

SB 98, SD 1

Measure Title: RELATING TO WATER CARRIERS.

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. (SD1)

Companion:

Package: None

Current Referral: TIA, CPN

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**WRITTEN TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
MARCH 1, 2011**

MEASURE: S.B. No. 98 SD1
TITLE: Relating to Water Carriers

Chair Baker and Members of the Committee:

DESCRIPTION:

This bill:

- 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;
- Deters new water carriers from gaining entry into the market; and
- Bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies.

POSITION:

The Commission defers to the Legislature on much of the substantive matters of this bill, and offers the following comments.

COMMENTS:

The Commission defers to the Legislature as to whether the State's policy should be to prohibit the entry of additional water carriers into the market in Hawaii. This bill would make it extremely difficult, if not impossible, for companies to gain entry into the water carrier market in Hawaii. The bill states, "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 will 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 water carrier." The Commission defers to the Legislature on what findings should be required to issue a CPCN, but this Committee should be aware that this paragraph, among others, would make it very difficult for any new water carrier to enter the market, which could give consumers other options for shipping goods intrastate.

S.B. 98 SD1

Page 2

The Commission would also like to note that barring temporary and interim orders would prevent the Commission from being able to seek actual data and supporting evidence as to whether there would be any harmful effects to an existing water carrier by other water carriers who wish to enter the intrastate shipping market.

Thank you for the opportunity to testify.



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SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**THE HONORABLE ROSALYN H. BAKER, CHAIR
THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR**

SENATE BILL NO. 98, SD 1, scheduled for decision-making on March 1, 2011

**Comments of Roy Catalani, Vice President,
Young Brothers, Limited**

Chair Baker, Vice Chair Taniguchi, and Members of the Senate Commerce and Consumer Protection Committee:

Thank you for the opportunity to comment on Senate Bill No. 98, SD 1 (*SB98 SD1*).

Young Brothers, Limited (*Young Brothers*) strongly supports this bill.

SB98 SD1 is similar to Senate Bill 99, Senate Draft 1 (*SB99 SD1*), the original bill of which was heard before this Committee on February 4, 2011. Both bills clarify the legislative intent underlying the existing requirement for a finding of present or future public convenience and necessity in admitting new entrants into the regulated intra-state water transportation industry. This finding is required before the Hawaii State Public Utilities Commission (the *PUC*) issues a certificate of public convenience and necessity (*CPCN*) to a new water carrier. SB99 SD1, however, also calls for the *PUC*'s restructuring.

In the interest of consistency between these bills, Young Brothers suggests minor revisions to SB98 SD1, as set forth in the table, entitled "Comparison of SB98 and SB99 and Young Brothers, Limited's Suggestions," attached to this submittal. The table identifies differences between the language of the two bills and indicates Young Brothers' suggestions with respect to reconciling the differences.

We would be happy to work with Committee staff and/or State administrative agencies to address these matters as your Committee may direct.

Thank you for this opportunity to comment on SB98 SD1.

**Comparison of SB98 and SB99
and Young Brothers, Limited's Suggestions**

YB Suggestions Regarding New 271G-	SB98 SD1	SB99 SD1
Para (b) - SB 98 should be conformed to match SB 99	<u>(b) Any notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and their proposed effective date.</u>	<u>(b) Notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and their proposed effective date. Notice under this section shall be effective upon compliance with subsection (c); provided that the commission shall retain and make available for public inspection copies of all notices and related documents issued pursuant to this section.</u>
Para (c) - minor difference – SB 98 should be conformed to match SB 99	<u>(c) ... Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service....</u>	<u>(c) ... Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks on each island in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service....</u>
Para (c) – SB 98 should be conformed to match SB 99	<u>(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application, whether interim, permanent, or otherwise, to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures outlined in section 271G- .</u>	<u>(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures outlined in section 271G- .</u>
Para (d) (1) – minor grammar – SB 98 is OK, SB 99 needs edit	<u>(1) the The applicant is fit, willing, and able properly to properly perform the service proposed and to conform to this chapter and the requirements, rules, and regulations of the commission [thereunder,]; and [that the]</u>	<u>(1) The applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements, rules, and regulations of the commission [thereunder,]; and [that the]</u>
Para (e)(3) – SB 98 should be conformed to match SB 99	<u>(3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G- ;</u>	<u>(3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G- , including demonstrated and quantifiable benefits with respect to reliability, affordability, and security of the service line;</u>

