

SB 99

Measure Title: RELATING TO THE PUBLIC UTILITIES COMMISSION.

Report Title: Public Utilities Commission; Commissioners; Staff; Appropriation

Description: Establishes notice and fact-finding requirements for the issuance of certificates of public convenience and necessity for water carriers; expands the composition of the PUC to five members with a representative from each county plus one at-large member; creates specialized subject-matter panels within the PUC; mandates the hiring of sufficient staff; creates the position of executive officer; requires electronic posting of information in connection with applications for certificates of public convenience and necessity; bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies. (\$)

Companion:

Package: None

Current Referral: CPN, WAM

**Maui Cattlemen's
Association**

PO Box 473

Kula, HI 96790

(808) 878-2660

**Board of Directors
and Officers**

Brendan Baltazar

Harry Cambra

Alex Franco

Greg Freil

Jimmy Gomes

William G. Jacintho

John Kim

Mike Murakami

Amber Starr

Toni Thompson

**Sustaining
ranching
communities in
Hawaii**

MAUI CATTLEMEN'S ASSOCIATION

TESTIMONY

February 2, 2011

Submitted via email: CPNTestimony@Capitol.hawaii.gov

FROM: Maui Cattlemen's Association

TO: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

HEARING DATE: Friday, February 4, 2011, 9:00 am, Hawaii State Capital,
Conference Room 229

MEASURE#: SB 99, RELATING TO THE PUBLIC UTILITIES COMMISSION

The Maui Cattlemen's Association is a non-profit organization representing small and large livestock producers in Maui County, which includes Molokai and Lanai. We fully **support SB 99**, Relating to the Public Utilities Commission. We also support the Affidavit of Alan Gottlieb, President of the Hawaii Cattlemen's Council (HCC), which was presented at the December 2, 2010 hearing.

SB 99 is needed to make sure the Commission applies the rules, and to make sure it promotes public convenience and necessity. As in the Pasha case, the Commission did not address the neighbor island freight concerns, including agriculture products. It should be protecting the public interest as in Chapter 271G of the Hawaii Revised Statutes. This is one reason we strongly support the bill's requirements for public hearings for new applications and careful review of specified matters of public interest.

Thank you for the opportunity to provide comment on Senate Bill 99.

You may contact Maui Cattlemen's Association President, William Jacintho, through the information provided above, or Vice-President, Amber Starr, at (808) 573-6444.

Thank you,

William Jacintho, President

Amber Starr, Vice President

Testimony for CPN 2/4/2011 9:00:00 AM SB99

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Alan Gottlieb

Organization: Hawaii Cattlemen's Council

Address:

Phone: 808-306-7769

E-mail: gottlieb@hawaii.rr.com

Submitted on: 1/29/2011

Comments:



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Friday, February 4, 2011 TIME: 9:00 a.m. PLACE: CR 229

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair; Senator Brian T. Taniguchi, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Government Relations

RE: SB 99 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chairs & Committee Members:

The Hawaii Food Industry Association supports this bill.

The Hawaii Food Industry Association is an organization made up of retailers, wholesalers, manufacturers, and brokers.

HFIA is very grateful for Senator Baker's very important work in stabilizing the inter-island water carrier industry and her efforts to make this critical form of cargo transportation sustainable now and into the future.

HFIA represents many neighbor island businesses that are greatly affected by the PUC's decision to alter the rules regulating inter-island carriers by changing from a CPCN (Certificate of Public Convenience and Necessity) requirement to carrier convenience.

HFIA is concerned with ensuring that all neighbor island ports receive an adequate supply of food within the necessary time frame for food to remain safe and fresh.

Hawaii Food Industry Association

1188 Bishop St. Suit 608

Honolulu, HI 96813

It has come to our attention that Pasha does not offer any refrigerated services and that their vessels are only designed for roll on roll off equipment such as trucks and autos. It has also come to our attention that although Young Brothers is required to offer all lines of service, some of which are subsidized by others, Pasha will not be required to provide all lines of service. HFIA is concerned that the PUC's decision may hinder Young Brothers' ability to subsidize less profitable lines of service to remote neighbor island communities and that this will negatively affect just in time delivery and even food security for these areas.

It is our position that the neighbor island communities affected by the PUC's decision should have been allowed more input prior to the PUC's decision.

This bill is an important step forward and it will help to rectify some of the problems that allowed decisions that did not incorporate neighbor island perspectives.

