
A BILL FOR AN ACT

RELATING TO REGULATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to address the
2 regulation of water and motor carriers. More specifically, this
3 Act:

4 (1) Creates a transportation carrier commission to
5 regulate water and motor carriers; and

6 (2) Removes these carriers from the jurisdiction of the
7 public utilities commission.

8 The legislature finds that the main objective of this Act
9 is to enable the public utilities commission to place more focus
10 on energy utility regulatory and renewable energy programs.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 TRANSPORTATION CARRIER COMMISSION

16 § -1 Definitions. For the purpose of this chapter:

17 "Commission" means the transportation carrier commission.



1 "Motor carrier" means a motor carrier subject to regulation
2 under chapter 271.

3 "Water carrier" means a water carrier subject to regulation
4 under chapter 271G.

5 § -2 Transportation carrier commission; number;
6 appointment of commissioners; qualifications; compensation;
7 persons having interest in carriers. (a) There shall be a
8 transportation carrier commission consisting of three members,
9 to be called commissioners, who shall be appointed in the manner
10 prescribed in section 26-34, except as otherwise provided in
11 this section. All members shall be appointed for terms of six
12 years each, except that the terms of the members first appointed
13 shall be for two, four, and six years, respectively, as
14 designated by the governor at the time of appointment. The
15 governor shall designate a member to be chairperson of the
16 commission. Each member shall hold office until the member's
17 successor is appointed and qualified. Section 26-34 shall not
18 apply insofar as it relates to the number of terms and
19 consecutive number of years a member may serve on the
20 commission; provided that no member shall serve more than twelve
21 consecutive years.



1 In appointing commissioners, the governor shall select
2 persons who have had experience in accounting, business,
3 engineering, government, finance, law, or other similar fields.
4 The commissioners shall devote full time to their duties as
5 members of the commission and no commissioner shall hold any
6 other public office or other employment during the
7 commissioner's term of office. No person owning any stock or
8 bonds of any water or motor carrier or having any interest in or
9 deriving any remuneration from any such carrier shall be
10 appointed a commissioner.

11 (b) The chairperson of the commission shall be paid a
12 salary set at eighty-seven per cent of the salary of the
13 director of human resources development, and each of the other
14 commissioners shall be paid a salary equal to ninety-five per
15 cent of the chairperson's salary. The commissioners shall be
16 exempt from chapters 76 and 89 but shall be members of the state
17 employees retirement system and shall be eligible to receive the
18 benefits of any state or federal employee benefit program
19 generally applicable to officers and employees of the State,
20 including those under chapter 87A.

21 (c) The commission is placed within the department of
22 budget and finance for administrative purposes.



1 § -3 **Employment of assistants.** (a) The chairperson of
2 the transportation carrier commission may appoint and employ
3 clerks, stenographers, agents, engineers, accountants, and other
4 assistants for the commission as the chairperson finds necessary
5 for the performance of the commission's functions and define
6 their powers and duties. The chairperson may appoint and, at
7 pleasure, dismiss a chief administrator and hearings officers as
8 may be necessary. Notwithstanding section 103D-209, the
9 chairperson shall appoint one or more attorneys independent of
10 the attorney general who shall act as attorneys for the
11 commission and define their powers and duties and fix their
12 compensation. Administrators, analysts, research assistants,
13 economists, legal secretaries, legal assistants, and enforcement
14 officers may be appointed with or without regard to chapter 76.
15 Other employees shall be appointed as may be needed by the
16 chairperson in accordance with chapter 76.

17 (b) Notwithstanding section 91-13, the commission may
18 consult with its staff appointed under authority of this section
19 in any contested case or agency hearing concerning any issue of
20 facts. Neither the commission nor any of its staff, in a
21 proceeding, shall consult with any other person or party, except
22 upon notice and an opportunity for all parties to participate,



1 except to the extent required for the disposition of ex parte
2 matters authorized by law.

3 § -4 **Annual report.** The transportation carrier
4 commission shall prepare and present to the governor in January
5 of each year, through the director of finance, a report
6 regarding its actions during the preceding fiscal year. This
7 report shall include:

- 8 (1) Summary information and analytical, comparative, and
9 trend data concerning major regulatory issues acted
10 upon and pending before the commission;
- 11 (2) Environmental matters having a significant impact upon
12 carriers;
- 13 (3) Actions of the federal government affecting the
14 regulation of carriers in Hawaii;
- 15 (4) Long- and short-range plans and objectives of the
16 commission; and
- 17 (5) The commission's recommendations regarding legislation
18 and other matters requiring executive and legislative
19 consideration.

20 Copies of the annual reports shall be furnished by the governor
21 to the legislature.



1 § -5 Investigative powers. (a) The transportation
2 carrier commission and each commissioner shall have power to
3 examine:

- 4 (1) The condition of each water or motor carrier;
- 5 (2) How a carrier operates with respect to the safety or
6 accommodation of the public;
- 7 (3) The safety, working hours, and wages of the carrier's
8 employees;
- 9 (4) A carrier's fares and rates;
- 10 (5) The value of a carrier's physical property;
- 11 (6) A carrier's issuance of stocks and bonds and the
12 disposition of proceeds;
- 13 (7) The amount and disposition of a carrier's income;
- 14 (8) All of a carrier's financial transactions;
- 15 (9) A carrier's business relations with other persons,
16 companies, or corporations;
- 17 (10) A carrier's compliance with all applicable state and
18 federal laws and with the provisions of its franchise,
19 charter, and articles of association, if any;
- 20 (11) A carrier's classifications, rules, regulations,
21 practices, and service; and



1 (12) All matters of every nature affecting the relations
2 and transactions between a carrier and the public,
3 persons, or corporations.

4 (b) The commission may investigate any person acting in
5 the capacity of or engaging in the business of a water or motor
6 carrier within the State, who does not have a certificate of
7 public convenience and necessity or other authority previously
8 obtained under and in compliance with this chapter or the rules
9 adopted under this chapter.

10 (c) Any investigation may be made by the commission on its
11 own motion, and shall be made when requested by a water or motor
12 carrier to be investigated, or by any person upon a sworn
13 written complaint to the commission, setting forth any prima
14 facie cause of complaint. A majority of the commission shall
15 constitute a quorum.

16 § -6 Notice. Whenever an investigation is undertaken by
17 the transportation carrier commission, reasonable notice in
18 writing of the investigation and of the subject or subjects to
19 be investigated shall be given to the carrier or the person
20 concerned, and when based upon complaints made to it as
21 prescribed in section -5, a copy of the complaint, and a
22 notice in writing of the date and place fixed by the commission



1 for beginning the investigation, shall be served upon the
2 carrier or the person concerned, or other respondent and the
3 complainant not less than two weeks before the date designated
4 for the hearing.

5 § -7 Commission may institute proceedings to enforce
6 chapter. (a) If the transportation carrier commission believes
7 that:

8 (1) Any carrier or person is violating or neglecting to
9 comply with any provision of this chapter, chapter
10 271, or chapter 271G or any rule, order, or other
11 requirement of the commission, or of any provisions of
12 its franchise, charter, or articles of association, if
13 any;

14 (2) Changes, additions, extensions, or repairs are
15 desirable in its plant or service to meet the
16 reasonable convenience or necessity of the public or
17 to insure greater safety or security;

18 (3) Any rates, fares, classifications, charges, or rules
19 are unreasonable or unreasonably discriminatory; or

20 (4) A carrier is violating this chapter by commission or
21 omission of an act,



1 the commission shall notify the carrier or person in writing and
2 may institute any proceedings before it that may be necessary to
3 require the carrier or person to correct any deficiency. Upon
4 notice, the commission may direct the director of commerce and
5 consumer affairs to appear in any proceeding and carry out the
6 purposes of this section. The commission may examine any of the
7 matters referred to in this section, notwithstanding that the
8 matter may be within the jurisdiction of any court or other
9 body; provided that this section shall not be construed in any
10 manner to limit or otherwise affect the jurisdiction of any
11 court or other body.

