
A BILL FOR AN ACT

RELATING TO MOTOR CARRIERS.

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

1 Part I.

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

4 (1) By amending the definition of "enforcement officer" to
5 read as follows:

6 ""Enforcement officer" means any person employed and
7 authorized by the commission to investigate any matter on behalf
8 of the commission. [~~The term also means a motor vehicle safety
9 officer employed and assigned, pursuant to section 271-38, by
10 the department of transportation to enforce sections 271-8, 271-
11 12, 271-13, 271-19, and 271-29 through assessment of civil
12 penalties as provided in section 271-27(h), (i), and (j).]~~"]

13 (2) By amending the definition of "public utility" to read
14 as follows:

15 ""Public utility":

16 (1) Includes every person who may own, control, operate,
17 or manage as owner, lessee, trustee, receiver, or
18 otherwise, whether under a franchise, charter,



1 license, articles of association, or otherwise, any
2 plant or equipment, or any part thereof, directly or
3 indirectly for public use, for the transportation of
4 passengers or freight [7] except for transportation by
5 motor carrier, or the conveyance or transmission of
6 telecommunications messages, or the furnishing of
7 facilities for the transmission of intelligence by
8 electricity by land or water or air within the State,
9 or between points within the State, or for the
10 production, conveyance, transmission, delivery, or
11 furnishing of light, power, heat, cold, water, gas, or
12 oil, or for the storage or warehousing of goods [7]
13 except by motor carriers, or the disposal of sewage;
14 provided that the term shall include:

15 (A) Any person insofar as that person owns or
16 operates a private sewer company or sewer
17 facility; and

18 (B) Any telecommunications carrier or
19 telecommunications common carrier;

20 (2) Shall not include:



- 1 (A) Any person insofar as that person owns or
2 operates an aerial or ground transportation
3 enterprise;
- 4 (B) Persons owning or operating taxicabs, as defined
5 in this section;
- 6 (C) Common carriers transporting [~~only~~] passengers or
7 freight on the public highways [~~, unless operating~~
8 ~~within localities or along routes or between~~
9 ~~points that the public utilities commission finds~~
10 ~~to be inadequately serviced without regulation~~
11 ~~under this chapter~~];
- 12 (D) Persons engaged in the business of warehousing or
13 storage unless the commission finds that
14 regulation thereof is necessary in the public
15 interest;
- 16 (E) The business of any carrier by water to the
17 extent that the carrier enters into private
18 contracts for towage, salvage, hauling, or
19 carriage between points within the State and the
20 carriage is not pursuant to either an established
21 schedule or an undertaking to perform carriage
22 services on behalf of the public generally;



1 (F) The business of any carrier by water,
2 substantially engaged in interstate or foreign
3 commerce, transporting passengers on luxury
4 cruises between points within the State or on
5 luxury round-trip cruises returning to the point
6 of departure;

7 (G) Any person who:

8 (i) Controls, operates, or manages plants or
9 facilities for the production, transmission,
10 or furnishing of power primarily or entirely
11 from nonfossil fuel sources; and

12 (ii) Provides, sells, or transmits all of that
13 power, except such power as is used in its
14 own internal operations, directly to a
15 public utility for transmission to the
16 public;

17 (H) A telecommunications provider only to the extent
18 determined by the commission pursuant to section
19 269-16.9;

20 (I) Any person who controls, operates, or manages
21 plants or facilities developed pursuant to
22 chapter 167 for conveying, distributing, and



1 transmitting water for irrigation and such other
2 purposes that shall be held for public use and
3 purpose;

4 (J) Any person who owns, controls, operates, or
5 manages plants or facilities for the reclamation
6 of wastewater; provided that:

7 (i) The services of the facility shall be
8 provided pursuant to a service contract
9 between the person and a state or county
10 agency and at least ten per cent of the
11 wastewater processed is used directly by the
12 State or county which has entered into the
13 service contract;

14 (ii) The primary function of the facility shall
15 be the processing of secondary treated
16 wastewater that has been produced by a
17 municipal wastewater treatment facility that
18 is owned by a state or county agency;

19 (iii) The facility shall not make sales of water
20 to residential customers;

21 (iv) The facility may distribute and sell
22 recycled or reclaimed water to entities not



1 covered by a state or county service
2 contract; provided that, in the absence of
3 regulatory oversight and direct competition,
4 the distribution and sale of recycled or
5 reclaimed water shall be voluntary and its
6 pricing fair and reasonable. For purposes
7 of this subparagraph, "recycled water" and
8 "reclaimed water" means treated wastewater
9 that by design is intended or used for a
10 beneficial purpose; and

11 (v) The facility shall not be engaged, either
12 directly or indirectly, in the processing of
13 food wastes;

14 (K) Any person who owns, controls, operates, or
15 manages any seawater air conditioning district
16 cooling project; provided that at least fifty per
17 cent of the energy required for the seawater air
18 conditioning district cooling system is provided
19 by a renewable energy resource, such as cold,
20 deep seawater; and

21 (L) Any person who owns, controls, operates, or
22 manages plants or facilities primarily used to



1 charge or discharge a vehicle battery that
 2 provides power for vehicle propulsion.

