



**GOV. MSG. NO 1317**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 11, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

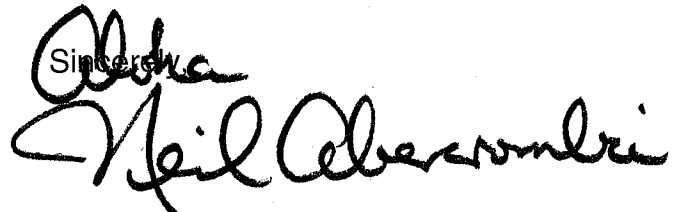
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 11, 2011, the following bill was signed into law:

SB98 SD2 HD1 CD1

RELATING TO WATER CARRIERS  
**Act 213 (11)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

JUL 11 2011

on

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 213  
S.B. NO. 98  
S.D. 2  
H.D. 1  
C.D. 1

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# A BILL FOR AN ACT

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RELATING TO WATER CARRIERS.

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

1 SECTION 1. The legislature finds that the State's water  
2 cargo transportation industry is critical to the economic health  
3 of its island communities. In recognition of the significance  
4 of a healthy, efficient, and accessible water transportation  
5 system, the legislature passed the Hawaii Water Carrier Act,  
6 codified as chapter 271G, Hawaii Revised Statutes, to subject  
7 water carriers to the regulatory oversight of the public  
8 utilities commission.

9 The regulatory framework created by chapter 271G, Hawaii  
10 Revised Statutes, includes a requirement that a water carrier  
11 apply for and receive a certificate of public convenience and  
12 necessity from the public utilities commission before engaging  
13 in operations within the State. Issuance of a certificate of  
14 public convenience and necessity requires findings that the  
15 applicant is willing and able to properly perform the proposed  
16 service and conform to the applicable laws and rules, and that  
17 the proposed service is currently required for the convenience  
18 and necessity of the public or that it will be in the future.



1 Experience has shown that efficient, reliable, frequent,  
2 and universal water carrier service depends on economies of  
3 scale and scope, as well as the substantial investment of  
4 capital and other resources. A successful regulatory regime  
5 must take into account and accommodate these realities. In  
6 reviewing applications to offer new services within the existing  
7 regulatory environment, the public utilities commission must  
8 ensure that the entry of new services and service providers does  
9 not erode the underpinnings of the regulatory framework or  
10 threaten future investment in service and infrastructure in a  
11 manner that risks the loss of existing services. To this end, a  
12 mere recitation of the purported benefits of market competition  
13 is not, without specific supporting facts on the record,  
14 sufficient to support a finding of present or future public  
15 convenience and necessity.

16 The legislature finds that applications for entry into the  
17 regulated water carrier market require in-depth analysis of  
18 specific issues of public convenience and necessity to ensure  
19 that successful applications serve the public interest and  
20 protect communities from the risk of harm.

21 Accordingly, the purpose of this Act is to clarify the  
22 legislative intent that underlies the existing requirement for a



1 finding of present or future public convenience and necessity  
2 for the issuance of a certificate of public convenience and  
3 necessity.

4 SECTION 2. 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- Notice of hearing required. (a) Whenever the  
8 commission conducts a public hearing on an application for a  
9 certificate pursuant to section 271G-10, the commission shall  
10 provide reasonable notice in writing to the applicant for a  
11 certificate and to the public on each island that will be  
12 affected by the proposed service of the fact of the public  
13 hearing and the matter to be considered. Notice pursuant to  
14 this section shall be provided at least thirty days before the  
15 date fixed by the commission for the public hearing.

16 (b) Notice provided pursuant to this section shall plainly  
17 state the proposed operations, routes, and services of the  
18 applicant and the proposed effective date. Notice under this  
19 section shall be effective upon compliance with subsection (c);  
20 provided that the commission shall retain and make available for  
21 public inspection copies of all notices and related documents  
22 issued pursuant to this section.



1        (c) Any public hearing held pursuant to section 271G-10(c)  
2 shall be a noticed public hearing or hearings on the island or  
3 islands to which the water carrier proposes to provide services  
4 or which will be affected by the proposed service. Notice of  
5 the hearing, its purpose, and the date, time, and place at which  
6 it will open shall be given not less than once in each of three  
7 weeks on each island in the county or counties to which the  
8 water carrier proposes to provide services or which will be  
9 affected by the proposed service. The first notice shall be  
10 given not less than twenty-one days before the public hearing  
11 and the last notice shall be given not more than two days before  
12 the public hearing."

13        SECTION 3. Section 271G-10, Hawaii Revised Statutes, is  
14 amended to read as follows:

15        "[+]§271G-10[+] Applications for certificates of public  
16 convenience and necessity. (a) Except as otherwise provided in  
17 this section and in sections 271G-6 and 271G-12, no water  
18 carrier shall engage in operations between points within the  
19 State[-] unless [~~such~~] the carrier holds a certificate of public  
20 convenience and necessity issued by the public utilities  
21 commission authorizing [~~such~~] the operation[-]; provided that no  
22 new application shall be required for any common carrier by



1 water ~~[who]~~ that is the holder of a certificate of public  
2 convenience and necessity issued by the public utilities  
3 commission.