Thank you for the opportunity to testify.



75-5737 Kuakini Hwy, Suite 208
Kailua-Kona, HI 96740
Phone: 329-1758 Fax: 329-8564
www.Kona-Kohala.com info@kona-kohala.com

**Testimony to the Senate Committee on Commerce and Consumer Protection
Friday, February 4, 2011; 9 a.m.
Conference Room 229**

RE: In Support of SB 99

Aloha Chair Baker, Vice Chair Taniguchi and Members of this Committee,

My name is Vivian Landrum and I am the President/CEO of the Kona-Kohala Chamber of Commerce (KKCC). KKCC represents over 550 business members and is the leading business advocacy organization on the west side of Hawai'i Island. KKCC also actively works to enhance the environment, unique lifestyle and quality of life in West Hawai'i for both residents and visitors alike.

KKCC applauds SB 99 as it strives to make much needed changes to the public utilities commission. The proposed structural changes in the composition of the commission with the inclusion of a diversity of professional experience in that composition, will not only offer greater insight and understanding of neighbor island issues, but also will increase the knowledge bank required to make informed and educated decisions on matters that highly impact the economic well-being of the State. As reflected in the recent Pasha decision, it is strongly felt that the neighbor islands were not truly recognized nor represented during that decision-making process. The proposed five member commission with a commissioner from each county would ensure the interests of the entire State were represented.

Seeking greater transparency in the approval process and requiring neighbor island public hearings is another modification we strongly support. Again, the neighbor island perspective is imperative when making decisions that impact the entire State. As noted in this Bill, "the State's water cargo industry is critical to the economic health of its island communities." All impacted "island communities" must be informed, consulted and heard before any decisions can be finalized.

KKCC supports competition in a business market, however feels this works well only when the rules are clearly defined and followed. The proposed changes for application for certificates of public convenience and necessity elucidate the requirements and provide a clear level of measurement to assist in the decision making process.

We strongly urge this Committee to support this legislature. The neighbor islands often face different economic challenges that Oahu does not, and need that recognition from this body. This Bill will help to correct that disparity with the public utilities commission.

Mahalo for the opportunity to submit our testimony.

Sincerely,

A handwritten signature in cursive script that reads "Vivian Landrum".

Vivian Landrum
President/CEO



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Carol Reimann
Executive Director
Maui Hotel & Lodging Association
on
SB99
RELATING TO WATER CARRIERS

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Friday, 02-4-11 9:00am

Conference room 229

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes approximately 120 property and allied business members – all of whom have an interest in the visitor industry. Collectively, the MHLA membership employs over 10,000 Maui County residents.

MHLA supports SB99, which will clarify the existing decision making process for water carrier by the PUC.

We are grateful for your responsiveness in drafting SB99 after the informational briefing last December regarding the Public Utilities Commission Docket No 2009-0059, Pasha Hawaii. Many testimonies were provided which exposed huge issues in the existing regulatory rules for water carriers and we appreciate that you are responding to our pleas.

We support the language to reform of the PUC structure, especially the inclusion of two additional commissioners and the requirement that each county must have at least one representative. We strongly support this bill as it will provide the neighbor islands a voice and representation in the process.

The suggested amendments requiring PUC to better address neighbor island needs are essential to the viability of our economy. MHLA also supports the suggested amendment language introduced by the Hawaii Farm Bureau which will facilitate staff's ability to thoroughly evaluate compliance with the HWCA.

The visitor industry is the economic engine for Maui County – the majority of our businesses and residents rely on a healthy industry in order to survive. The visitor industry is just beginning to see signs of a steady recovery. Any increase to the cost of doing business could jeopardize our ability to provide first class goods & services, increase the cost of travel to our visitors, and ultimately put our viability at risk.

Thank you for the opportunity to testify.

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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

SENATE BILL NO. 99 scheduled for hearing on February 4, 2011

**Testimony of Glenn Hong, President, and 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 testify on Senate Bill No. 99 (*SB 99*).

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

We would first like to thank this Committee and the sponsors of this bill for listening and responding to the testimony presented in the CPN's December 2, 2010 informational briefing. In that hearing, we respectfully submitted that, in the context of water carriers, a key question of legislative policy is this: Does a regulatory or competitive system best serve those who depend upon it, particularly Neighbor Island residents and businesses? Although we described the reasons why we believe a regulatory system best serves the public interest, we also asked that, whatever policy choice the legislature makes, the same rules apply to all those who seek to provide service. We appreciate and support the answers provided in this bill.