3 If the application of this chapter is ordered by the
 4 commission in any case provided in paragraphs (2)(C), (2)(D),
 5 (2)(H), and (2)(I), the business of any public utility that
 6 presents evidence of bona fide operation on the date of the
 7 commencement of the proceedings resulting in the order shall be
 8 presumed to be necessary to public convenience and necessity,
 9 but any certificate issued under this proviso shall nevertheless
 10 be subject to such terms and conditions as the commission may
 11 prescribe, as provided in sections 269-16.9 and 269-20."

Part II.

13 SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "§46-1.5 General powers and limitation of the counties.
 16 Subject to general law, each county shall have the following
 17 powers and shall be subject to the following liabilities and
 18 limitations:

- 19 (1) Each county shall have the power to frame and adopt a
- 20 charter for its own self-government that shall
- 21 establish the county executive, administrative, and
- 22 legislative structure and organization, including but



1 not limited to the method of appointment or election
2 of officials, their duties, responsibilities, and
3 compensation, and the terms of their office;

4 (2) Each county shall have the power to provide for and
5 regulate the marking and lighting of all buildings and
6 other structures that may be obstructions or hazards
7 to aerial navigation, so far as may be necessary or
8 proper for the protection and safeguarding of life,
9 health, and property;

10 (3) Each county shall have the power to enforce all claims
11 on behalf of the county and approve all lawful claims
12 against the county, but shall be prohibited from
13 entering into, granting, or making in any manner any
14 contract, authorization, allowance payment, or
15 liability contrary to the provisions of any county
16 charter or general law;

17 (4) Each county shall have the power to make contracts and
18 to do all things necessary and proper to carry into
19 execution all powers vested in the county or any
20 county officer;

21 (5) Each county shall have the power to:



- 1 (A) Maintain channels, whether natural or artificial,
2 including their exits to the ocean, in suitable
3 condition to carry off storm waters;
- 4 (B) Remove from the channels, and from the shores and
5 beaches, any debris that is likely to create an
6 unsanitary condition or become a public nuisance;
7 provided that, to the extent any of the foregoing
8 work is a private responsibility, the
9 responsibility may be enforced by the county in
10 lieu of the work being done at public expense;
- 11 (C) Construct, acquire by gift, purchase, or by the
12 exercise of eminent domain, reconstruct, improve,
13 better, extend, and maintain projects or
14 undertakings for the control of and protection
15 against floods and flood waters, including the
16 power to drain and rehabilitate lands already
17 flooded; and
- 18 (D) Enact zoning ordinances providing that lands
19 deemed subject to seasonable, periodic, or
20 occasional flooding shall not be used for
21 residence or other purposes in a manner as to
22 endanger the health or safety of the occupants



1 thereof, as required by the Federal Flood
2 Insurance Act of 1956 (chapter 1025, Public Law
3 1016);

4 (6) Each county shall have the power to exercise the power
5 of condemnation by eminent domain when it is in the
6 public interest to do so;

7 (7) Each county shall have the power to exercise
8 regulatory powers over business activity as are
9 assigned to them by chapter 445 or other general law;

10 (8) Each county shall have the power to fix the fees and
11 charges for all official services not otherwise
12 provided for;

13 (9) Each county shall have the power to provide by
14 ordinance assessments for the improvement or
15 maintenance of districts within the county;

16 (10) Except as otherwise provided, no county shall have the
17 power to give or loan credit to, or in aid of, any
18 person or corporation, directly or indirectly, except
19 for a public purpose;

20 (11) [~~Where not within the jurisdiction of the public~~
21 ~~utilities commission, each] Each county shall have the
22 power to regulate by ordinance the operation of motor~~