12 (b) In addition to any other remedy available, the
13 commission or its enforcement officer may issue citations to any
14 person acting in the capacity of or engaging in the business of
15 a water or motor carrier within the State without having a
16 certificate of public convenience and necessity or other
17 authority previously obtained under and in compliance with this
18 chapter or rules as follows:

19 (1) The citation may contain an order of abatement and an
20 assessment of civil penalties as provided in chapter
21 271 or 271G, as applicable. All penalties collected
22 under this subsection shall be deposited into the



1 transportation carrier commission special fund.

2 Service of a citation issued under this subsection
3 shall be made by personal service whenever possible,
4 or by certified mail, restricted delivery, sent to the
5 last known business or residence address of the person
6 cited;

7 (2) Any person served with a citation under this
8 subsection may submit a written request to the
9 commission for a hearing, within twenty days from the
10 receipt of the citation, with respect to the
11 violations alleged, the scope of the order of
12 abatement, and the amount of civil penalties assessed.

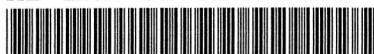
13 If the person cited under this subsection timely
14 notifies the commission of the request for a hearing,
15 the commission shall afford an opportunity for a
16 hearing under chapter 91. The hearing shall be
17 conducted by the commission or the commission may
18 designate a hearings officer to hold the hearing;

19 (3) If the person cited under this subsection does not
20 submit a written request to the commission for a
21 hearing within twenty days from the receipt of the
22 citation, the citation shall be deemed a final order



1 of the commission. The commission may apply to the
2 appropriate court for a judgment to enforce the
3 provisions of any final order issued by the commission
4 or designated hearings officer pursuant to this
5 subsection, including the provisions for abatement and
6 civil penalties imposed. In any proceeding to enforce
7 the provisions of the final order of the commission or
8 designated hearings officer, the commission need only
9 show that the notice was given, a hearing was held, or
10 the time granted for requesting the hearing has run
11 without such a request, and a certified copy of the
12 final order of the commission or designated hearings
13 officer;

14 (4) If any party is aggrieved by the decision of the
15 commission or the designated hearings officer, the
16 party may appeal to the intermediate appellate court,
17 subject to chapter 602, in the manner provided for
18 civil appeals from the circuit court; provided that
19 the operation of an abatement order shall not be
20 stayed on appeal unless specifically ordered by a
21 court of competent jurisdiction after applying the
22 stay criteria enumerated in section 91-14(c). The



1 sanctions and disposition authorized under this
2 subsection shall be separate and in addition to all
3 other remedies, either civil or criminal, provided in
4 any other applicable law.

5 The commission may adopt rules in accordance with chapter 91 as
6 may be necessary to fully effectuate this subsection.

7 § -8 Appeals. An appeal from an order of the
8 transportation carrier commission under this chapter shall lie,
9 subject to chapter 602, in the manner provided for civil appeals
10 from the circuit courts. Only a person aggrieved in a contested
11 case proceeding provided for in this chapter may appeal from the
12 order if the order is final, or if preliminary, is of the nature
13 defined by section 91-14(a). The commission may elect to be a
14 party to all matters from which an order of the commission is
15 appealed, and the commission may file appropriate responsive
16 briefs or pleadings in the appeal; provided that where there was
17 no adverse party in the case below, or in cases where there is
18 no adverse party to the appeal, the commission shall be a party
19 to all matters in which an order of the commission is appealed
20 and shall file the appropriate responsive briefs or pleadings in
21 defending all such orders. The appearance of the commission as
22 a party in appellate proceedings in no way limits the



1 participation of persons otherwise qualified to be parties on
2 appeal. The appeal shall not of itself stay the operation of
3 the order appealed from, but the appellate court may stay the
4 order after a hearing upon a motion therefor and may impose
5 conditions it deems proper, including but not limited to
6 requiring a bond, requiring that accounts be kept, or requiring
7 that other measures be taken as ordered to secure restitution of
8 the excess charges, if any, made during the pendency of the
9 appeal, in case the order appealed from is sustained, reversed,
10 or modified in whole or in part.

11 **§ -9 Alternative dispute resolution.** The commission may
12 require the parties in any matter before the commission to
13 participate in nonbinding arbitration, mediation, or other
14 alternative dispute resolution process prior to the hearing.

15 **§ -10 Relations with an affiliated interest; definition;**
16 **contracts with affiliates filed and subject to commission**
17 **action.** (a) For purposes of this section, "affiliated
18 interests" with a water or motor carrier includes the following:
19 (1) Every person owning or holding, directly or
20 indirectly, ten per cent or more of the voting
21 securities of a carrier, and every person having
22 ownership of ten per cent or more of voting securities



1 of a person owning ten per cent or more of the voting
2 securities of a carrier;

3 (2) Every corporation, ten per cent or more of whose
4 voting securities is owned by any person owning ten
5 per cent or more of the voting securities of a
6 carrier;

7 (3) Every person who is an officer or director of a
8 carrier; and

9 (4) Every corporation operating a carrier or providing
10 engineering, accounting, legal, or similar service to
11 carriers, that has three or more officers or three or
12 more directors in common with another carrier, and
13 every other corporation that has directors in common
14 with a carrier where the number of common directors is
15 more than one-third of the total number of the
16 carrier's directors.

17 (b) The purpose of this section is to encourage motor and
18 water carriers to obtain their services, supplies, and equipment
19 by relying, to the extent practicable, on competitive
20 procurement practices; provided that when companies obtain their
21 services, supplies, and equipment from affiliated interests, the
22 contracts and agreements between the carrier and its affiliates



1 shall be shown by clear and convincing evidence to be in
2 furtherance of the interests of the public.

3 (c) No contract or agreement providing for the furnishing
4 of management, supervisory, construction, engineering,
5 accounting, legal, financial, or similar services, and no
6 contract or agreement for the purchase, sale, lease, furnishing,
7 or exchange of any real or personal property rights, including
8 but not limited to real estate, improvements on land, equipment,
9 leasehold interests, easements, rights-of-way, franchises,
10 licenses, permits, trademarks, and copyrights, made or entered
11 into after July 1, 2010, between a carrier and any affiliated
12 interest shall be valid or effective unless and until the
13 contract or agreement has been received by the commission. It
14 shall be the duty of every carrier to file with the commission a
15 verified copy of any contract or agreement with an affiliate
16 having a face value of at least \$300,000, or a verified summary
17 of any unwritten contract or agreement having a face value of at
18 least \$300,000, within forty-five days of the effective date of
19 the contract or agreement. Each contract or agreement between a
20 carrier and an affiliate for capital expenditures other than for
21 real property or an interest therein, shall be accompanied by
22 price quotations provided by at least two nonaffiliated



1 suppliers, providers, or purveyors, or if the price quotations
2 cannot be obtained without substantial expense to the carrier,
3 the carrier shall verify that fact by affidavit; provided that:

4 (1) All contracts or agreements effective at the time of a
5 general rate proceeding that were discoverable and
6 subject to review by the commission shall be valid and
7 not subject to subsequent regulatory review and action
8 by the commission; and

9 (2) Notwithstanding any other provision to the contrary,
10 there shall be no transfer of real property, or
11 interest in real property, between a carrier and an
12 affiliate without prior approval of the commission,
13 after hearing, wherein the carrier shall show that the
14 transfer is in the best interest of the carrier and
15 all of its customers.