SB 99 proposes to restructure the Hawaii State Public Utilities Commission (*PUC*) and its administrative staff to achieve fair representation of all island communities and to ensure that this agency is led and managed by commissioners and staff of "the highest possible levels of experience and expertise". The legislation also clarifies the standard by which the PUC admits new water carriers into the regulated intra-state industry.

As the Committee well knows, Young Brothers is a water carrier regulated by the PUC. We transport cargo mainly to serve the State's Neighbor Island communities. In this Committee's informational briefing of December 2, 2011, Young Brothers articulated serious concerns arising from the PUC's decision to grant "interim" approval of Pasha Hawaii Transport Lines LLC's application for a certificate of public convenience and necessity (CPCN). As we pointed out, without a legislative mandate, the PUC's decision changes the regime by which water carriers are to be regulated in this State. These changes have diminished Young Brothers' ability to attract capital and thereby carry economic risks that impact most heavily those neighbor island communities served by Young Brothers.

SB 99 addresses these concerns directly and significantly. The legislation ensures representation of Neighbor Island interests by proposing, among other things, a five-member PUC with one commissioner appointed from each of the State's counties and one commissioner appointed at large. It also proposes appointment of an executive officer of a caliber that allows commissioners to address planning and policy matters affecting the State's essential utility services.

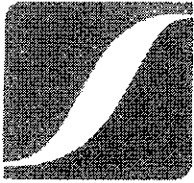
As importantly, SB 99 also reiterates and clarifies the Legislature's policy with respect to regulation of water carriers. The bill clearly enumerates the factors that the PUC should have considered, even under the law as it stands today, with respect to reviewing applications for water carrier CPCNs.

Young Brothers has some ministerial matters to point out in the following sections of the bill:

- **Section 2:** In the new section proposed for addition to Hawaii Revised Statutes (HRS) chapter 271G, subsection (b) provides in part: "Notice under this section shall be effectuated by filing the notice with the commission, which shall make it available for public inspection." It appears, however, that the notice is issued by the commission itself and is effectuated by the proposed subsection (c). Perhaps the quoted passage may be inapplicable or unnecessary.
- **Section 3:** We point out two matters: First, an amendment to HRS § 269-2 is being proposed to change the composition of the PUC, from three members to five members. The proposed change to HRS § 269-2(a) specifies the terms of three of the first five appointees to this reconstituted commission; it does not specify the terms of the other two appointees. Second, the proposed new subsection (b) to HRS § 269-2 tasks the commission to establish two panels within the PUC. To avoid any administrative difficulties and ambiguities, perhaps a process by which each commissioner is assigned to a panel could be spelled out in the legislation.

We would be happy to work with Committee staff to address these matters.

Thank you for the opportunity to testify.



SUISAN Company, Ltd.

1965 KAMEHAMEHA AVE. P.O. BOX 386 HILO, HAWAII 96720

PHONE: 808-935-8511

VIA ELECTRONIC MAIL

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

February 3, 2011

Dear Senator Baker and Senator Taniguchi:

Re: Senate Bill No. 99 Scheduled for Hearing on February, 4, 2011 at 9:00 a.m.

Suisan Company, Limited ("Suisan") is the premier distributor of frozen and chilled food products, fresh produce, dry grocery, disposables, cleaners, and paper products on the Big Island of Hawaii. Substantially all of the merchandise Suisan distributes arrives by way of water transportation.

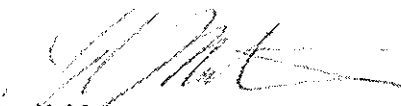
Given the great importance of water transportation to "neighbor island" businesses, we were indeed surprised last year when the Public Utilities Commission ("PUC") granted Pasha Hawaii Transport Lines an interim certificate of public convenience and necessity without holding any public hearings on the matter. Such a crucial decision should properly be made only after considering the input from those that will be most affected by it.

We strongly support the intent and purpose of Senate Bill No. 99, as it would enable the PUC to become more responsive to the concerns of the public. In particular, the requirement for one commissioner to be appointed from each of the four counties and one at large would better represent the interests of the "neighbor islands."

We are grateful for the opportunity to provide our thoughts on this matter.