4 (b) Applications for certificates shall be made in writing  
5 to the commission, be verified under oath, ~~[and shall]~~ be  
6 presented in ~~[such]~~ a form ~~[and]~~, contain ~~[such]~~ the  
7 information, and be accompanied by proof of service upon  
8 interested parties as the commission shall, by ~~[regulation,~~  
9 rule, require.

10 (c) The commission shall not approve an application for a  
11 certificate or otherwise grant authorization pursuant to an  
12 application to operate as a water carrier under this chapter  
13 until the commission has given notice and held public hearings  
14 conducted in accordance with the procedures under section  
15 271G- .

16 ~~[(e) A certificate shall be issued]~~ (d) The commission  
17 shall issue a certificate to any qualified applicant ~~[therefor]~~,  
18 authorizing the whole or any part of the operations ~~[covered by]~~  
19 proposed in the application ~~[if it is found that the]~~ only if  
20 the commission finds that:

21 (1) The applicant is fit, willing, and able properly to  
22 perform the service proposed and to conform to this



1 chapter and the requirements [~~7~~] and rules [~~7~~ and  
2 regulations] of the commission [~~thereunder, and that~~  
3 ~~the~~]; and

4 (2) The proposed service, to the extent to be authorized  
5 by the certificate, is or will be required by the  
6 present or future public convenience and necessity [~~7~~  
7 otherwise the application shall be denied].

8 (e) The commission shall not make a finding of public  
9 convenience and necessity or issue an authorization, whether  
10 interim, permanent, or otherwise, to operate as a water carrier  
11 without the following specific findings supported by evidence in  
12 the record:

13 (1) Existing water carrier services are inadequate to  
14 presently service the public or meet demonstrated and  
15 quantifiable future demands for service;

16 (2) The proposed service is designed for and necessary to  
17 meet demonstrated and quantifiable unmet public needs  
18 for present water carrier service or demonstrated and  
19 quantifiable future demands for service;

20 (3) The proposed service will provide demonstrated and  
21 quantifiable benefits to the general public, business  
22 community, and the economy of all islands that are



- 1           entitled to notice under section 271G- , including  
2           demonstrated and quantifiable benefits with respect to  
3           reliability, affordability, and security of the  
4           service line;
- 5           (4) The specific, identified benefits of the proposed  
6           service outweigh its detrimental impact to the  
7           public's interest in maintaining services, including:
- 8           (A) Economies of scale and scope of current water  
9           carriers;
- 10           (B) Future capital costs of existing water carriers;
- 11           (C) Ability of existing water carriers to make  
12           necessary capital and resource investments;
- 13           (D) The financial health, stability, and revenue  
14           stream of existing water carriers; and
- 15           (E) The likelihood that existing levels of service  
16           will be maintained after the enactment of the  
17           proposed service; and
- 18           (5) If the commission's finding of public convenience and  
19           necessity differs from the recommendation of the  
20           consumer advocate, specific findings to address each  
21           ground for objection articulated by the consumer  
22           advocate.





1 The commission shall not make a finding of public convenience  
2 and necessity nor issue a certificate if the evidence in the  
3 record indicates that the issuance of the certificate would  
4 diminish an existing water carrier's ability to realize its  
5 allowed rate of return or if the certificate would allow an  
6 applicant to serve only high-margin or high-profit ports or  
7 lines of service that are currently served by an existing  
8 carrier.

9       ~~[(d)]~~ (f) Any water carrier transporting passengers under  
10 ~~[any such]~~ a certificate issued pursuant to this chapter may  
11 occasionally deviate from the route over which it is authorized  
12 to operate under the certificate ~~[under such]~~ pursuant to the  
13 ~~rules [and regulations as the]~~ of the commission [may  
14 prescribe].

15       (g) The commission shall not issue any certificate that is  
16 designated as interim or temporary or that otherwise does not  
17 conform to the requirements of this chapter except in response  
18 to an emergency situation; provided that an emergency situation  
19 shall mean a state-declared emergency including disaster relief  
20 pursuant to chapter 127 or a civil defense emergency pursuant to  
21 chapter 128. Any certificate issued pursuant to this subsection  
22 shall expire upon the expiration of the state-declared emergency



1 or an earlier date determined by the commission in response to  
2 prevailing conditions. An extension of a certificate granted  
3 under this subsection beyond the expiration of the state-  
4 declared emergency or date determined by the commission shall be  
5 granted only subject to the notice, hearing, and findings  
6 requirements of this chapter.

7 (h) The commission shall post a link on the front page of  
8 the commission's website to a publicly accessible electronic  
9 version of each application for a certificate pursuant to this  
10 section and to each order of the commission regarding posted  
11 applications, including the commission's final decision and  
12 order. Links posted under this subsection shall include a short  
13 description of the document to which the link refers, shall be  
14 active within twenty-four hours of the filing of an application  
15 or issuance of an order, and shall remain active for at least  
16 thirty days from the filing of the application or the issuance  
17 of the order or decision and order."

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2011

21

APPROVED this 11 day of JUL, 2011



GOVERNOR OF THE STATE OF HAWAII