YB Suggestions Regarding New 271G-__	SB98 SD1	SB99 SD1
Para (e)(4) – SB 98 should be conformed to match SB 99	<u>(4) The specific identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including:</u>	<u>(4) The specific, identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including but not limited to:</u>
Para (e)(4)(D) – Up to Committee to decide whether to use language in SB 99, SD 1 or compromise language offered by CA and YB and used in SB 98, SD1.	<u>(D) The financial health, stability, and revenue stream of existing water carriers, including whether the proposed service will diminish an existing water carrier's ability to realize its allowed rate of return; and</u>	<u>(D) The financial health, stability, and revenue stream of existing water carriers; and</u>
Para (e)(4)(E)	<u>(E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service;</u>	<u>(E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and</u>
Para (e)(5) – Up to Committee to decide whether to use language in SB 99, SD 1 or compromise language offered by CA and YB and used in SB 98, SD1.	The text to the right is *not in SB98 SD1* but similar language exists as Paragraph (e)(5): <u>(5) Issuance of the certificate would not permit an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier; provided that an applicant shall not be considered to be in the same line of service as an existing cargo carrier if the applicant's proposed service is to transport primarily passengers and any cargo transported is accompanied by and is incidental to the transport of a passenger; and</u>	The text to the left is *not in SB99 SD1* but similar language exists as separate paragraph at the end of Section (e), following Paragraph (e)(5): <u>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 will 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.</u>
In SB98 SD1 Para (e)(6) vs. In SB99 SD1 Para (e)(5) – SB 98 is OK, SB 99 needs edit	<u>(6) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each of the grounds for objection articulated by the consumer advocate.</u>	<u>(5) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each grounds for objection articulated by the consumer advocate.</u>
Para (g) – SB 98 should be conformed to match SB 99	<u>(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation. For the purposes of this subsection, an emergency situation shall mean a state-declared emergency, including disaster relief</u>	<u>(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation; provided that an emergency situation shall mean a state-declared emergency including disaster relief pursuant to chapter 127 or a civil</u>

YB Suggestions Regarding New 271G-__	SB98 SD1	SB99 SD1
	<p><u>pursuant to chapter 127 and a civil defense emergency pursuant to chapter 128. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state-declared emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted pursuant to this subsection beyond the expiration of the state-declared emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter."</u></p>	<p><u>defense emergency pursuant to chapter 128. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state-declared emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted pursuant to this subsection beyond the expiration of the state declared emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter.</u></p>
<p>Para (h) -- SB 98 should be conformed to match SB 99</p>	<p>*text does not exist in SB98 SD1*</p>	<p><u>(h) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted pursuant to this subsection shall include a short description of the document to which the link refers, shall be active within twenty-four hours of the filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order."</u></p>

YB Suggestions Regarding 269-7.5	SB98 SD1	SB99 SD1
<p>Since SB 98 does not address HRS Chapter 269, no change is necessary.</p>	<p>*Section 269-7.5 is not referenced at all.*</p> <p>*Text to the right does not exist in SB98 SD1, but is similar to new language for Section 271G-10, proposed as paragraph (h) above.*</p>	<p><u>(f) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted pursuant to this subsection shall include a short description of the document to which the link refers, shall</u></p>

YB Suggestions Regarding 269-7.5	SB98 SD1	SB99 SD1
		<u>be active within twenty-four hours of filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order."</u>