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KEALI S. LOPEZ
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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

MONDAY, MARCH 14, 2011
2:00 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE

**SENATE BILL NO. 99, S. D. 2 – RELATING TO THE
PUBLIC UTILITIES COMMISSION.**

DESCRIPTION:

This measure establishes notice and fact-finding requirements for the issuance of a certificate of public convenience and necessity ("CPCN") for water carriers; expands the composition of the PUC to five members, with two Commissioners representing the counties of Hawaii, Kauai, and Maui; 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 CPCNs; bars interim or temporary orders for CPCNs except in state-declared emergencies.

POSITION:

The Consumer Advocate supports S. B. No. 99, S. D.2, with reservations.

COMMENTS:

The Consumer Advocate worked with Young Brothers, Limited and Senators Rosalyn Baker and Kalani English concerning the language of S. B. No. 99 (and S. B. No. 98). The Consumer Advocate had expressed concern that this

Senate Bill No. 99, S. D. 2
House Committee on Consumer Protection and Commerce
Monday, March 14, 2011, 2:00 p.m.
Page 2

legislation should not be overly broad so as to prevent the issuance of a Certificate of Public Convenience and Necessity (CPCN) to an inter-island water carrier who proposes to transport primarily passengers. The language of the legislation that was agreed upon by the Consumer Advocate and Young Brothers, Limited, with the approval of both Senators Baker and English was as follows:

Page 18, beginning on line 20 and continuing on to page 19 up to line 5 should be numbered as paragraph (6) and should read as follows:

“(6) 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 such 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.”

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
MARCH 14, 2011**

MEASURE: S.B. No. 99 SD2

TITLE: Relating to the Public Utilities Commission

Chair Herkes and Members of the Committee:

Comments

DESCRIPTION:

This bill, among other things:

- 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 1) at least two commissioners representing the counties of Hawaii, Kauai, and Maui, provided these two commissioners shall not represent the same county and 2) no more than two commissioners shall represent the same professional or occupational field;
- Creates two specialized subject-matter panels within the PUC, comprised of two commissioners plus the chairperson;
- Creates the position of executive officer;
- Requires electronic posting of information in connection with applications for certificates of public convenience and necessity; 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 bill provides that the number of commissioners will be increased from three to five commissioners and the bill states, "At all times, the commission shall include at least two commissioners representing the counties of Hawaii, Kauai and Maui;" The Commission defers to the Legislature as to how many members should be on the Commission, and how the members of the Commission should be comprised and constituted. However, any residency requirements should be clearly specified, as the word "representing" can be open to many interpretations.
- With the addition of two more Commissioners, an executive officer and other personnel, which this bill mandates, the cost to State Government will be significantly increased. An estimate of the total cost if the bill is fully implemented would be approximately \$700,000 annually.
- In regard to the requirement that the Commission post a link to the front page of the Commission's website for each application for a certificate of Public Convenience and Necessity ("CPCN") and the corresponding decision and order, the Commission notes that its staff resources are currently very limited and this action would require substantial time and resources. Our Docket Management System (DMS) already contains all the filings in our dockets and includes the ability to subscribe to a docket and receive email notification when anything is filed in the docket. Additionally, the public can subscribe to receive the Commission's daily activity reports. The Commission could place a list of active CPCN applications on its homepage with links to each the dockets (where all the filings for that docket would be available), provided sufficient staff resources are available.
- 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. On page 18, line 20, 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.

- If it is the Legislature's intent to effectively and significantly improve the Commission's resources and structure so that it can implement the State's policies set forth by the Legislature and prevent history from repeating itself year after year, the Legislature must correct and repeal the statutory provision that provides for an automatic annual raid on the Commission's Special Fund, which are funds primarily made up of monies paid by regulated public utilities, and which they collect from their customers to fund regulatory efforts. Chapter 269-33(d) HRS provides: "All monies in excess of \$1,000,000 remaining on balance in the public utilities special fund on June 30 of each year shall lapse to the credit of the general fund." Millions of dollars from the Commission's special fund lapse into the general fund every year because of this statute. Further, a budget ceiling is imposed on the Commission's budget, which caps the amount of money that the Commission can use during the fiscal year, since any amounts not expended by the Commission in excess of \$1,000,000, is automatically transferred to the General Fund every year to help balance the State's budget. Last year, over 67% of the Special Fund lapsed into the General Fund. This severely handicaps the Commission in its ability to control and use its own funding. Repealing section 33(d) in Chapter 269 HRS and increasing the budget ceiling would enable the Commission to maintain a higher level of resources that is required to fulfill its statutory duties in today's more complex and demanding regulatory arena.

Thank you for the opportunity to testify.