Very truly yours,

SUISAN COMPANY, LIMITED


Rex Y. Matsuno
President

RYM/wkw



February 3, 2011

To: Senator Rosalyn Baker, Chair Senator Brian Taniguchi, Vice Chair
Senator Brickwood Galuteria Senator Josh Green, M.D.
Senator Clarence Nishihara Senator Sam Slom

Committee on Commerce and Consumer Protection

From: Chad Buck
Owner, Hawaii Foodservice Alliance LLC

Re: Support for **S99 Relating to Public Utilities Commission**

As a business owner with businesses on the islands of Maui, Kauai, the Big Island and Oahu, I see the need for better representation for the neighbor islands within the PUC Commission. Recently, a decision was made by the PUC regarding the entry of Pasha to enter in to inter-island service without full consideration as to how Pasha's entry would negatively impact the neighbor island populations in regard to the transportation and frequency of service of perishable products. I believe that Senate Bill 99 will help prevent harmful decisions from being made, particularly in the cases involving water cargo transportation between islands.

On behalf of our 176 employees and their families, many of whom live and work on the neighbor islands, I would also like to thank Senator Baker and her colleagues for initiating SB99. Thank you for recognizing the need for better representation for our neighbor island citizens.

With this in mind, I fully support SB99.

Thank you.

Testimony in Strong Support of SB 99

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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

SENATE BILL NO. 99 scheduled for hearing on February 4, 2011 at 9 a.m.

**Testimony of Dean Okimoto
President of Nalo Farms, Inc.**

I strongly support Senate Bill 99. I presented testimony at this Committee's Informational Briefing on December 2, 2010 as President of Nalo Farms, Inc., a Hawaii corporation, doing business in Waimanalo on Oahu. In that testimony, I made points about (a) sustainability, food security and increasing our local agricultural products for the people of Hawaii, (b) the harm that unfair competition, as authorized by the PUC in the Pasha decision, will ultimately have on the Young Brothers system upon which farmers rely, and (c) failure to take care of this problem may well put the nail in the coffin to farming on the Neighbor Islands and, along with this, any hope of increasing agricultural food production, sustainability, and food security. I attach this testimony for your reference.

In short, both neighbor island voices and the important purposes and protections of Chapter 271G of the Hawaii Revised Statutes were ignored in the Pasha case. For that reason, I strongly support the provisions of both Senate Bill 98 and 99 which require public hearings for new applications and the amendments to Section 271G-10 of the Hawaii Revised Statutes to clarify the rules relating to *public* convenience and necessity. I very strongly believe that these issues relating to PUC reform are critical problems for the Legislature to immediately correct.

Thank you for this opportunity to testify.

Testimony in Strong Support of SB 99

Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice-Chair

December 2, 2010
9:30 AM
Senate Room 229

Chair Baker, Vice Chair Taniguchi, and committee members.

Thank you for this opportunity to discuss and address your committee, on the interim decision and order issued by the PUC on granting PASHA to service the interisland ports for cargo service.

I come before you today as President of Nalo Farms, Inc., and a farmer that does business with over 100 restaurants and markets in Honolulu and Maui. We also sell other farmers products to many of these establishments, some products of which are brought into Honolulu on Young Brothers. I have always appreciated Young Brothers concern for helping agriculture, as we would not be able to buy and distribute some of the Neighbor Island products without YB's help in shipping discounts for agricultural products.

We hear growing talks about sustainability and food security and increasing our local agricultural products for the people of Hawaii, and yet we are now looking at a situation where we will surely make less ag products available or at the least products available at higher costs to the consumer due to increased transportation costs.

If you allow PASHA to operate without the same stipulations put on Young Brothers of servicing marginally profitable ports such as Molokai and Lanai, and allow them to pick and choose the clients that they will transport cargo for, it will put an unfair burden on YB to be competitive and they will need to do away with the discounts on ag products that they transport.

PASHA can choose all the big shippers, like car manufacturers and construction materials, service them and even make it cheaper for these items to go between islands, but it will be at the expense of food products that require shipping in refrigerated containers and farm products. Taking away the cream from YB will kill agriculture on the Neighbor Islands, as then they really become uncompetitive with farmers on Oahu. I speak as a farmer from Oahu...it may even help my business, but as a native born Hawaii resident it is absolutely wrong! Things like Okinawan sweet potato from Molokai or the Big Island, Hamakua tomatoes from Hawaii, papayas from all islands, Maui gold pineapple, Kula strawberries, etc. ... all become to high priced for our restaurants to serve on their menus.