1 vehicle common carriers transporting passengers within
2 the county and adopt and amend rules the county deems
3 necessary for the public convenience and necessity;
4 (12) Each county shall have the power to enact and enforce
5 ordinances necessary to prevent or summarily remove
6 public nuisances and to compel the clearing or removal
7 of any public nuisance, refuse, and uncultivated
8 undergrowth from streets, sidewalks, public places,
9 and unoccupied lots. In connection with these powers,
10 each county may impose and enforce liens upon the
11 property for the cost to the county of removing and
12 completing the necessary work where the property
13 owners fail, after reasonable notice, to comply with
14 the ordinances. The authority provided by this
15 paragraph shall not be self-executing, but shall
16 become fully effective within a county only upon the
17 enactment or adoption by the county of appropriate and
18 particular laws, ordinances, or rules defining "public
19 nuisances" with respect to each county's respective
20 circumstances. The counties shall provide the
21 property owner with the opportunity to contest the
22 summary action and to recover the owner's property;



1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute where the statute does
7 not disclose an express or implied intent that the
8 statute shall be exclusive or uniform throughout the
9 State;

10 (14) Each county shall have the power to:

11 (A) Make and enforce within the limits of the county
12 all necessary ordinances covering all:

- 13 (i) Local police matters;
- 14 (ii) Matters of sanitation;
- 15 (iii) Matters of inspection of buildings;
- 16 (iv) Matters of condemnation of unsafe
17 structures, plumbing, sewers, dairies, milk,
18 fish, and morgues; and

19 (v) Matters of the collection and disposition of
20 rubbish and garbage;

21 (B) Provide exemptions for homeless facilities and
22 any other program for the homeless authorized by



1 chapter 356D, for all matters under this
2 paragraph;

3 (C) Appoint county physicians and sanitary and other
4 inspectors as necessary to carry into effect
5 ordinances made under this paragraph, who shall
6 have the same power as given by law to agents of
7 the department of health, subject only to
8 limitations placed on them by the terms and
9 conditions of their appointments; and

10 (D) Fix a penalty for the violation of any ordinance,
11 which penalty may be a misdemeanor, petty
12 misdemeanor, or violation as defined by general
13 law;

14 (15) Each county shall have the power to provide public
15 pounds; to regulate the impounding of stray animals
16 and fowl, and their disposition; and to provide for
17 the appointment, powers, duties, and fees of animal
18 control officers;

19 (16) Each county shall have the power to purchase and
20 otherwise acquire, lease, and hold real and personal
21 property within the defined boundaries of the county
22 and to dispose of the real and personal property as



1 the interests of the inhabitants of the county may
2 require, except that:

3 (A) Any property held for school purposes may not be
4 disposed of without the consent of the
5 superintendent of education;

6 (B) No property bordering the ocean shall be sold or
7 otherwise disposed of; and

8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;

11 (17) Each county shall have the power to provide by charter
12 for the prosecution of all offenses and to prosecute
13 for offenses against the laws of the State under the
14 authority of the attorney general of the State;

15 (18) Each county shall have the power to make
16 appropriations in amounts deemed appropriate from any
17 moneys in the treasury, for the purpose of:

18 (A) Community promotion and public celebrations;

19 (B) The entertainment of distinguished persons as may
20 from time to time visit the county;



1 (C) The entertainment of other distinguished persons,
2 as well as, public officials when deemed to be in
3 the best interest of the community; and

4 (D) The rendering of civic tribute to individuals
5 who, by virtue of their accomplishments and
6 community service, merit civic commendations,
7 recognition, or remembrance;

8 (19) Each county shall have the power to:

9 (A) Construct, purchase, take on lease, lease,
10 sublease, or in any other manner acquire, manage,
11 maintain, or dispose of buildings for county
12 purposes, sewers, sewer systems, pumping
13 stations, waterworks, including reservoirs,
14 wells, pipelines, and other conduits for
15 distributing water to the public, lighting
16 plants, and apparatus and appliances for lighting
17 streets and public buildings, and manage,
18 regulate, and control the same;

19 (B) Regulate and control the location and quality of
20 all appliances necessary to the furnishing of
21 water, heat, light, power, telephone, and
22 telecommunications service to the county;

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1 (C) Acquire, regulate, and control any and all
2 appliances for the sprinkling and cleaning of the
3 streets and the public ways, and for flushing the
4 sewers; and

5 (D) Open, close, construct, or maintain county
6 highways or charge toll on county highways;
7 provided that all revenues received from a toll
8 charge shall be used for the construction or
9 maintenance of county highways;

10 (20) Each county shall have the power to regulate the
11 renting, subletting, and rental conditions of property
12 for places of abode by ordinance;

13 (21) Unless otherwise provided by law, each county shall
14 have the power to establish by ordinance the order of
15 succession of county officials in the event of a
16 military or civil disaster;

17 (22) Each county shall have the power to sue and be sued in
18 its corporate name;