16 No affirmative action shall be required by the commission
17 in regards to the filing of the contract or agreement; provided,
18 however, that if the commission, in its discretion, determines
19 that the terms and conditions of the contract or agreement are
20 unreasonable or otherwise contrary to the public interest, the
21 commission shall notify the carrier of its determination,
22 whereupon the carrier shall have the option to alter, revise,



1 amend, or terminate the contract or agreement, or assume the
2 risk that future payments for performance of the contract or
3 agreement may be deemed unreasonable and excluded by the
4 commission for ratemaking purposes.

5 (d) In any proceeding, whether upon the commission's own
6 motion or upon application or complaint, involving the rates or
7 practices of any carrier, the commission may exclude from the
8 accounts of the carrier any payment or compensation to an
9 affiliated interest for any services rendered or property or
10 service furnished, as described in this section, under existing
11 contracts or agreements with the affiliated interest unless the
12 carrier shall establish by clear and convincing evidence the
13 reasonableness of the payment or compensation.

14 (e) The commission shall have continuing supervisory
15 control over the terms and conditions of the contracts and
16 agreements so far as necessary to protect and promote the public
17 interest. The commission shall have the same jurisdiction over
18 modifications of or amendments to contracts or agreements as it
19 has over original contracts or agreements. The fact that the
20 carrier may have entered into contracts or agreements without
21 submittal of documents to the commission shall not preclude
22 disallowance or disapproval of payments made pursuant thereto,



1 for ratemaking purposes if, upon actual experience under the
2 contracts or agreements, it appears that the payments provided
3 for or made are or were unreasonable. Every contract or
4 agreement shall be expressly conditioned upon the reserved power
5 of the commission to take appropriate ratemaking actions if, and
6 as necessary, subsequent to submittal of the contract or
7 agreement in order to protect and promote the public interest.

8 (f) Whenever the commission discovers that any carrier is
9 giving effect to any contract or agreement without the contract
10 or agreement having been received by the commission for review,
11 as required by this section, the commission shall issue an order
12 to the carrier to show cause why the carrier should not cease
13 making any payments or otherwise giving any effect to the terms
14 of the contract or agreement, and the carrier shall have the
15 opportunity to show with clear and convincing evidence that the
16 contract or agreement is in the best interest of the carrier and
17 all of its customers.

18 (g) This section shall not apply to transactions with
19 affiliated interests where the total consideration involved in a
20 transaction is less than \$300,000 for any calendar year;
21 provided that:



1 (1) Multiple payments under any contract or agreement
2 shall be added together for purposes of construing
3 this provision; and

4 (2) This section shall apply to any contract or agreement
5 structured specifically to avoid regulation under this
6 section.

7 § -11 Penalty. (a) Any carrier violating, neglecting,
8 or failing in any way to conform to or comply with this chapter,
9 chapter 271, or chapter 271G, or any lawful order of the
10 commission shall be subject to a civil penalty not to exceed
11 \$25,000 for each day the violation, neglect, or failure
12 continues, to be assessed by the commission after a hearing in
13 accordance with chapter 91. The commission may order the
14 carrier to cease carrying on its business while the violation,
15 neglect, or failure continues.

16 (b) Notwithstanding subsection (a), any person acting in
17 the capacity of or engaging in the business of a carrier in the
18 State without having a certificate of public convenience and
19 necessity or other authority previously obtained under and in
20 compliance with this chapter, chapter 271 or 271G, or their
21 implementing rules, may be subject to a civil penalty not to
22 exceed \$5,000 for each offense and, in the case of a continuing



1 violation, \$5,000 for each day that uncertificated activity
2 continues.

3 (c) Upon written application filed within fifteen days
4 after service of an order imposing a civil penalty pursuant to
5 this section, the commission may remit or mitigate the penalty
6 upon any terms that it deems proper.

7 (d) If any civil penalty imposed pursuant to this section
8 is not paid within the period that the commission may direct,
9 the attorney general shall institute a civil action for recovery
10 in circuit court.

11 § -12 **Perjury.** Any person who wilfully and knowingly
12 makes under oath any false statement in connection with any
13 investigation by or proceeding before the commission shall be
14 guilty of perjury and, upon conviction, shall be subject to the
15 penalty prescribed by law for the offense.

16 § -13 **Transportation carrier commission special fund.**

17 (a) There is established within the state treasury a
18 transportation carrier commission special fund to be
19 administered by the transportation carrier commission. The
20 proceeds of the fund shall be used by the commission and the
21 division of consumer advocacy of the department of commerce and
22 consumer affairs for all expenses incurred in the administration



1 of this chapter and chapters 271 and 271G; provided that the
2 expenditures of the commission shall be in accordance with
3 legislative appropriations. On a quarterly basis, an amount not
4 exceeding thirty per cent of the proceeds remaining in the fund
5 after the deduction for central service expenses, pursuant to
6 section 36-27, shall be allocated by the commission to the
7 division of consumer advocacy and deposited in the compliance
8 resolution fund established pursuant to section 26-9(o);
9 provided that all moneys allocated by the commission from the
10 fund to the division of consumer advocacy shall be in accordance
11 with legislative appropriations.

12 (b) All moneys appropriated to, received, and collected by
13 the commission that are not otherwise pledged, obligated, or
14 required by law to be placed in any other special fund or
15 expended for any other purpose shall be deposited into the
16 transportation carrier commission special fund including but not
17 limited to all moneys received and collected by the commission
18 pursuant to sections 92-21, 269E-6, 269E-14, 271-27, 271-36,
19 271G-19, and 607-5.

20 (c) The commission shall submit a report to the
21 legislature detailing all funds received and all moneys



1 disbursed out of the fund prior to the convening of each regular
2 session.

3 (d) All money in excess of \$1,000,000 remaining on balance
4 in the transportation carrier commission special fund on June 30
5 of each year shall lapse to the credit of the state general
6 fund.

7 § -14 **Consumer advocate.** The consumer advocate
8 designated under chapter 269, part II, shall represent, protect,
9 and advance the interests of all consumers, including small
10 businesses, of carrier services. The consumer advocate shall
11 not receive any salary in addition to the salary received as
12 director of commerce and consumer affairs for the purposes of
13 this chapter.

14 The responsibility of the consumer advocate for advocating
15 the interests of the consumer of carrier services shall be
16 separate and distinct from the responsibilities of the
17 transportation carrier commission and those assistants employed
18 by the commission. The consumer advocate shall have full rights
19 to participate as a party in interest in all proceedings before
20 the commission.

21 The consumer advocate shall have the same powers and duties
22 over the transportation carrier commission and regulated



1 carriers as the consumer advocate has over the public utilities
2 commission and public utilities under chapter 269, part II, and
3 any other applicable law."

4 SECTION 3. Chapter 271G, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§271G- Bills of lading, shipping documents. The
8 commission may prescribe for water carriers the form and content
9 of all bills of lading, freight bills, receipts, or other
10 shipping documents governing the movement of traffic by water
11 carriers regulated under this chapter, and may prescribe the
12 length of time the same shall be preserved."

13 SECTION 4. Section 26-8, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

15 "(d) The employees retirement system as constituted by
16 chapter 88 is placed within the department of budget and finance
17 for administrative purposes. The functions, duties, and powers,
18 subject to the administrative control of the director of
19 finance, and the composition of the board of trustees of the
20 employees retirement system shall be as heretofore provided by
21 law.