Oahu has 85% of the consuming population in the state, so farmers on the Neighbor Islands must have access to this market to survive. YB provides us with the cheapest mode of interisland transportation, especially with their 30% agricultural discount. Our farmers have a hard enough time competing against Mainland produce and even the farmers on Oahu, I would think this would put the nail in the coffin to farming on the Neighbor Islands...and there goes any talks of increasing agricultural food production, sustainability, and food security.

Testimony in Strong Support of SB 99

I don't know if our islands can sustain two cargo shipping companies operating in Hawaii, and I understand how we might want competition, but as legislators you must look at making sure these companies can be viable for the future of Hawaii. Ask yourselves is there enough business? do we want another Aloha airlines situation?

I thank you for the opportunity to testify. You may contact me on my cell at 479-1797, if you have any additional questions for me.

sincerely,

Dean J. Okimoto
President, Nalo Farms, Inc.

Testimony of Lynn DeCoite, President
L&R Farm Ent LLC

Senate Committee on Consumer Protection
The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair

Notice of Hearing

Date: Friday, February 4, 2011

Time: 9:00 a.m.

Place: Conference Room 229

State Capitol

415 South Beretania Street

Testimony in **Support** of Senate Bill 99

Chair Baker, Vice Chair Taniguchi and committee members:

Thank you for allowing me to give testimony, many testimonies were provided which had big problems in the existing regulatory rules for water carriers and we thank you and your committee members who heard our cries. A notice "to the public on each island that will be affected by the proposed service...." I hope that this notice will include Molokai and Lanai since we will be affected by the proposed service, such as Pasha Hawaii's CPNC. Molokai and Lanai will not be served by Pasha Hawaii, but yet it may affect a rate increase to us, or a discontinuance of a barge service or a change in route because of the economics.

I hope the contents on page 5, S271G, Notice of hearing requirement, covers that ripple effects which Pasha Hawaii's CPCN will do to both Molokai and Lanai. Pasha Hawaii got "cherry picking" privileges and Molokai and Lanai will get slapped with a higher rate increase and future possibility of less frequent barge service.

Thank you for providing SB99 by keeping Molokai and Lanai on the playing field for decision making.

For those Reasons we support SB99

Mahalo,

Lynn DeCoite,

Testimony for S.B. NO. 99

HEARING

Date: Friday, February 4, 2011

Time: 9:00am

Place: Conference Room 229, State Capitol, 415 South Beretania Street

Senator Rosalyn H. Baker and Senator Brian T. Taniguchi,

I am writing you in support of S.B. NO. 99

We need to provide support to the PUC so it can better serve the public. As it is now in present form, the PUC is old and outdated, and only best suited for yesterday's problems. The PUC needs to be improved to be able to deal with today's and tomorrow's complex problems.

Mahalo.

Kimo Pa

Big Island Container Sales & Rentals, LLC.

Testimony of
Peter Yukimura
KOA Trading Company

Before:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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

SENATE BILL NO. 99 scheduled for hearing on February 4, 2011 at 9 a.m.

Chair Baker, Vice Chair Taniguchi and Committee Members:

Thank you for this opportunity to discuss to address your committee and present testimony in **strong support of SB 99**. I am the owner and President of KOA Trading Company, Kauai's Complete Grocery Distributor. My family has owned and operated this business since 1949.

I submitted an affidavit to the PUC in the PUC proceedings in the Pasha case. As far as I can tell, my testimony was not considered by the PUC. I attach a copy of my affidavit in which I explained my reasons for reaching the following conclusion:

“I do not believe that Pasha's application for a CPCN is fair, nor would it benefit the businesses on the Island of Kauai or the people of the State of Hawaii. If Pasha is allowed to cherry-pick from YB, I am concerned that it may jeopardize the services that we all truly do need. We currently have a water transportation system, utilizing YB, that works and provides the frequency and just-in-time service upon which my business and the Island of Kauai depend. The Pasha proposal adds nothing to this system and, in fact, jeopardizes the system we currently have and clearly need.”

The Commission failed to consider my or other neighbor island testimony. As a result, neighbor island businesses and residents were not given the benefit of the water carrier law and consumer protection found in Chapter 271G. For these reasons, I strongly support this bill's clear statement of legislative policy and the bill's clarification of the process that the PUC must complete and the facts that the PUC must find before it issues a certificate of public convenience and necessity to a new water carrier.

