

CONFERENCE COMMITTEE REP. NO.

1

Honolulu, Hawaii

APR 21 2011 , 2011

RE: S.B. No. 98
S.D. 2
H.D. 1
C.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 98, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO WATER CARRIERS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to clarify the existing requirement for a finding of present or future public convenience and necessity for the issuance of a certificate of public convenience and necessity to a water carrier.

Your Committee on Conference finds that applications for entry into the regulated water carrier market require in-depth analyses of specific issues of public convenience and necessity to ensure that successful applications serve the public interest and protect communities from the risk of harm.



In reviewing applications to offer new services within the existing regulatory environment, the Public Utilities Commission must ensure that the entry of new services and service providers does not erode the underpinnings of the regulatory framework or threaten future investment in service and infrastructure in a manner that risks the loss of existing services.

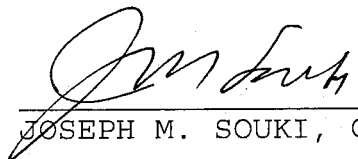
Your Committee on Conference has amended this measure by:

- (1) Clarifying that the Commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate would diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier;
- (2) Inserting an effective date of July 1, 2011; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 98, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 98, S.D. 2, H.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE



JOSEPH M. SOUKI, Co-Chair

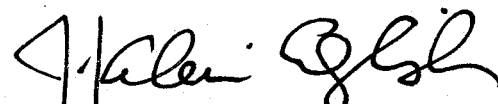


ROBERT N. HERKES, Co-Chair



MARCUS R. OSHIRO, Co-Chair

ON THE PART OF THE SENATE



J. KALANI ENGLISH, Chair

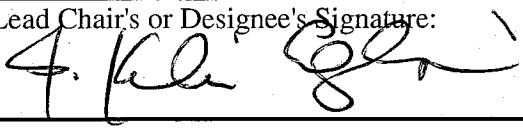
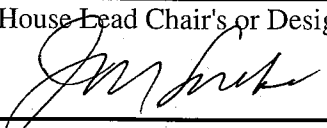


ROSALYN H. BAKER, Co-Chair



Hawaii State Legislature

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: SB 98, SD 2, HD 1					Date/Time: <i>April 20, 2011 1:35 pm</i>				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
ENGLISH, J. Kalani, Chr.	/				SOUKI, Joseph M., Co-Chr.	/			
BAKER, Rosalyn H., Co-Chr.	/				HERKES, Robert N., Co-Chr.	/			
KAHELE, Gilbert	/				OSHIRO, Marcus R., Co-Chr.	/			
					CHONG, Pono	/			
					ICHIYAMA, Linda	/			
					TOKIOKA, James Kunane	/			
					JOHANSON, Aaron Ling	/			
TOTAL	3				TOTAL	7			
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is:					House Recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature:					House Lead Chair's or Designee's Signature:				
									
Distribution: Original Yellow Pink Goldenrod									
<i>File with Conference Committee Report</i> <i>House Clerk's Office</i> <i>Senate Clerk's Office</i> <i>Drafting Agency</i>									

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.

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[7] unless [~~such~~] the carrier holds a certificate of public
20 convenience and necessity issued by the public utilities
21 commission authorizing [~~such~~] the operation[7]; 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 [~~(c) 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



Report Title:

Public Utilities Commission; Water Carriers

Description:

Requires public hearings subject to specified notice requirements before Public Utilities Commission (PUC) approval of a water carrier's certificate of public convenience and necessity (CPCN); specifies required findings for a CPCN; requires posting of documents on PUC's website. (CD1)

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