1 The public utilities commission [~~is~~] and the transportation
 2 carrier commission shall be placed within the department of
 3 budget and finance for administrative purposes only."

4 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
 5 amended as follows:

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

7 "(a) No department of the State other than the attorney
 8 general may employ or retain any attorney, by contract or
 9 otherwise, for the purpose of representing the State or the
 10 department in any litigation, rendering legal counsel to the
 11 department, or drafting legal documents for the department;
 12 provided that the foregoing provision shall not apply to the
 13 employment or retention of attorneys:

14 (1) By the public utilities commission, the transportation
 15 carrier commission, the labor and industrial relations
 16 appeals board, and the Hawaii labor relations board;

17 (2) By any court or judicial or legislative office of the
 18 State; provided that if the attorney general is
 19 requested to provide representation to a court or
 20 judicial office by the chief justice or the chief
 21 justice's designee, or to a legislative office by the
 22 speaker of the house of representatives and the



1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;

7 (3) By the legislative reference bureau;

8 (4) By any compilation commission that may be constituted
9 from time to time;

10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;

12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;

14 (7) By the trustees for any action involving the travel
15 agency recovery fund;

16 (8) By the office of Hawaiian affairs;

17 (9) By the department of commerce and consumer affairs for
18 the enforcement of violations of chapters 480 and
19 485A;

20 (10) As grand jury counsel;

21 (11) By the Hawaiian home lands trust individual claims
22 review panel;



- 1 (12) By the Hawaii health systems corporation, or its
2 regional system boards, or any of their facilities;
3 (13) By the auditor;
4 (14) By the office of ombudsman;
5 (15) By the insurance division;
6 (16) By the University of Hawaii;
7 (17) By the Kahoolawe island reserve commission;
8 (18) By the division of consumer advocacy;
9 (19) By the office of elections;
10 (20) By the campaign spending commission;
11 (21) By the Hawaii tourism authority, as provided in
12 section 201B-2.5; or
13 (22) By a department, in the event the attorney general,
14 for reasons deemed by the attorney general good and
15 sufficient, declines to employ or retain an attorney
16 for a department; provided that the governor thereupon
17 waives the provision of this section."
18 2. By amending subsection (c) to read:
19 "(c) Every attorney employed by any department on a full-
20 time basis, except an attorney employed by the public utilities
21 commission, the transportation carrier commission, the labor and
22 industrial relations appeals board, the Hawaii labor relations



1 board, the office of Hawaiian affairs, the Hawaii health systems
 2 corporation or its regional system boards, the department of
 3 commerce and consumer affairs in prosecution of consumer
 4 complaints, insurance division, the division of consumer
 5 advocacy, the University of Hawaii, the Hawaii tourism authority
 6 as provided in section 201B-2.5, the Hawaiian home lands trust
 7 individual claims review panel, or as grand jury counsel, shall
 8 be a deputy attorney general."

9 SECTION 6. Section 51-1, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "§51-1 Grant of powers. Every county of this State may
 12 acquire, condemn, purchase, lease, construct, extend, own,
 13 maintain, and operate mass transit systems, including [~~without~~
 14 ~~being~~] but not limited to [~~7~~] motor buses, street railroads,
 15 fixed rail facilities such as monorails or subways, whether
 16 surface, subsurface, or elevated, taxis, and other forms of
 17 transportation for hire for passengers and their personal
 18 baggage.

19 Every county shall have power to provide mass
 20 transportation service, whether directly, jointly, or under
 21 contract with private parties, without the county or private
 22 parties being subject to the jurisdiction and control of the



1 [~~public utilities~~] transportation carrier commission in any
2 manner.

3 The terms "mass transit" and "mass transportation" mean
4 transportation by bus, or rail or other conveyance, either
5 publicly or privately owned, which provides to the public
6 general or special service (but not including school buses or
7 charter or sightseeing service) on a regular and continuing
8 basis."

9 SECTION 7. Section 92-21, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§92-21 Copies of records; other costs and fees.** Except
12 as otherwise provided by law, a copy of any government record,
13 including any map, plan, diagram, photograph, photostat, or
14 geographic information system digital data file, which is open
15 to the inspection of the public, shall be furnished to any
16 person applying for the same by the public officer having charge
17 or control thereof upon the payment of the reasonable cost of
18 reproducing such copy. Except as provided in section 91-2.5,
19 the cost of reproducing any government record, except geographic
20 information system digital data, shall not be less than 5 cents
21 per page, sheet, or fraction thereof. The cost of reproducing
22 geographic information system digital data shall be in



1 accordance with rules adopted by the agency having charge or
2 control of that data. Such reproduction cost shall include but
3 shall not be limited to labor cost for search and actual time
4 for reproducing, material cost, including electricity cost,
5 equipment cost, including rental cost, cost for certification,
6 and other related costs. All fees shall be paid in by the
7 public officer receiving or collecting the same to the state
8 director of finance, the county director of finance, or to the
9 agency or department by which the officer is employed, as
10 government realizations; provided that fees collected by the
11 public utilities commission and transportation carrier
12 commission pursuant to this section shall be deposited in the
13 public utilities commission special fund established under
14 section 269-33 [-] and transportation carrier commission special
15 fund established under section -13, as applicable."

16 SECTION 8. Section 239-5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) There shall be levied and assessed upon each public
19 utility [~~except airlines, motor carriers, common carriers by~~
20 ~~water, and contract carriers taxed by section 239-6,~~] a tax of
21 such rate per cent of its gross income each year from its public
22 utility business as shall be determined in the manner



1 hereinafter provided. The tax imposed by this section is in
2 lieu of all taxes other than those below set out, and is a means
3 of taxing the personal property of the public utility, tangible
4 and intangible, including going concern value. In addition to
5 the tax imposed by this chapter there also are imposed income
6 taxes, the specific taxes imposed by chapter 249, the fees
7 prescribed by chapter 269, any tax specifically imposed by the
8 terms of the public utility's franchise or under chapter 240,
9 the use or consumption tax imposed by chapter 238, and
10 employment taxes.

11 The rate of the tax upon the gross income of the public
12 utility shall be four per cent; provided that if:

13 (1) A county provides by ordinance for a real property tax
14 exemption for real property used by a public utility
15 in its public utility business and owned by the public
16 utility (or leased to it by a lease under which the
17 public utility is required to pay the taxes upon the
18 property), and

19 (2) The county has not denied the exemption to the public
20 utility, but excluding a denial based upon a dispute
21 as to the ownership, lease, or use of a specific
22 parcel of real property,



1 then there shall be levied and assessed a tax in excess of the
2 four per cent rate determined in the manner hereinafter provided
3 upon the gross income allocable to such county. The revenues
4 generated from the tax in excess of the four per cent rate
5 hereinbefore established shall be paid by the public utility
6 directly to such county based upon the proportion of gross
7 income from its public utility business attributable to such
8 county, based upon the allocation made in the public utility's
9 filings with the State of Hawaii; provided that if the gross
10 income from the public utility business attributable to such
11 county is not so allocated in the public utility's [~~State~~] state
12 filings, then the gross income from the public utility business
13 shall be equitably allocated to each county. The relative
14 number of access lines in each county shall be deemed an
15 acceptable basis of equitable allocation for telecommunication
16 companies.