Thank you for this opportunity to testify in strong support of SB 99.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PASHA HAWAII TRANSPORT LINES LLC) DOCKET NO. 2009-0059
)
For Issuance of a Certificate of Public)
Convenience and Necessity and Approval of its)
Local Tariff No. 1 for Service Between and)
Among the Ports of Honolulu, Kahului, Hilo)
and Nawiliwili)
_____)

AFFIDAVIT OF PETER YUKIMURA
IN SUPPORT OF YOUNG BROTHERS, LIMITED'S STATEMENT OF POSITION

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, Peter Yukimura, first being duly sworn on oath, depose and say:

1. I am the owner and President of KOA Trading Company, Kauai's Complete Grocery Distributor. My family has owned and operated this business since 1949.
2. I submit this affidavit as an officer and on behalf of KOA Trading Company.
3. KOA Trading provides over 50% of Kauai's hotel and restaurant needs relating to food and beverage products.
4. As one of Kauai's largest distributors of the finest food and beverage products from all over the world, KOA Trading relies on frequent and efficient shipping to supply our customers regularly. We handle a large amount of both dry and refrigerated cargo. We primarily receive palletized cargo (recently over 100 pallets in a typical week), but we also receive goods packed in YB containers by our suppliers. More than half of that total is

refrigerated cargo. We bring in items from about 20 different shippers in the State via Young Brothers, including a substantial amount of perishable cargo through Unicold Corporation.

5. As a business owner and customer of Young Brothers, I have several concerns about the application by Pasha Hawaii Ltd. to obtain a certificate of public convenience and necessity (CPCN).

- a. I have serious questions as to whether Pasha will actually serve Nawiliwili “on inducement” as they state in their PUC application. Without regular sailings to Nawiliwili, Pasha’s proposal provides no direct benefits for companies on Kauai.
- b. If Pasha reduces the volume that our primary shipper (YB) handles statewide and starts to affect its bottom line, I believe it could affect YB’s ability to continue to provide the same level of services currently offered to Kauai.
- c. Even if Pasha does sail to Nawiliwili occasionally, their proposed bi-weekly schedule is too infrequent for my company’s needs. The frequency of sailings is a key service feature offered by Young Brothers that is important to our business model. The twice weekly sailings are crucial to replenish our inventory with “just-in-time” sailings. It is absolutely critical that this Commission understand that for our Island of Kauai, similar to the other islands of our State, warehousing space is very limited and adding substantial warehousing space would be prohibitively expensive. For this reason alone, the Commission must scrutinize the impacts of changing the basic economics of this system for an essential service provider such as YB.
- d. I also understand that Pasha’s application does not include refrigerated cargo services. Because KOA Trading ships a significant amount of the perishable goods consumed on Kauai, we would be unlikely to utilize a service like Pasha’s that does not offer refrigeration.

- e. In the case of Kauai, Pasha's proposed inter-island service will not be an alternative to Young Brothers. Kauai will remain dependent on Young Brothers. Therefore, any financial harm to Young Brothers – particularly anything that may affect their ability to provide affordable, regular, and frequent sailings – will result in direct harm to Kauai.
- f. My business depends on the comprehensive services that Young Brothers currently offers: state-wide shipping, for all types of cargos, refrigerated and dry, palletized and containerized – not just some ports or some cargo types. If a new competitor like Pasha significantly weakens YB's ability to provide its comprehensive lines of services, I fear that costs may rise as a result of YB losing business to Pasha.
- g. If the cost of shipping via YB does rise, KOA Trading will pass on those costs to our customers. I'm sure other distributors will do the same. As a result, food prices on Kauai will also rise.
- h. Alternatively, if YB's economies of scale were to change so that the frequency of sailings were reduced, the consistent, dependable and convenient service that we are used to will force us to add inventory, which will increase our cost of doing business.

6. I do not believe that Pasha's application for a CPCN is fair, nor would it benefit the businesses on the Island of Kauai or the people of the State of Hawaii. If Pasha is allowed to cherry-pick from YB, I am concerned that it may jeopardize the services that we all truly do need. We currently have a water transportation system, utilizing YB, that works and provides the frequency and just-in-time service upon which my business and the Island of Kauai depend. The Pasha proposal adds nothing to this system and, in fact, jeopardizes the system we currently have and clearly need.

