

JAN 21 2011

A BILL FOR AN ACT

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. The regulatory framework created by
9 chapter 271G includes a requirement that a water carrier apply
10 for and receive a certificate of public convenience and
11 necessity from the public utilities commission before engaging
12 in operations within the State. Issuance of a certificate of
13 public convenience and necessity requires findings that the
14 applicant is willing and able to properly perform the proposed
15 service and conform to the applicable laws and rules and that
16 the proposed service is currently required for the convenience
17 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 capital
4 and other resources. A successful regulatory regime must take
5 into account and accommodate these realities. In reviewing
6 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 do, in fact, serve the public
20 interest and 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) Any notice provided pursuant to this section shall
17 plainly state the proposed operations, routes, and services of
18 the applicant and their proposed effective date. Notice under
19 this section shall be effectuated by filing the notice with the
20 commission, which shall make it available for public inspection.

21 (c) Any public hearing held pursuant to section 271G-10(c)
22 shall be a noticed public hearing or hearings on the island or



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

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

13 " [f]§271G-10 [f] **Applications for certificates of public**
14 **convenience and necessity.** (a) Except as otherwise provided in
15 this section and in sections 271G-6 and 271G-12, no water
16 carrier shall engage in operations between points within the
17 State [7] unless [such] the carrier holds a certificate of public
18 convenience and necessity issued by the public utilities
19 commission authorizing [such] the operation [7]; provided that no
20 new application shall be required for any common carrier by
21 water who is the holder of a certificate of public convenience
22 and necessity issued by the public utilities commission.



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

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

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

18 (1) ~~[the]~~ The applicant is fit, willing, and able
19 ~~[properly]~~ to properly perform the service proposed
20 and to conform to this chapter and the requirements,
21 rules, and regulations of the commission
22 ~~[thereunder,]~~ ; and ~~[that the]~~



- 1 (B) Future capital costs of existing water carriers;
- 2 (C) Ability of existing water carriers to make
- 3 necessary capital and resource investments;
- 4 (D) The financial health, stability, and revenue
- 5 stream of existing water carriers; and
- 6 (E) The likelihood that existing levels of service
- 7 will be maintained after the enactment of the
- 8 proposed service.

9 The commission shall not make a finding of public
 10 convenience and necessity nor issue a certificate if the
 11 evidence in the record indicates that the issuance of the
 12 certificate will diminish an existing water carrier's ability to
 13 realize its allowed rate of return or if the certificate would
 14 allow an applicant to serve only high-margin or high-profit
 15 ports or lines of service that are currently served by an
 16 existing carrier.

17 [~~d~~] (f) Any water carrier transporting passengers under
 18 [any such] a certificate issued pursuant to this chapter may
 19 occasionally deviate from the route over which it is authorized
 20 to operate under the certificate [~~under such~~] pursuant to the
 21 rules and regulations [~~as the~~] of the commission [~~may~~
 22 prescribe] ."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2011.
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Report Title:

Public Utilities Commission; Water Carriers

Description:

Requires public hearings before PUC approval of a water carrier's application for certificate of public convenience and necessity. Clarifies the required findings for a finding of public convenience and necessity. Clarifies notice requirements for public hearings.

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