19 (23) Each county shall have the power to establish and
20 maintain waterworks and sewer works; to collect rates
21 for water supplied to consumers and for the use of
22 sewers; to install water meters whenever deemed



1 expedient; provided that owners of premises having
2 vested water rights under existing laws appurtenant to
3 the premises shall not be charged for the installation
4 or use of the water meters on the premises; to take
5 over from the State existing waterworks systems,
6 including water rights, pipelines, and other
7 appurtenances belonging thereto, and sewer systems,
8 and to enlarge, develop, and improve the same;

9 (24) (A) Each county may impose civil fines, in addition
10 to criminal penalties, for any violation of
11 county ordinances or rules after reasonable
12 notice and requests to correct or cease the
13 violation have been made upon the violator. Any
14 administratively imposed civil fine shall not be
15 collected until after an opportunity for a
16 hearing under chapter 91. Any appeal shall be
17 filed within thirty days from the date of the
18 final written decision. These proceedings shall
19 not be a prerequisite for any civil fine or
20 injunctive relief ordered by the circuit court;

21 (B) Each county by ordinance may provide for the
22 addition of any unpaid civil fines, ordered by



1 any court of competent jurisdiction, to any
2 taxes, fees, or charges, with the exception of
3 fees or charges for water for residential use and
4 sewer charges, collected by the county. Each
5 county by ordinance may also provide for the
6 addition of any unpaid administratively imposed
7 civil fines, which remain due after all judicial
8 review rights under section 91-14 are exhausted,
9 to any taxes, fees, or charges, with the
10 exception of water for residential use and sewer
11 charges, collected by the county. The ordinance
12 shall specify the administrative procedures for
13 the addition of the unpaid civil fines to the
14 eligible taxes, fees, or charges and may require
15 hearings or other proceedings. After addition of
16 the unpaid civil fines to the taxes, fees, or
17 charges, the unpaid civil fines shall not become
18 a part of any taxes, fees, or charges. The
19 county by ordinance may condition the issuance or
20 renewal of a license, approval, or permit for
21 which a fee or charge is assessed, except for
22 water for residential use and sewer charges, on



1 payment of the unpaid civil fines. Upon
2 recordation of a notice of unpaid civil fines in
3 the bureau of conveyances, the amount of the
4 civil fines, including any increase in the amount
5 of the fine which the county may assess, shall
6 constitute a lien upon all real property or
7 rights to real property belonging to any person
8 liable for the unpaid civil fines. The lien in
9 favor of the county shall be subordinate to any
10 lien in favor of any person recorded or
11 registered prior to the recordation of the notice
12 of unpaid civil fines and senior to any lien
13 recorded or registered after the recordation of
14 the notice. The lien shall continue until the
15 unpaid civil fines are paid in full or until a
16 certificate of release or partial release of the
17 lien, prepared by the county at the owner's
18 expense, is recorded. The notice of unpaid civil
19 fines shall state the amount of the fine as of
20 the date of the notice and maximum permissible
21 daily increase of the fine. The county shall not
22 be required to include a social security number,



1 state general excise taxpayer identification
2 number, or federal employer identification number
3 on the notice. Recordation of the notice in the
4 bureau of conveyances shall be deemed, at such
5 time, for all purposes and without any further
6 action, to procure a lien on land registered in
7 land court under chapter 501. After the unpaid
8 civil fines are added to the taxes, fees, or
9 charges as specified by county ordinance, the
10 unpaid civil fines shall be deemed immediately
11 due, owing, and delinquent and may be collected
12 in any lawful manner. The procedure for
13 collection of unpaid civil fines authorized in
14 this paragraph shall be in addition to any other
15 procedures for collection available to the State
16 and county by law or rules of the courts;

17 (C) Each county may impose civil fines upon any
18 person who places graffiti on any real or
19 personal property owned, managed, or maintained
20 by the county. The fine may be up to \$1,000 or
21 may be equal to the actual cost of having the
22 damaged property repaired or replaced. The



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1 parent or guardian having custody of a minor who
2 places graffiti on any real or personal property
3 owned, managed, or maintained by the county shall
4 be jointly and severally liable with the minor
5 for any civil fines imposed hereunder. Any such
6 fine may be administratively imposed after an
7 opportunity for a hearing under chapter 91, but
8 such a proceeding shall not be a prerequisite for
9 any civil fine ordered by any court. As used in
10 this subparagraph, "graffiti" means any
11 unauthorized drawing, inscription, figure, or
12 mark of any type intentionally created by paint,
13 ink, chalk, dye, or similar substances;