7. For the foregoing reasons, I ask that you deny the Pasha application.

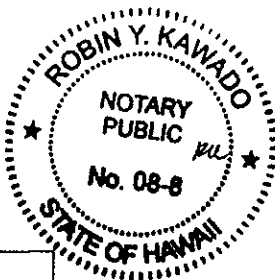
Further Affiant Sayeth Naught.


PETER YUKIMURA

Subscribed and sworn to before me
This 7th day of October 2009.

Robin Y Kawado

Notary Public, State of Hawaii
First Judicial Circuit
Name of Notary: Robin Y. Kawado
My Commission Number: 08-8
My Commission expires: January 20, 2012



NOTARY CERTIFICATION (Hawaii Administrative Rule ' 5-11-8)	
Doc. Date: <u>October 7, 2009</u>	# of Pages: <u>4</u>
Doc. Description: <u>Affidavit of Peter Yukimura in support of Young Brothers Ltd's statement of position</u>	
<u>Robin Y Kawado</u>	<u>10/7/2009</u>
(Name of Notary) <u>First</u>	Date
Judicial Circuit	

Testimony for CPN 2/4/2011 9:00:00 AM SB99

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Terry Mcbarnet

Organization: Lanai Oil Co.

Address: 16 Hobron Ave Kahului, Hi

Phone: 8082810168

E-mail: terry@mauioil.com

Submitted on: 2/2/2011

Comments:

The interest of Lanai are better served if Young Brothers remain the sole shipper between the islands. It is a small market and every effort should be tried to keep the cost of living from rising. Thank You



Ocean Tourism Coalition

The Voice for Hawaii's Ocean Tourism Industry
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Testimony to the Senate CPN Committee
Friday, February 4, 2011; 9:00 a.m.
Conference Room 229

Speaking in Support

RE: SB 99

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

My name is James E. Coon, President of the Ocean Tourism Coalition.
The OTC represents over 300 small ocean tourism businesses state wide. We
appreciate the efforts being made by the Legislature in addressing the
inadequacies of the Public Utilities Commission.

We believe these bills will go a long way in reforming some of the serious
shortfalls that are now apparent in the operation of the PUC. Especially
disturbing was the recent ruling which allowed a large shipper to "cherry pick"
markets to serve at the detriment of the current provider which will cause
serious hardship for the smaller islands.

Please pass this bill which will help restructure the PUC in ways that will be very
positive for our islands.

Thank you for the opportunity to submit testimony. If you have any questions,
please contact me at 808-870-9115.

Sincerely,

James E. Coon, President



LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai'i 96817

Phone: 533-3454; henry.lifeoftheland@gmail.com

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

DATE: Friday, February 4, 2011

TIME: 9:00 a.m.

PLACE: Conference Room 229

re: **SB 99 PUBLIC UTILITIES COMMISSION STRONG SUPPORT**

Aloha Chair Baker, Vice Chair Taniguchi and Members of the Committee

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Passage of SB 99 is of paramount importance in efforts to modernize the Public Utilities Commission.

The Commission has come a long way by posting all of the documents associated with its cases on-line. The Commission has allowed more parties to intervene in recent regulatory actions (dockets). They have also allowed proceedings to be videotaped for airing on `Olelo.

More needs to be accomplished. For example, all private water companies in Hawai'i are required to be registered with the Commission and to have their rates approved by the Commission. Although we have provided the

Commission with examples of non-compliance, there are still some water companies which have existed for 50 years and have never complied with this legally binding requirement.

In the early 1970s the Commission, like all other state agencies, deliberated openly.

Then at some point their deliberations became secret and the public was not permitted to understand how the Commission decided cases.

Around this time the three member Commission became the Chair who made all decisions and the two "high three" appointees --civil servants promoted so that they could receive higher income for a few years which "entitled" them to receive higher pensions.

Unlike other State Agencies, which list findings of facts and conclusions of law as part of their decision making process, often Commission decisions are determined in private and appear more to be of the form -- we decided this in this case because that is what we wanted to do.

The Commission has also had problems understanding that Environmental Law (Chapter 343, HRS) applies to them. In cases involving transmission lines, interisland travel, and Big Wind, the Commission has either decided that an EIS was not required or that "at the earliest practical time" did not apply to the Commission.