17 The rate of the tax in excess of the four per cent rate
18 hereinbefore established upon the gross income from the public
19 utility business shall be determined as follows:

20 If the ratio of the net income of the company to its gross
21 income is fifteen per cent or less, the rate of tax in excess of
22 the four per cent rate on gross income shall be 1.885 per cent;



1 for all companies having net income in excess of fifteen per
2 cent of the gross, the rate of the tax on gross income shall
3 increase continuously in proportion to the increase in ratio of
4 net income to gross, at such rate that for each increase of one
5 per cent in the ratio of net income to gross, there shall be an
6 increase of .2675 per cent in the rate of the tax.

7 The following formula may be used to determine the rate, in
8 which formula the term "R" is the ratio of net income to gross
9 income, and "X" is the required rate of the tax on gross income
10 for the utility in question:

$$11 \quad X = (26.75R - 2.1275)\%;$$

12 provided that in no case governed by the formula shall "X" be
13 less than 1.885 per cent or more than 4.2 per cent.

14 However, if the gross income is apportioned under section
15 239-8(b) or (c), there shall be no adjustment of the rate of tax
16 on the amount of gross income so apportioned to the State on
17 account of the ratio of the net income to the gross income being
18 in excess of fifteen per cent, and it shall be assumed in such
19 case that the ratio is fifteen per cent or less."

20 SECTION 9. Section 269-1, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending the definition of "enforcement officer" to
2 read:

3 ""Enforcement officer" means any person employed and
4 authorized by the public utilities commission to investigate any
5 matter on behalf of the commission. [~~The term also means a~~
6 ~~motor vehicle safety officer employed and assigned, pursuant to~~
7 ~~section 271-38, by the department of transportation to enforce~~
8 ~~sections 271-8, 271-12, 271-13, 271-19, and 271-29 through~~
9 ~~assessment of civil penalties as provided in section 271-27(h),~~
10 ~~(i), and (j).~~"]

11 2. By amending the definition of "public utility" to read:

12 ""Public utility":

13 (1) Includes every person who may own, control, operate,
14 or manage as owner, lessee, trustee, receiver, or
15 otherwise, whether under a franchise, charter,
16 license, articles of association, or otherwise, any
17 plant or equipment, or any part thereof, directly or
18 indirectly for public use, for [~~the transportation of~~
19 ~~passengers or freight, or~~] the conveyance or
20 transmission of telecommunications messages, or the
21 furnishing of facilities for the transmission of
22 intelligence by electricity by land or water or air



1 within the State, or between points within the State,
2 or for the production, conveyance, transmission,
3 delivery, or furnishing of light, power, heat, cold,
4 water, gas, or oil, or for [~~the storage or warehousing~~
5 ~~of goods, or~~] the disposal of sewage; provided that
6 the term shall include:

7 (A) Any person insofar as that person owns or
8 operates a private sewer company or sewer
9 facility; and

10 (B) Any telecommunications carrier or
11 telecommunications common carrier;

12 (2) Shall not include:

13 (A) Any person insofar as that person owns or
14 operates an aerial transportation enterprise;

15 (B) Persons owning or operating taxicabs, as defined
16 in this section;

17 (C) [~~Common~~] Water or motor carriers [~~transporting~~
18 ~~only freight on the public highways, unless~~
19 ~~operating within localities or along routes or~~
20 ~~between points that the public utilities~~
21 ~~commission finds to be inadequately serviced~~



1 ~~without regulation under this chapter,~~] subject
2 to chapter 271 or 271G;

3 (D) Persons engaged in the business of warehousing or
4 storage unless the commission finds that
5 regulation thereof is necessary in the public
6 interest;

7 ~~[(E) The business of any carrier by water to the~~
8 ~~extent that the carrier enters into private~~
9 ~~contracts for towage, salvage, hauling, or~~
10 ~~carriage between points within the State and the~~
11 ~~carriage is not pursuant to either an established~~
12 ~~schedule or an undertaking to perform carriage~~
13 ~~services on behalf of the public generally;~~

14 ~~(F) The business of any carrier by water,~~
15 ~~substantially engaged in interstate or foreign~~
16 ~~commerce, transporting passengers on luxury~~
17 ~~cruises between points within the State or on~~
18 ~~luxury round trip cruises returning to the point~~
19 ~~of departure;~~

20 ~~(G)]~~ (E) Any person who:

21 (i) Controls, operates, or manages plants or
22 facilities for the production, transmission,



1 or furnishing of power primarily or entirely
2 from nonfossil fuel sources; and

3 (ii) Provides, sells, or transmits all of that
4 power, except such power as is used in its
5 own internal operations, directly to a
6 public utility for transmission to the
7 public;

8 [~~(H)~~] (F) A telecommunications provider only to the
9 extent determined by the commission pursuant to
10 section 269-16.9;

11 [~~(I)~~] (G) Any person who controls, operates, or
12 ~~manages~~ plants or facilities developed pursuant
13 to chapter 167 for conveying, distributing, and
14 transmitting water for irrigation and such other
15 purposes that shall be held for public use and
16 purpose;

17 [~~(J)~~] (H) Any person who owns, controls, operates, or
18 ~~manages~~ plants or facilities for the reclamation
19 of wastewater; provided that:

20 (i) The services of the facility shall be
21 provided pursuant to a service contract
22 between the person and a state or county



1 agency and at least ten per cent of the
2 wastewater processed is used directly by the
3 State or county which has entered into the
4 service contract;

5 (ii) The primary function of the facility shall
6 be the processing of secondary treated
7 wastewater that has been produced by a
8 municipal wastewater treatment facility that
9 is owned by a state or county agency;

10 (iii) The facility shall not make sales of water
11 to residential customers;

12 (iv) The facility may distribute and sell
13 recycled or reclaimed water to entities not
14 covered by a state or county service
15 contract; provided that, in the absence of
16 regulatory oversight and direct competition,
17 the distribution and sale of recycled or
18 reclaimed water shall be voluntary and its
19 pricing fair and reasonable. For purposes
20 of this subparagraph, "recycled water" and
21 "reclaimed water" mean treated wastewater



1 that by design is intended or used for a
 2 beneficial purpose; and
 3 (v) The facility shall not be engaged, either
 4 directly or indirectly, in the processing of
 5 food wastes; and

6 ~~[(K)]~~ (I) Any person who owns, controls, operates, or
 7 manages any seawater air conditioning district
 8 cooling project; provided that at least fifty per
 9 cent of the energy required for the seawater air
 10 conditioning district cooling system is provided
 11 by a renewable energy resource, such as cold,
 12 deep seawater.

13 If the application of this chapter is ordered by the
 14 commission in any case provided in paragraphs ~~[(2)(C)]~~ (2)(D),
 15 ~~[(2)(H), and (2)(I)]~~ (2)(F), and (2)(G), the business of any
 16 public utility that presents evidence of bona fide operation on
 17 the date of the commencement of the proceedings resulting in the
 18 order shall be presumed to be necessary to public convenience
 19 and necessity, but any certificate issued under this proviso
 20 shall nevertheless be subject to such terms and conditions as
 21 the commission may prescribe, as provided in sections 269-16.9
 22 and 269-20."



1 SECTION 10. Section 269-19.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The purpose of this section is to encourage companies
4 providing essential utility [~~and regulated transport~~] service to
5 Hawaii consumers to obtain their services, supplies, and
6 equipment by relying, to the extent practicable, on competitive
7 procurement practices; provided that when companies obtain their
8 services, supplies, and equipment from affiliated interests, the
9 contracts and agreements between the regulated entity and its
10 affiliates must be shown by clear and convincing evidence to be
11 in furtherance of the interests of the public."