14 (D) At the completion of an appeal in which the
15 county's enforcement action is affirmed and upon
16 correction of the violation if requested by the
17 violator, the case shall be reviewed by the
18 county agency that imposed the civil fines to
19 determine the appropriateness of the amount of
20 the civil fines that accrued while the appeal
21 proceedings were pending. In its review of the



1 amount of the accrued fines, the county agency
2 may consider:

- 3 (i) The nature and egregiousness of the
4 violation;
- 5 (ii) The duration of the violation;
- 6 (iii) The number of recurring and other similar
7 violations;
- 8 (iv) Any effort taken by the violator to correct
9 the violation;
- 10 (v) The degree of involvement in causing or
11 continuing the violation;
- 12 (vi) Reasons for any delay in the completion of
13 the appeal; and
- 14 (vii) Other extenuating circumstances.

15 The civil fine that is imposed by administrative
16 order after this review is completed and the
17 violation is corrected shall be subject to
18 judicial review, notwithstanding any provisions
19 for administrative review in county charters;

20 (E) After completion of a review of the amount of
21 accrued civil fine by the county agency that
22 imposed the fine, the amount of the civil fine



1 determined appropriate, including both the
2 initial civil fine and any accrued daily civil
3 fine, shall immediately become due and
4 collectible following reasonable notice to the
5 violation. If no review of the accrued civil fine
6 is requested, the amount of the civil fine, not
7 to exceed the total accrual of civil fine prior
8 to correcting the violation, shall immediately
9 become due and collectible following reasonable
10 notice to the violator, at the completion of all
11 appeal proceedings;

12 (F) If no county agency exists to conduct appeal
13 proceedings for a particular civil fine action
14 taken by the county, then one shall be
15 established by ordinance before the county shall
16 impose the civil fine;

17 (25) Any law to the contrary notwithstanding, any county
18 mayor may exempt by executive order donors, provider
19 agencies, homeless facilities, and any other program
20 for the homeless under chapter 356D from real property
21 taxes, water and sewer development fees, rates
22 collected for water supplied to consumers and for use



1 of sewers, and any other county taxes, charges, or
2 fees; provided that any county may enact ordinances to
3 regulate and grant the exemptions granted by this
4 paragraph;

5 (26) Any county may establish a captive insurance company
6 pursuant to article 19, chapter 431; and

7 (27) Each county shall have the power to enact and enforce
8 ordinances regulating towing operations."

9 SECTION 3. Section 46-16.5, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) The legislature finds and declares the following:

12 (1) The orderly regulation of vehicular traffic on the
13 streets and highways of Hawaii is essential to the
14 welfare of the State and its people;

15 (2) Privately-operated public passenger vehicle service
16 provides vital transportation links within the State.
17 Public passenger vehicle service operated in the
18 counties enables the State to provide the benefits of
19 privately-operated, demand-responsive transportation
20 services to its people and to persons who travel to
21 the State for business or tourist purposes;



- 1 (3) The economic viability and stability of privately-
2 operated public passenger vehicle service is
3 consequently a matter of statewide importance;
- 4 (4) The policy of the State is to promote safe and
5 reliable privately-operated public passenger vehicle
6 service to provide the benefits of that service. In
7 furtherance of this policy, the legislature recognizes
8 and affirms that the regulation of privately-operated
9 public passenger vehicle service is an essential
10 governmental function;
- 11 (5) The policy of the State is to require that counties
12 regulate privately-operated public passenger vehicle
13 service and not subject a county or its officers to
14 liability under the federal antitrust laws;
- 15 (6) The policy of the State is to further promote
16 privately-operated public passenger vehicle service,
17 including but not limited to, the picking up and
18 discharge of passengers from various unrelated
19 locations by taxicabs; and
- 20 (7) The policy of the State is to further promote
21 privately-operated public passenger vehicle service by
22 requiring jitney services [~~not regulated by the~~

1 ~~counties to be under the jurisdiction of the public~~
2 ~~utilities commission.]~~ to be regulated by the
3 counties. For the purposes of this paragraph, "jitney
4 services" means public transportation services
5 utilizing motor vehicles that have seating
6 accommodations for six to twenty-five passengers,
7 operate along specific routes during defined service
8 hours, and levy a flat fare schedule.

9 (b) Any other law to the contrary notwithstanding, [~~where~~
10 ~~not within the jurisdiction of the public utilities commission,]~~
11 every county may provide rules to protect the public health,
12 safety, and welfare by licensing, controlling, and regulating,
13 by ordinance or resolution, public passenger vehicle service
14 operated within the jurisdiction of the county; provided that
15 the counties shall promote the policies set forth in subsection
16 (a)."

