has been difficult to recruit and retain individuals for the Integrated Resource Planning Analyst position and for the Auditor positions, as currently described, since there is little correlation between the job's duties and job description. As an example, the Division's "Auditors" do not "audit" a utility or its application, since auditing generally implies the verification of historical transactions using an applicable generally accepted financial accounting standard or principle. Instead, these "Auditors" forecast operating results and determine whether the information presented by the utility in support of the utility's forecast is complete, what the impact of such request may be, and whether the request, given all of the totality of the circumstances, is reasonable. As a result, we propose to re-establish these "Auditors" as "Researchers."

¹As noted above, the Division also has an exempt Education Specialist, and one additional exempt position for which it does not have funding, which must be included in the total number of exempt positions allowed pursuant to section 269-52(1).

The Researchers' primary responsibility would be to assist with docketed and special, non-docketed projects before the PUC. As we envision them, Researchers would be responsible for, for example, assisting with analysis in rate case proceedings and generic, investigative proceedings, legislative tasks, petroleum monitoring, development and compliance with the Renewable Portfolio Standards, and researching new developments in utility regulation.

The exempt positions would allow the Division the ability to hire staff at salaries that are more competitive and flexible than those within the civil service system. It may also provide the Division with opportunities to move others, who are dissatisfied with the compensation offered by the civil service system, into more flexible, exempt positions rather than incurring the cost of losing a qualified individual, as has happened in the recent past. The Division would, of course, be careful to ensure equity in salary scale among all of its employees.

The Division believes it is important to have supervisory roles to allow professional staff the opportunity for upward mobility to ensure job satisfaction and personal growth.

2. Rate Analysis Branch

The Division proposes to re-describe the Economist, the Research Statisticians, and the Rate Analyst positions as a branch of all Rate Analysts. The Rate Analyst description most closely describes the work done by Division analysts completing examinations of applications for rate increases and tariff or rule amendments. There are dozens of applications, sometimes quite large (like the ones filed by Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited), that are filed each year by public utilities. These applications require close review of voluminous material filed by the utility in support of its request and disposition by the PUC within certain prescribed statutory deadlines. Such deadlines require the timely filings by the parties, including the Division pursuant to a procedural schedule established by the PUC.

The Division has encountered extreme difficulty in finding applicants who can both meet the current positions' minimum qualifications and have an understanding of or an aptitude for public utility regulation. The Rate Analysts' description, on the other hand, accurately describes the duties to be performed by the Division's staff in reviewing dockets, which are the "bread and butter" of utility regulation – the rate case.

The current structure almost prohibits any upward movement within this branch, which has served to discourage others from applying for or staying within the branch in the past. For example, the individual in the entry-level Rate Analyst position may not be able to apply for the Economist's supervisory position or pass the statistics test required to apply for the higher-rated Statistician position. The Statistician who does not also have an economics degree cannot move up to the Economist's supervisory role. For the reasons stated herein and above, the Division proposes to include a supervisor for this renamed branch within the same class, to encourage upward mobility.

III. Other Resources

The Division will request, via a supplemental budget request for next fiscal year, additional funds to enable professional staff to participate in specialized training seminars, since training to provide a general understanding of the subject matter and also to provide regular updates as the regulatory conditions change is necessary in this field.

In addition, the Division intends to submit an emergency appropriation this session to allow the Division to hire one or more consultants to assist with the investigation of the power outages experienced by Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited on October 15, 2006.