12 SECTION 11. Section 269-33, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) There is established in the state treasury a public
15 utilities commission special fund to be administered by the
16 public utilities commission. The proceeds of the fund shall be
17 used by the public utilities commission and the division of
18 consumer advocacy of the department of commerce and consumer
19 affairs for all expenses incurred in the administration of
20 chapters 269, [~~271, 271G,~~] 269E, and 486J; provided that the
21 expenditures of the public utilities commission shall be in
22 accordance with legislative appropriations. On a quarterly



1 basis, an amount not exceeding thirty per cent of the proceeds
2 remaining in the fund after the deduction for central service
3 expenses, pursuant to section 36-27, shall be allocated by the
4 public utilities commission to the division of consumer advocacy
5 and deposited in the compliance resolution fund established
6 pursuant to section 26-9(o); provided that all moneys allocated
7 by the public utilities commission from the fund to the division
8 of consumer advocacy shall be in accordance with legislative
9 appropriations.

10 (b) All moneys appropriated to, received, and collected by
11 the public utilities commission that are not otherwise pledged,
12 obligated, or required by law to be placed in any other special
13 fund or expended for any other purpose shall be deposited into
14 the public utilities commission special fund including, but not
15 limited to, all moneys received and collected by the public
16 utilities commission pursuant to sections 92-21, 269-28, 269-30,
17 [~~271-27, 271-36, 271G-19,~~] 269E-6, 269E-14, and 607-5."

18 SECTION 12. Section 271-2, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§271-2 Administration; governing provisions of other
21 acts. This chapter shall be administered by the [~~public~~
22 ~~utilities~~] transportation carrier commission of the State, and



1 the provisions of this chapter and of chapter [269,] _____ that
 2 are not inconsistent with this chapter[7] shall govern its
 3 administration[7, ~~provided that sections 269-4, 269-9, 269-11,~~
 4 ~~269-16 to 269-28 and 269-30 shall not, in any respect, apply to~~
 5 ~~the regulation of motor carriers]."~~

6 SECTION 13. Section 271-4, Hawaii Revised Statutes, is
 7 amended by amending the definition of "commission" to read as
 8 follows:

9 "(2) "Commission" means the [~~public utilities~~]
 10 transportation carrier commission."

11 SECTION 14. Section 271-5, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "§271-5 Exemptions, generally. Notwithstanding any other
 14 provisions of this chapter, its contents shall not apply to:

15 (1) Persons transporting their own property where the
 16 transportation is in furtherance of a primary business
 17 purpose or enterprise of that person, except where the
 18 transportation is undertaken by a motor carrier to
 19 evade the regulatory purposes of this chapter;

20 (2) Persons operating motor vehicles when engaged in the
 21 transportation of school children and teachers to and
 22 from school, and to and from school functions;



1 provided that these persons may engage in providing
2 transportation at special rates for groups of persons
3 belonging to an eleemosynary or benevolent
4 organization or association domiciled in this State
5 where the organization or association sponsors or is
6 conducting a nonregular excursion; provided that
7 whenever the persons engage in the transportation of
8 persons other than those exempted in this paragraph,
9 that portion of their operation shall not be exempt
10 from this chapter. Nothing in this paragraph shall be
11 construed to authorize any person to engage in the
12 transportation of persons, other than the
13 transportation of persons exempted by the terms of
14 this paragraph, without a permit or certificate issued
15 by the commission authorizing such transportation;

16 (3) Persons operating taxicabs or other motor vehicles
17 utilized in performing a bona fide taxicab service.

18 "Taxicab" includes:

19 (A) Any motor vehicle used in the movement of
20 passengers on the public highways under the
21 following circumstances, namely the passenger
22 hires the vehicle on call or at a fixed stand,



1 with or without baggage for transportation, and
2 controls the vehicle to the passenger's
3 destination;

4 (B) Any motor vehicle for hire having seating
5 accommodations for eight or fewer passengers used
6 in the movement of passengers on the public
7 highways that may, as part of a continuous trip,
8 pick up or discharge passengers from various
9 unrelated locations; provided that they shall be
10 regulated by the counties in accordance with
11 section 46-16.5(c); and provided further that
12 this subparagraph shall not apply to any
13 exclusive rights granted by the department of
14 transportation for taxicab services at facilities
15 under the department's control; and

16 (C) Any motor vehicle having seating accommodations
17 for eight or fewer passengers used in the
18 movement of passengers on the public highways
19 between a terminal, i.e., a fixed stand, in the
20 Honolulu district, as defined in section 4-1 and
21 a terminal in a geographical district outside the
22 limits of the Honolulu district, and vice versa,



1 without picking up passengers other than at the
2 terminals or fixed stands; provided that the
3 passengers may be picked up by telephone call
4 from their homes in the rural area or may be
5 unloaded at any point between the fixed stands or
6 may be delivered to their homes in the rural
7 area;

8 (4) Persons operating motor vehicles in the transportation
9 of persons pursuant to a franchise from the
10 legislature [~~and whose operations are presently~~
11 ~~regulated under chapter 269~~];

12 (5) Nonprofit agricultural cooperative associations to the
13 extent that they engage in the transportation of their
14 own property or the property of their members;

15 (6) Persons operating motor vehicles specially constructed
16 for the towing of disabled or wrecked vehicles but not
17 otherwise used in the transportation of property for
18 compensation or hire;

19 (7) Persons operating motor vehicles in the transportation
20 of mail, newspapers, periodicals, magazines, messages,
21 documents, letters, or blueprints;

22 (8) Persons operating funeral cars or ambulances;



- 1 (9) Persons operating motor vehicles in the transportation
2 of garbage or refuse;
- 3 (10) Persons operating the type of passenger carrying motor
4 vehicles known as "sampan buses" within the radius of
5 twenty miles from the city of Hilo, Hawaii;
- 6 (11) Persons transporting unprocessed pineapple to a
7 cannery, seed corn to a processing facility, or
8 returning any containers used in such transportation
9 to the fields;
- 10 (12) Sugar plantations transporting sugarcane, raw sugar,
11 molasses, sugar by-products, and farming supplies for
12 neighboring farmers pursuant to contracts administered
13 by the United States Department of Agriculture;
- 14 (13) Persons engaged in the ranching or meat or feed
15 business who transport cattle to slaughterhouses for
16 hire where such transportation is their sole
17 transportation for hire and where their earnings from
18 the transportation constitute less than fifty per cent
19 of their gross income from their business and the
20 transportation for hire;



- 1 (14) Persons transporting unprocessed raw milk to
2 processing plants and returning any containers used in
3 such transportation to dairy farms for reloading;
- 4 (15) Persons transporting animal feeds to animal husbandry
5 farmers and farming supplies directly to animal
6 husbandry farmers and returning any containers used in
7 such transportation to these sources of such feeds and
8 supplies for reloading;
- 9 (16) Persons engaged in transporting not more than fifteen
10 passengers between their places of abode, or termini
11 near such places, and their places of employment in a
12 single daily round trip where the driver is also on
13 the driver's way to or from the driver's place of
14 employment;
- 15 (17) Persons transporting passengers without charge in
16 motor vehicles owned or operated by such person, where
17 such transportation is provided in conjunction with
18 and in furtherance of a related primary business
19 purpose or enterprise of that person, and such
20 transportation is provided only directly to and from
21 the place of business of such person, except that this
22 exemption shall not apply to persons making any



1 contract, agreement, or arrangement to provide,
 2 procure, furnish, or arrange for transportation as a
 3 travel agent or broker or a person engaged in tour or
 4 sightseeing activities, nor shall this exemption apply
 5 where the transportation is undertaken by a person to
 6 evade the regulatory purposes of this chapter; and

7 (18) Persons conducting the type of county-regulated
 8 passenger carrying operation known as "jitney
 9 services". For the purposes of this paragraph,
 10 "jitney services" means public transportation services
 11 utilizing motor vehicles that have seating
 12 accommodations for six to twenty-five passengers,
 13 operate along specific routes during defined service
 14 hours, and levy a flat fare schedule."