17 SECTION 4. Section 92-28, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§92-28 State service fees; increase or decrease of.** Any
20 law to the contrary notwithstanding, the fees or other nontax
21 revenues assessed or charged by any board, commission, or other
22 governmental agency may be increased or decreased by the body in



1 an amount not to exceed fifty per cent of the statutorily
2 assessed fee or nontax revenue, to maintain a reasonable
3 relation between the revenues derived from such fee or nontax
4 revenue and the cost or value of services rendered,
5 comparability among fees imposed by the State, or any other
6 purpose which it may deem necessary and reasonable; provided
7 that:

8 (1) The authority to increase or decrease fees or nontax
9 revenues shall be subject to the approval of the
10 governor and extend only to the following: chapters
11 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
12 231, 269, [~~271,~~] 321, 338, 373, 412, 414, 414D, 415A,
13 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
14 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444,
15 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453,
16 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459,
17 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K,
18 467, 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484,
19 485A, 501, 502, 505, 514A, 514B, 514E, 572, 574, and
20 846 (part II);

21 (2) The authority to increase or decrease fees or nontax
22 revenues under the chapters listed in paragraph (1)



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1 that are established by the department of commerce and
2 consumer affairs shall apply to fees or nontax
3 revenues established by statute or rule;

4 (3) The authority to increase or decrease fees or nontax
5 revenues established by the University of Hawaii under
6 chapter 304A shall be subject to the approval of the
7 board of regents; provided that the board's approval
8 of any increase or decrease in tuition for regular
9 credit courses shall be preceded by an open public
10 meeting held during or prior to the semester preceding
11 the semester to which the tuition applies;

12 (4) This section shall not apply to judicial fees as may
13 be set by any chapter cited in this section;

14 (5) The authority to increase or decrease fees or nontax
15 revenues pursuant to this section shall be exempt from
16 the public notice and public hearing requirements of
17 chapter 91; and

18 (6) Fees for copies of proposed and final rules and public
19 notices of proposed rulemaking actions under chapter
20 91 shall not exceed 10 cents a page, as required by
21 section 91-2.5."



1 SECTION 5. Section 239-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "gross income" to read as
3 follows:

4 "Gross income" means the gross income from public service
5 company business as follows:

6 (1) Gross income from the production, conveyance,
7 transmission, delivery, or furnishing of light, power,
8 heat, cold, water, gas, or oil;

9 (2) Gross income from the transportation of passengers or
10 freight, or the conveyance or transmission of
11 telephone or telegraph messages other than mobile
12 telecommunications services, or the furnishing of
13 facilities for the transmission of intelligence by
14 electricity, by land or water or air:

15 (A) Originating and terminating within this State;

16 (B) By means of vessels or aircraft having their home
17 port in the State and operating between ports or
18 airports in the State, with respect to the
19 transportation so effected; or

20 (C) By means of plant or equipment located in the
21 State, between points in the State;



- 1 (3) Gross income from the transportation of freight by
2 motor carriers (other than as stated in paragraph
3 (2)), or the conveyance or transmission of messages or
4 intelligence through wires or cables located or partly
5 located in the State (other than as stated in
6 paragraph (2) or (5));
- 7 (4) Gross income from the operation of a private sewer
8 company or private sewer facility; or
- 9 (5) With respect to a home service provider of mobile
10 telecommunications services, "gross income" includes
11 charges billed for mobile telecommunications services
12 provided by a home service provider to a customer with
13 a place of primary use in this State when the mobile
14 telecommunications services originate and terminate
15 within the same state; provided that all such charges
16 for mobile telecommunications services that are billed
17 by or for the home service provider are deemed to be
18 provided by the home service provider at the
19 customer's place of primary use, regardless of where
20 the mobile telecommunications services originate,
21 terminate, or pass through. "Gross income" shall not
22 include:



1 (A) Any charges for or receipts from mobile
2 telecommunications services provided to customers
3 of the home service provider whose place of
4 primary use is outside this State;

5 (B) Any receipts of a home service provider acting as
6 a serving carrier providing mobile
7 telecommunications services to another home
8 service provider's customer; and

9 (C) Any receipts specifically from interstate or
10 foreign mobile telecommunications services
11 taxable under section 237-13(6)(D), as determined
12 by the home service provider's books and records
13 kept in the ordinary course of business.

14 For the purposes of this paragraph, "customer", "home
15 service provider", "mobile telecommunications
16 services", "place of primary use", and "serving
17 carrier" have the same meaning as in section 239-22.