The law is clear. The Hawai'i Supreme Court opined: "Where all three elements under subsection (c) were present: (1) an applicant proposed an action specified by subsection (a), (2) the action required the approval of an agency, and (3) the action was not exempt ...the agency ...was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098."¹

Mahalo,

Henry Curtis
Executive Director

¹ http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/hrs0343/HRS_0343-0005.htm

Testimony of

Barbara Haliniak

President, Molokai Chamber of Commerce Foundation

Before:

Senate Committee on Consumer Protection

The Honorable Rosalyn H. Baker, Chair

The Honorable Brian T. Taniguchi, Vice Chair

Notice of Hearing

Date: Friday, February 4, 2011

Time: 9:00 a.m.

Place: Conference Room 229

State Capitol

415 South Beretania Street

Testimony for Senate Bill 99

Chair Baker, Vice Chair Taniguchi and committee members:

Thank you for this opportunity to address your committee. Thank you for crafting SB99, which will cover the pukas in the existing regulatory rules on a water carrier's application for a Certificate of Public Convenience and Necessity (CPCN).

We know that SB99 was in direct response from your December 2, 2010 Informational Briefing regarding the Public Utilities Commission Docket No 2009-0059. Many testimonies were provided which cited huge pukas in the existing regulatory rules for water carriers and we thank you and your committee members who heard our pleas, thus crafted SB99.

I would like to direct your attention to page 5 of SB99, lines 17 through 19, which talks about

a notice "to the public on each island that will be affected by the proposed service...." I hope that this notice will include Molokai and Lanai since there may be potential ripple effects, such as Pasha Hawaii's CPNC. Molokai and Lanai will not be served by Pasha Hawaii, but yet it may affect a rate increase to us, or a discontinuance of a barge service or a change in route because of the economics as outlined on page 18, lines 9 through 16. I hope the contents on page 5, S271G, Notice of hearing requirement, covers that ripple effects which Pasha Hawaii's CPCN will do to both Molokai and Lanai. Pasha Hawaii got "cherry picking" privileges and Molokai and Lanai will get slapped with a higher rate increase and future possibility of less frequent barge service.

Thank you for including on SB99 page 7, lines 21 and 22, this is a very important part of ensuring that Molokai's and Lanai's economics will be included in the decision making.

As stated on page 17 (3) lines 8 through 11; "The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all

islands....." Yes, it should always include Molokai and Lanai. We support Senate Bill 99.

CARL FREEDMAN

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TESTIMONY TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE: Friday, February 4, 2011
TIME: 9:00 a.m.
PLACE: Conference Room 229
State Capitol, 415 South Beretania Street

SB 99 TESTIMONY AGAINST PUC RESTRUCTURING PROVISIONS

I am Carl Freedman, owner and principal of Haiku Design & Analysis, a small consulting business on Maui specializing in public utility regulatory affairs and long range utility planning.

This testimony is on my own behalf.

I have been working for many years in Hawaii to encourage and support constructive reforms to the PUC as chair of the Regulatory Reform Work Group of the Hawaii Energy Policy Forum and as author of a 2003 report for the Forum, Hawaii Energy Utility Regulation and Taxation .

I do not think the PUC restructuring provisions in SB99 would be effective. These provisions, as currently drafted this bill would:

- harm the speed, productivity and effectiveness of the Commission
- increase administrative costs
- encourage constituency-based decision making

The objectives of these provisions (to increase attention to outer-island concerns) could be more directly addressed by:

- requirements for conducting hearings on impacted islands (addressed in the bill)
- explicit legislative direction to consider all-island concerns or requirements to make explicit findings that all-island concerns have been considered and addressed
- review of incoming appointments to the Commission
- dissolution of the current statutory and administrative rule presumption that the Consumer Advocate can adequately represent all public interests in determining standing to intervene in hearings before the Commission (allowing all affected stakeholders and opportunity to petition to intervene in Commission dockets

Increasing the number of commissioners from three to five would:

- slow down decision making
- increase administration expenses.

Requiring multi-island constituency would:

- encourage constituency-based decision making
- limit the potential pools of qualified candidates willing to serve
- would require candidates to move families to Oahu for four multi-year terms.

Creating two panels of commissioners would:

- bifurcate decision making
- require two sequential levels of review
- trigger extra contested case exceptions briefing process requirements.

For the reasons above I recommend against the provisions in SB 99 that would restructure the PUC.

Respectfully submitted,

Carl Freedman