15 SECTION 15. Section 271G-3, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 **"§271G-3 Administration; governing provisions of other**
 18 **acts.** This chapter shall be administered by the [~~public~~
 19 ~~utilities~~] transportation carrier commission of the State, and
 20 the provisions of this chapter and of chapter [~~269~~] _____ that
 21 are not inconsistent with this chapter[~~7~~] shall govern its



1 administration[, ~~provided that sections 269-16 to 269-28 shall~~
2 ~~not apply in any respect to the regulation of water carriers]."~~

3 SECTION 16. Section 271G-5, Hawaii Revised Statutes, is
4 amended by amending the definition of "commission" to read as
5 follows:

6 "(2) "Commission" means the [~~public utilities~~]
7 transportation carrier commission."

8 SECTION 17. Section 271G-6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~271G-6 [~~§~~] **Exemptions, generally.** Notwithstanding any
11 other provisions of this chapter, its contents shall not apply
12 to:

13 (1) Persons transporting their own property where the
14 transportation is in furtherance of a primary business
15 purpose or enterprise of that person except where the
16 transportation is undertaken by a water carrier to
17 evade the regulatory purposes of this chapter;

18 (2) Nonprofit agricultural cooperative associations to the
19 extent that they engage in the transportation of their
20 own property or the property of their members;

21 (3) Persons engaged in the transportation over water of
22 passengers or property for compensation, other than



1 transportation referred to in section 271G-5(7) under
2 continuing contracts with one person or a limited
3 number of persons either (A) for the furnishing of
4 transportation services through the assignment of
5 vessels for a continuing period of time to the
6 exclusive use of each person served, or (B) for the
7 furnishing of transportation services designed to meet
8 the distinct need of each individual customer;

9 (4) Persons transporting their own property or employees
10 where the transportation is in furtherance of a
11 business or enterprise of fishing or taking of fish
12 for profit or gain as a means of livelihood;

13 (5) Persons engaged in business of transporting persons
14 for sightseeing and other recreational activities[-];

15 (6) Persons engaged in private contracts for towing,
16 salvaging, hauling, or carriage between points in the
17 State and the contracted service is not pursuant to
18 either an established schedule or undertaking to
19 perform the service on behalf of the public generally;
20 and

21 (7) Persons substantially engaged in transporting
22 passengers on luxury cruises between points within the



1 State or on luxury round-trip cruises returning to the
2 point of departure."

3 SECTION 18. Section 271G-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§271G-7 General duties and powers of the commission.** The
6 general duties and powers of the [~~public utilities~~] commission
7 shall be:

8 (1) To regulate water carriers, and to that end the
9 commission shall have and utilize the investigative
10 [~~powers set forth in section 269-7 as well as all of~~
11 ~~the duties~~] and other powers specifically enumerated
12 in this chapter[~~7~~] and chapter _____, and water
13 carriers shall be subject to the duties set forth in
14 [~~sections 269-8 and 269-9 as well as all of the duties~~
15 ~~specifically enumerated herein.~~] this chapter and
16 chapter _____.

17 (2) To establish such just and reasonable classifications
18 of water carriers as the special nature of the
19 services performed by the carriers shall require, and
20 such just and reasonable rules, regulations, and
21 requirements, consistent with this chapter, to be
22 observed by the carriers so classified or grouped, as



1 the commission deems necessary or desirable in the
 2 public interest. Such classifications, rules,
 3 regulations, and requirements shall be adopted and
 4 promulgated pursuant to the provisions of chapter 91
 5 and shall have the force and effect of law.

6 (3) Upon complaint in writing to the commission by any
 7 person or body politic, or upon its own initiative
 8 without complaint, the commission may investigate
 9 whether any water carrier has failed to comply with
 10 any provision of this chapter, or with any rule or
 11 order adopted or issued hereunder.

12 (4) The commission may investigate any person acting in
 13 the capacity of or engaging in the business of a water
 14 carrier within the State, without having a certificate
 15 of public convenience and necessity or other authority
 16 previously obtained under and in compliance with this
 17 chapter or the rules promulgated under this chapter."

18 SECTION 19. The following sections of the Hawaii Revised
 19 Statutes are amended by replacing the term "public utilities
 20 commission" wherever it occurs with "commission": sections 271-
 21 8, 271-8.5, 271-9, 271-10, 271-11, 271-12, 271-13, 271-15, 271-
 22 16, 271-17, 271-18, 271-19, 271-21, 271-22, 271-23, 271-25, 271-



1 26, 271-26.5, 271-29, 271-29, 271-30, 271-31, 271-32, 271-33,
 2 271-34, 271-35, 271-36, 271-27, 271-38, 271G-8, 271G-9, 271G-10,
 3 271G-12, 271G-13, 271G-14, 271G-15, 271G-17, 271G-17.5, 271G-18,
 4 271G-20, 271G-22, 271G-23, 271G-24, and 271G-25.

5 SECTION 20. Section 14 of Act 58, Session Laws of Hawaii
 6 2004, as amended by section 50 of Act 22, Session Laws of Hawaii
 7 2005, and section 1 of Act 306, Session Laws of Hawaii 2006, is
 8 amended to read as follows:

9 "SECTION 14. This Act shall take effect upon its approval;
 10 provided that:

11 (1) The amendments made to sections 40-1, 40-4, and 40-6,
 12 Hawaii Revised Statutes, by part I of this Act shall
 13 not be repealed when those sections are reenacted on
 14 June 30, 2006, by section 1 of Act 137, Session Laws
 15 of Hawaii 2005;

16 (2) Part I shall be repealed on June 30, 2010, and
 17 sections [~~28-8.3,7~~] 201B-2[~~7~~] and 201B-11, Hawaii
 18 Revised Statutes, shall be reenacted in the form in
 19 which they read on May 5, 2004, [~~and~~] sections 40-1,
 20 40-4, and 40-6, Hawaii Revised Statutes, shall be
 21 reenacted in the form in which they read on June 30,



1 1986 [7], and section 28-8.3 shall be reenacted in the
2 form in which it read on June 29, 2010; and

3 (3) Section 9 shall take effect on July 1, 2004."

4 SECTION 21. Section 7 of Act 141, Session Laws of Hawaii
5 2004, as amended by section 51 of Act 22, Session Laws of Hawaii
6 2005, is amended to read as follows:

7 "SECTION 7. This Act shall take effect on July 1, 2004,
8 and shall be repealed on June 30, 2009; provided that [~~sections~~]
9 section 269-30 [and 269-33], Hawaii Revised Statutes, shall be
10 reenacted in the form in which [~~they~~] it read on the day before
11 the effective date of this Act [~~-~~] and section 269-33, Hawaii
12 Revised Statutes, shall be reenacted in the form in which it
13 read on June 29, 2009."