18 The words "gross income" and "gross income from public
19 service company business" shall not be construed to include
20 dividends (as defined by section 235-1) paid by one member of an
21 affiliated public service company group to another member of the
22 same group; or gross income from the sale or transfer of

1 materials or supplies, interest on loans, or the provision of
2 engineering, construction, maintenance, or managerial services
3 by one member of an affiliated public service company group to
4 another member of the same group. "Affiliated public service
5 company group" means an affiliated group of domestic
6 corporations within the meaning of chapter 235, all of the
7 members of which are public service companies. "Member of an
8 affiliated public service company group" means a corporation
9 (including the parent corporation) that is included within an
10 affiliated public service company group.

11 Where the transportation of passengers or property is
12 furnished through arrangements between motor carriers, and the
13 gross income is divided between the motor carriers, any tax
14 imposed by this chapter shall apply to each motor carrier with
15 respect to each motor carrier's respective portion of the
16 proceeds.

17 Where tourism related services are furnished through
18 arrangements made by a travel agency or tour packager and the
19 gross income is divided between the provider of the services on
20 the one hand and the travel agency or tour packager on the other
21 hand, any tax imposed by this chapter shall apply to each person



1 with respect to each person's respective portion of the
2 proceeds.

3 Accounts found to be worthless and actually charged off for
4 income tax purposes, at corresponding periods, may be deducted
5 from gross income as specified under this chapter so far as the
6 accounts reflect taxable sales, but shall be added to gross
7 income when and if subsequently collected.

8 ~~[As used in this paragraph, "tourism related services"~~
9 ~~means motor carriers of passengers regulated by the public~~
10 ~~utilities commission]."~~

11 SECTION 6. Section 239-5, Hawaii Revised Statutes, is
12 amended by amending subsections (a) and (b) to read as follows:

13 "(a) There shall be levied and assessed upon each public
14 utility, except airlines, ~~[motor carriers,]~~ common carriers by
15 water, and contract carriers taxed by section 239-6, a tax of
16 such rate per cent of its gross income each year from its public
17 utility business as shall be determined in the manner
18 hereinafter provided. The tax imposed by this section is in
19 lieu of all taxes other than those below set out, and is a means
20 of taxing the personal property of the public utility, tangible
21 and intangible, including going concern value. In addition to
22 the tax imposed by this chapter there also are imposed income



1 taxes, the specific taxes imposed by chapter 249, the fees
2 prescribed by chapter 269, any tax specifically imposed by the
3 terms of the public utility's franchise or under chapter 240,
4 the use or consumption tax imposed by chapter 238, and
5 employment taxes.

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

8 (1) A county provides by ordinance for a real property tax
9 exemption for real property used by a public utility
10 in its public utility business and owned by the public
11 utility (or leased to it by a lease under which the
12 public utility is required to pay the taxes upon the
13 property), and

14 (2) The county has not denied the exemption to the public
15 utility, but excluding a denial based upon a dispute
16 as to the ownership, lease, or use of a specific
17 parcel of real property,
18 then there shall be levied and assessed a tax in excess of the
19 four per cent rate determined in the manner hereinafter provided
20 upon the gross income allocable to such county. The revenues
21 generated from the tax in excess of the four per cent rate
22 hereinbefore established shall be paid by the public utility



1 directly to such county based upon the proportion of gross
2 income from its public utility business attributable to such
3 county, based upon the allocation made in the public utility's
4 filings with the State of Hawaii; provided that if the gross
5 income from the public utility business attributable to such
6 county is not so allocated in the public utility's [~~State~~] state
7 filings, then the gross income from the public utility business
8 shall be equitably allocated to each county. The relative
9 number of access lines in each county shall be deemed an
10 acceptable basis of equitable allocation for telecommunication
11 companies.

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

15 If the ratio of the net income of the company to its gross
16 income is fifteen per cent or less, the rate of tax in excess of
17 the four per cent rate on gross income shall be 1.885 per cent;
18 for all companies having net income in excess of fifteen per
19 cent of the gross, the rate of the tax on gross income shall
20 increase continuously in proportion to the increase in ratio of
21 net income to gross, at such rate that for each increase of one



1 per cent in the ratio of net income to gross, there shall be an
2 increase of .2675 per cent in the rate of the tax.

3 The following formula may be used to determine the rate, in
4 which formula the term "R" is the ratio of net income to gross
5 income, and "X" is the required rate of the tax on gross income
6 for the utility in question:

7
$$X = (26.75R - 2.1275)\%;$$

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

10 However, if the gross income is apportioned under section
11 239-8(b) or (c), there shall be no adjustment of the rate of tax
12 on the amount of gross income so apportioned to the State on
13 account of the ratio of the net income to the gross income being
14 in excess of fifteen per cent, and it shall be assumed in such
15 case that the ratio is fifteen per cent or less.