IV. Proposed legislation

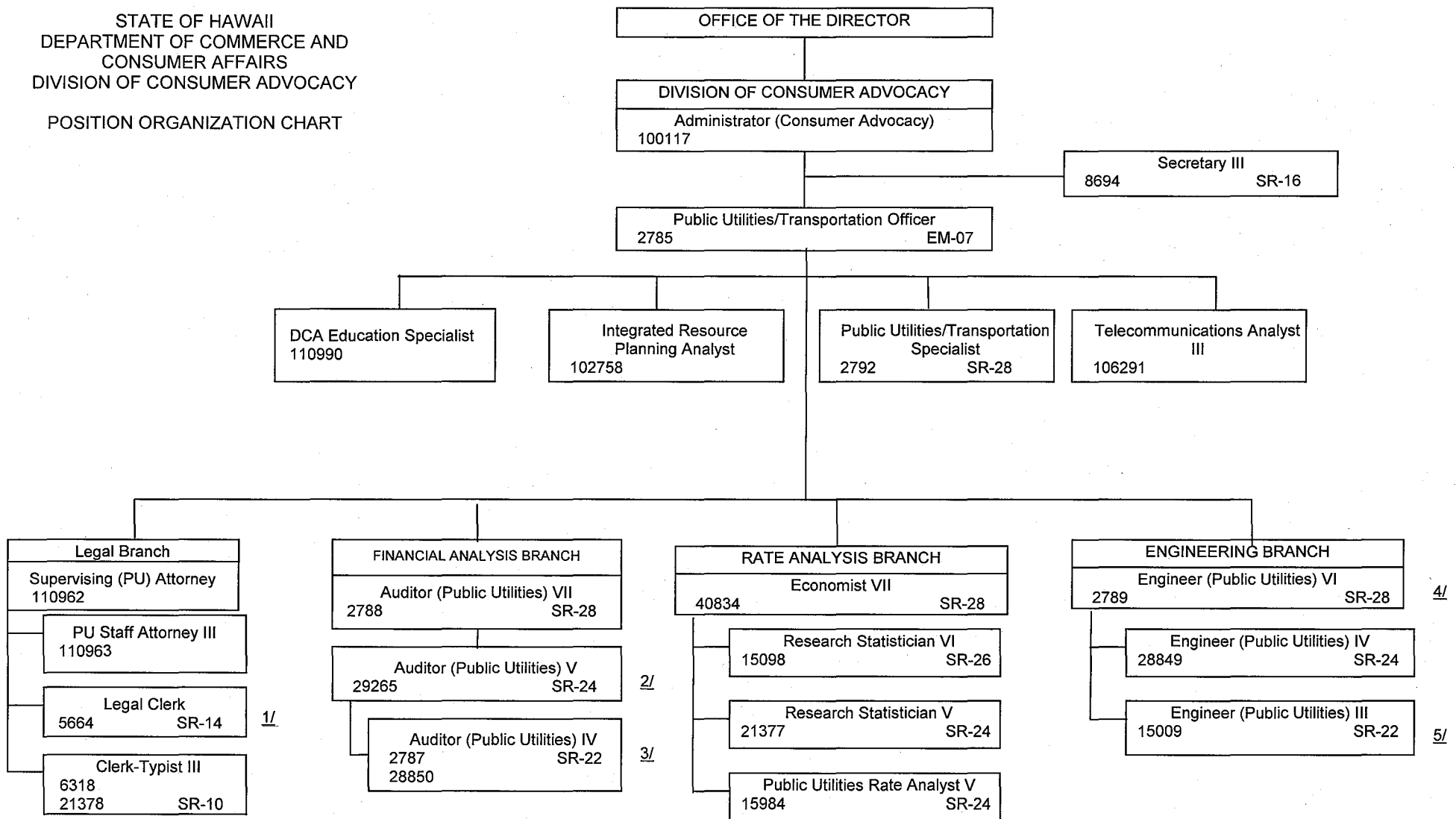
As stated above, the Division intends to propose two bills for consideration this session: (1) a Bill for an Act Relating to the Division of Consumer Advocacy, increasing the number of exempt positions within the Division from four to ten; and (2) a Bill for an Act Relating to an Emergency Appropriation for the Division of Consumer Advocacy, providing the Division with an appropriation in the amount of \$250,000 to hire one or more consultants to assist with the investigation of the power outages that occurred on the islands of Oahu, Maui, and Hawaii on October 15, 2006.

V. Contact Information

Should you have any questions or concerns about this report, please contact:

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STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
POSITION ORGANIZATION CHART



1/ Position reallocated from Clerk Typist IV, SR-12.

2/ Auditor (PU) VI, SR-26, Position No. 29265, temporarily downgraded to Auditor (PU) V, SR-24.