14 SECTION 22. Section 269-20, Hawaii Revised Statutes, is
15 repealed.

16 [~~"§269-20 Certificates of public convenience and necessity~~
17 ~~for water carriers. (a) No person which holds itself out to~~
18 ~~the general public to engage in the transportation by water of~~
19 ~~passengers or property or any class or classes thereof for~~
20 ~~compensation, between points in the State of Hawaii, shall~~
21 ~~operate unless there is in force with respect to such carrier a~~
22 ~~certificate of public convenience and necessity issued by the~~



1 ~~commission authorizing such transportation; provided that this~~
2 ~~section shall not apply to any carrier by water to the extent~~
3 ~~that the carrier is excluded from the definition of a public~~
4 ~~utility under section 269-1(2)(E) and (F).~~

5 ~~(b) Applications for certificates shall be made in writing~~
6 ~~under oath to the commission in such form as it requires.~~

7 ~~(c) A certificate shall be issued to any qualified~~
8 ~~applicant therefor, authorizing the whole or any part of the~~
9 ~~operations covered by the application, if it is found that the~~
10 ~~applicant is fit, willing, and able properly to perform the~~
11 ~~service proposed and to conform to the provisions of this~~
12 ~~chapter and the requirements, rules and regulations of the~~
13 ~~commission thereunder, and that the proposed service, to the~~
14 ~~extent authorized by the certificate, is or will be required by~~
15 ~~the present or future public convenience and necessity;~~
16 ~~otherwise such application shall be denied. Any certificate~~
17 ~~issued shall specify the service to be rendered and the routes~~
18 ~~and ports which the water carrier is to serve and there shall be~~
19 ~~attached to the exercise of the privileges granted by the~~
20 ~~certificate, at the time of issuance and from time to time~~
21 ~~thereafter, such reasonable conditions and limitations as the~~
22 ~~public convenience and necessity may require.~~



1 ~~(d) The commission may at any time suspend, change or~~
2 ~~revoke such certificate in the manner provided in section 271-~~
3 ~~19."]~~

4 SECTION 23. Section 269-23, Hawaii Revised Statutes, is
5 repealed.

6 ~~["§269-23 Liability of initial and delivering common~~
7 ~~carrier for loss; limitation of liability; notice and filing of~~
8 ~~claim. Any common carrier receiving property for transportation~~
9 ~~from a point in Hawaii to a point in Hawaii shall issue a~~
10 ~~receipt or bill of lading therefor, and shall be liable to the~~
11 ~~lawful holder thereof for any loss, damage, or injury to the~~
12 ~~property caused by it or by any common carrier or transportation~~
13 ~~company to which the property may be delivered or over whose~~
14 ~~line or lines the property may pass when transported on a~~
15 ~~through bill of lading, and no contract, receipt, rule,~~
16 ~~regulation, or other limitation of any character whatsoever~~
17 ~~shall exempt the common carrier from the liability imposed; and~~
18 ~~any such common carrier so receiving property for transportation~~
19 ~~or any common carrier or transportation company delivering the~~
20 ~~property so received and transported shall be liable to the~~
21 ~~lawful holder of the receipt or bill of lading or to any party~~
22 ~~entitled to recover thereon, whether the receipt or bill of~~



1 ~~lading has been issued or not, for the full actual loss, damage,~~
2 ~~or injury to such property caused by it or by any common carrier~~
3 ~~or transportation company to which the property may be delivered~~
4 ~~or over whose line or lines the property may pass when~~
5 ~~transported on a through bill of lading, notwithstanding any~~
6 ~~limitation of liability or limitation of the amount of recovery~~
7 ~~or representation or agreement as to value in any receipt or~~
8 ~~bill of lading, or in any contract, rule, regulation, or in any~~
9 ~~tariff filed with the public utilities commission; and any such~~
10 ~~limitation, without respect to the manner or form in which it is~~
11 ~~sought to be made is declared to be unlawful and void; provided~~
12 ~~that if the loss, damage, or injury occurs while the property is~~
13 ~~in the custody of a carrier by water the liability of the~~
14 ~~carrier shall be determined by the bill of lading of the carrier~~
15 ~~by water and by and under the laws and regulations applicable to~~
16 ~~transportation by water, and the liability of the initial or~~
17 ~~delivering carrier shall be the same as that of the carrier by~~
18 ~~water; provided that the provisions hereof respecting liability~~
19 ~~for full actual loss, damage, or injury, notwithstanding any~~
20 ~~limitation of liability or recovery or representation or~~
21 ~~agreement or release as to value, and declaring any such~~
22 ~~limitation to be unlawful and void, shall not apply, first, to~~



1 ~~baggage carried on passenger trains or boats, or trains or boats~~
2 ~~carrying passengers; second, to property, except ordinary~~
3 ~~livestock, received for transportation concerning which the~~
4 ~~carrier shall have been or shall be expressly authorized or~~
5 ~~required by order of the commission to establish and maintain~~
6 ~~rates dependent upon the value declared in writing by the~~
7 ~~shipper or agreed upon in writing as the released value of the~~
8 ~~property, in which case the declaration or agreement shall have~~
9 ~~no other effect than to limit liability and recovery to an~~
10 ~~amount not exceeding the value so declared or released, and any~~
11 ~~tariff schedule which may be filed with the commission pursuant~~
12 ~~to the order shall contain specific reference thereto and may~~
13 ~~establish rates varying with the value so declared and agreed~~
14 ~~upon; and the commission may make such order in cases where~~
15 ~~rates dependent upon and varying with declared or agreed values~~
16 ~~would, in its opinion, be just and reasonable under the~~
17 ~~circumstances and conditions surrounding the transportation;~~
18 ~~provided further that nothing in this section shall deprive any~~
19 ~~holder of the receipt or bill of lading of any remedy or right~~
20 ~~of action which the holder has under the existing law; provided~~
21 ~~further that it shall be unlawful for any such receiving or~~
22 ~~delivering common carrier to provide by rule, contract,~~



1 ~~regulation, or otherwise a shorter period for the filing of~~
2 ~~claims than four months, and for the institution of suits than~~
3 ~~two years, such period for institution of suits to be computed~~
4 ~~from the day when notice in writing is given by the carrier to~~
5 ~~the claimant that the carrier has disallowed the claim or any~~
6 ~~part or parts thereof specified in the notice, and provided~~
7 ~~further that the liability imposed by this section shall also~~
8 ~~apply in the case of property reconsigned or diverted in~~
9 ~~accordance with the applicable tariffs filed as provided by the~~
10 ~~commission."]~~

11 SECTION 24. This Act shall not affect rights and
12 privileges that matured or claims that accrued before July 1,
13 2010.

14 SECTION 25. (a) The public utilities commission shall:

15 (1) Identify other sections within the Hawaii Revised
16 Statutes to be amended to conform to the creation of
17 the transportation carrier commission or to conform to
18 this Act;

19 (2) Recommend amendments to this Act that are deemed
20 necessary for efficiency and effectiveness in the
21 regulation of water and motor carriers; and



1 (3) Identify the personnel, resources, and records
2 relating to the regulation of water and motor carriers
3 to be transferred to the transportation carrier
4 commission on July 1, 2010.

5 (b) The public utilities commission shall submit to the
6 legislature prior to the convening of the regular session of
7 2010 the information required under subsection (a) and proposed
8 legislation to implement the transfer of appropriate personnel,
9 resources, and records to the transportation carrier commission
10 on July 1, 2010.

11 SECTION 26. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 27. This Act shall take effect on July 1, 2010;
14 except that section 25 shall take effect upon its approval.

15

INTRODUCED BY: Calvin K. Day

JAN 26 2009



Report Title:

Transportation Carrier Commission; Creation

Description:

Establishes a transportation carrier commission to regulate water and motor carriers. Removes such carriers from the jurisdiction of the public utilities commission.