16 (b) Notwithstanding subsection (a), the rate of the tax
17 upon the portion of the gross income of a carrier of passengers
18 by land which consists in passenger fares for transportation
19 between points on a scheduled route, shall be 5.35 per cent.

20 However, if the carrier has ~~other~~ public utility gross income
21 the fares nevertheless shall be included in applying subsection



1 (a) in determining the rate of tax upon the [ether] public
2 utility gross income."

3 SECTION 7. Section 269-20, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

5 "(d) The commission may at any time suspend, change or
6 revoke such certificate [~~in the manner provided in section 271-~~
7 ~~19~~]."

8 SECTION 8. Section 269-33, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) There is established in the state treasury a public
11 utilities commission special fund to be administered by the
12 public utilities commission. The proceeds of the fund shall be
13 used by the public utilities commission and the division of
14 consumer advocacy of the department of commerce and consumer
15 affairs for all expenses incurred in the administration of
16 chapters 269, [~~271,~~] 271G, 269E, and 486J; provided that the
17 expenditures of the public utilities commission shall be in
18 accordance with legislative appropriations. On a quarterly
19 basis, an amount not exceeding thirty per cent of the proceeds
20 remaining in the fund after the deduction for central service
21 expenses, pursuant to section 36-27, shall be allocated by the
22 public utilities commission to the division of consumer advocacy



1 and deposited in the compliance resolution fund established
2 pursuant to section 26-9(o); provided that all moneys allocated
3 by the public utilities commission from the fund to the division
4 of consumer advocacy shall be in accordance with legislative
5 appropriations.

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

14 SECTION 9. Section 286-207, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§286-207 Exemptions, certain vehicles. This part shall
17 not apply to the following vehicles, if such vehicles are in
18 compliance with safety ordinances and rules of the county in
19 which they operate and other applicable state safety laws and
20 rules:



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- 1 (1) The type of passenger carrying vehicle known as a
2 "sampan bus" within a radius of twenty miles from the
3 city of Hilo, Hawaii;
- 4 (2) Station wagons for the carriage of property;
- 5 (3) Trucks, truck-trailers, trailers or other nonpassenger
6 carrying equipment having a gross vehicle weight
7 rating of 10,000 pounds or less;
- 8 (4) Taxicabs [~~as described in section 271-5(3)(B)~~];
- 9 (5) Passenger carrying vehicles with a seating capacity of
10 nine or less used for the transportation of employees
11 to and from the jobsite;
- 12 (6) Passenger carrying vehicles used by employees solely
13 for their own transportation to, from, and during
14 work;
- 15 (7) Passenger carrying vehicles with a gross vehicle
16 weight of 10,000 pounds or less used in car or van
17 pools for the movement of passengers to and from work;
- 18 (8) A passenger carrying vehicle used for the
19 transportation, without compensation, of persons for
20 private, recreational or entertainment purposes;
- 21 (9) A passenger carrying vehicle with a gross vehicle
22 weight rating of 10,000 pounds or less used solely for



1 the transportation, without compensation, of the
2 vehicle owner, the vehicle owner's family or guests;
3 (10) A passenger carrying vehicle with a gross vehicle
4 weight rating of 10,000 pounds or less used for the
5 transportation, without compensation, of persons for
6 the furtherance of their physical or mental
7 rehabilitation or for social welfare activities."

8 SECTION 10. Section 286-231, Hawaii Revised Statutes, is
9 amended by amending the definition of "school bus" to read as
10 follows:

11 ""School bus" means a commercial motor vehicle used to
12 transport pre-primary, primary, or secondary school students
13 from home to school, from school to home, or to and from school-
14 sponsored events, but does not include a bus, as defined under
15 section 286-2, used as a common carrier [~~as defined under~~
16 ~~section 271-4~~]."

17 SECTION 11. Section 486J-11, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The public utilities commission may take any action
20 or make any determination under this chapter, including but not
21 limited to actions or determinations that affect persons not
22 regulated under chapters 269, [~~271,~~] and 271G, as the commission



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1 deems necessary to carry out its responsibilities or otherwise
2 effectuate chapter 269, [~~271~~7] or 271G."

3 Part III.

4 SECTION 12. Chapter 271, Hawaii Revised Statutes, is
5 repealed.

6 SECTION 13. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 14. This Act shall take effect on January 1, 2011.

9

INTRODUCED BY: _____



JAN 13 2010



Report Title:

Public Utilities Commission; Motor Carriers

Description:

Excludes ground transportation of passengers and freight from regulation by the public utilities commission. Repeals the motor carrier law.

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