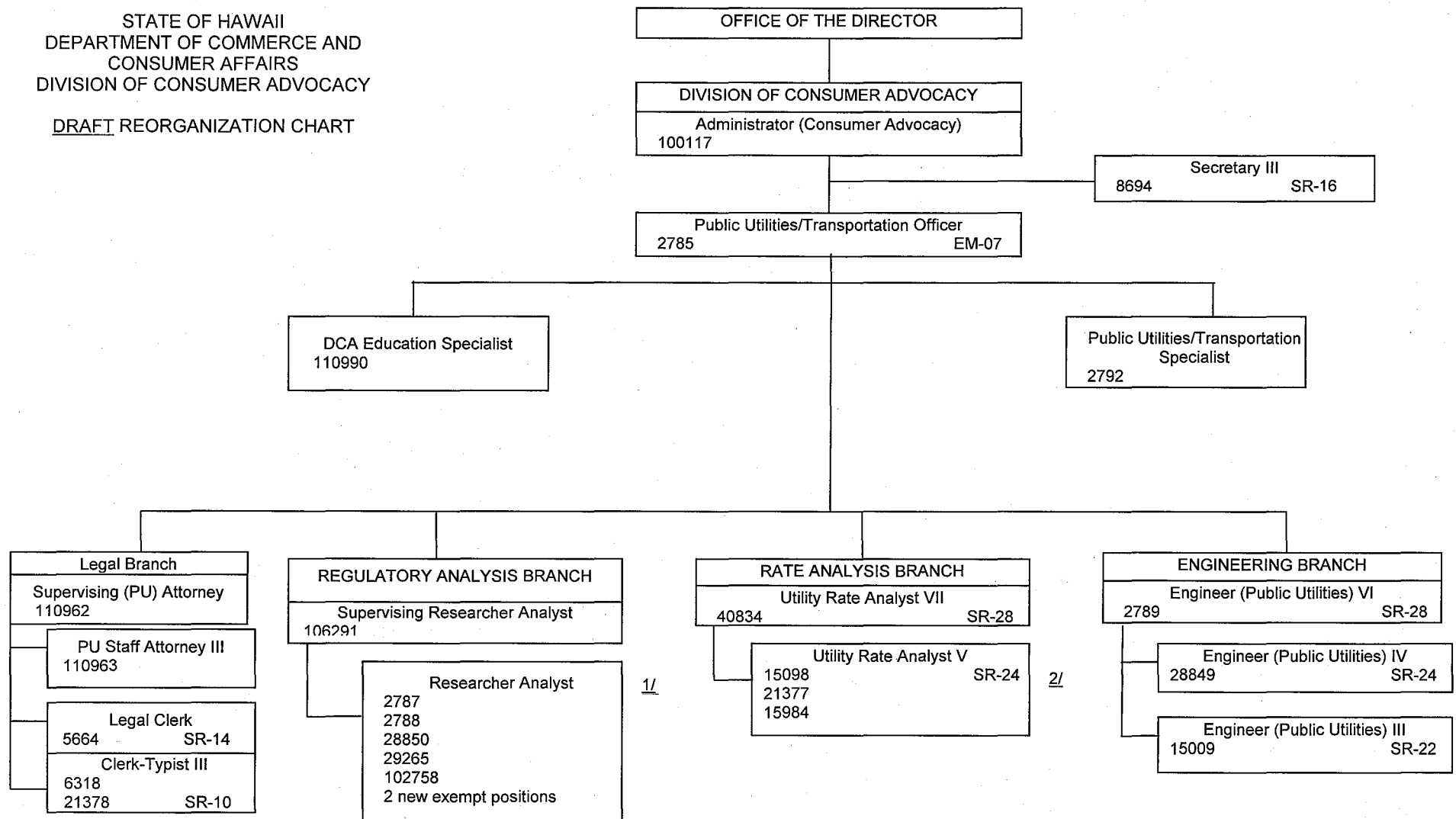
3/ Auditor (PU) V, SR-24, Position No. 2787 and 28850, temporarily downgraded to Auditor (PU) IV, SR-22.

4/ Engineer (PU) VI, SR-28, Position No. 2789, temporarily downgraded to Engineer (PU) V, SR-26.

5/ Engineer (PU) IV, SR-4, Position No. 15009, temporarily downgraded to Engineer (PU) III, SR-22.

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY

DRAFT REORGANIZATION CHART



1/ These positions are currently the IRP Analyst, Telecommunications Specialist, and Auditor positions. In addition, we are requesting that two more exempt positions be provided. The IRP Analyst and all of the Auditor positions are currently vacant. We propose to re-describe these positions as Researcher Analysts.

2/ This was the Economics and Pricing Branch. All of the current positions are currently vacant. We propose to re-describe these positions as Utility Rate Analysts.