CPCtestimony

From: barbara.haliniak@hawaiiantel.net
Sent: Saturday, March 12, 2011 8:45 AM
To: CPCtestimony
Subject: Testimony for Senate Bill 99

Testimony Before:

House of Representatives

Committee on Consumer Protection & Commerce

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

NOTICE OF HEARING

DATE: Monday, March 14, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

State Capitol

415 South Beretania Street

TESTIMONY: for SB 99, SD2, (SSCR756) Status

Chair Herkes, Vice Chair Yamane and committee members:

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

We know that SB99 was in direct response from the Senate Committee on Consumer Protection December 2, 2010 Informational Briefing regarding the Public Utilities Commission's approval of Docket No. 2009-0059, Pasha Hawaii. Many testimonies were provided which cited huge pukas in the existing regulatory rules for water carriers and we thank the 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..." We asked that this notice include Molokai and Lanai since there may be potential ripple effects, such as Pasha Hawaii's CPCN, to both of our islands. Molokai and Lanai will not be served by Pasha Hawaii, yet it may trigger a higher 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. We asked that the contents of page 5, S271G, Notice of hearing requirements, 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 because of economics.

SB99 page 7, lines 21 and 22, 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 since we have unique economic challenges. We strongly urge you to support SB 99.

Respectfully,

Barbara Haliniak President
Molokai Chamber of Commerce Foundation



**Testimony to the House Committee on Consumer Protection and Commerce
Monday, March 14, 2011
2:00 p.m.
Conference Room 325**

RE: SB 99 SD2 RELATING TO PUBLIC UTILITIES COMMISSION

Chair Herkes, Vice Chair Yamane and Members of the Committee:

The Chamber of Commerce of Hawaii is in general support of SB 99 relating to the Public Utilities Commission.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The Chamber of Commerce of Hawaii is concerned for the security and well-being of businesses and residents throughout Hawaii. For these reasons, The Chamber supports Senate Bill 99 SD2 based on its intent to:

- 1) Expand the PUC to ensure diverse representation (e.g. geographic diversity by ensuring the Neighbor Islands are represented; diversity in professional experience of Commissioners);
- 2) Ensure Hawaii’s unique island economy has a viable water-cargo system and provider that will move freight of all kinds between islands reliably, consistently and safely at a reasonable cost.

The Chamber stands firmly in favor of competition – fair competition – in which the same rules apply to each competitor.

We believe the State’s policymakers in years past had the foresight to create a regulated system to ensure reliable water-cargo service to meet public necessity across all islands. This policy recognized that efficiencies of scale and scope are needed to support the frequency and universal nature of service on all islands and, in addition, that certain places (islands and ports) will not attract investment/resources unless part of a larger statewide system in which revenues and costs could be spread.

Changing the system, even on an interim basis, that will allow others to a lesser set of service obligations goes against the fairness principal. Unfairly changing the rules and injecting regulatory uncertainty into the system also puts at risk the capital-investment requirements for the existing system/carrier.

The Chamber also supports SB 99's requirement that each affected island community should be given an opportunity to voice its input and concerns. Such an "open" process will allow for all benefits/risks/consequences to surface and for thorough, transparent discussion to occur.

Thank you for this opportunity to express our views.



MOLOKAI CHAMBER OF COMMERCE

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE Rep. Robert N. Herkes, Chair
THE HONORABLE Rep. Ryan I. Yamane, Vice Chair

SENATE BILL NO. 99, SENATE DRAFT 2, scheduled for decision-making on March 14, 2011

Comments of Robert Stephenson, President, Molokai Chamber of Commerce

March 13, 2011

Aloha Chair Herkes, Vice Chair Yamane, and members of the House Committee on Consumer Protection and Commerce,

Thank you for the opportunity to comment on Senate Bill No. 99, Senate Draft 2 (SB 99 SD2).

The Molokai Chamber represents the business community on Molokai, and our businesses are the backbone of our island economy... They are our stability.

As Molokai's most trusted business organization, our focus is to be a business advocate for our members, to support their businesses, and do whatever necessary to ensure a stable environment in which to operate. To that end, we submit these comments.

We support SB 99 SD2 with the following suggested revisions:

- In the proposed HRS § 271G-10(e) (Page 18, lines 20-22 and Page 19, lines 1-5) we suggest removing the following stricken text to read as follows:
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 not require an applicant to serve all ports allow an applicant to serve only high margin or high profit ports or lines of service that are currently served by an existing carrier.

The Molokai Chamber welcomes competition and supports an equitable competitive business environment, and this revision would preserve the opportunity for future competition within this regulated market.

Please feel free to contact me if I can be of any assistance or offer further clarification on our position.

Sincerely,

Robert Stephenson, President

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2011 6:28 AM
To: CPCtestimony
Cc: Richard@hamakuasprings.com
Subject: Testimony for SB99 on 3/14/2011 2:00:00 PM

Testimony for CPC 3/14/2011 2:00:00 PM SB99

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Richard Ha
Organization: Individual
Address:
Phone:
E-mail: Richard@hamakuasprings.com
Submitted on: 3/14/2011

Comments:

Re: SB99 SD2 Relating to the Public Utilities Commission

Chair Herkes and Members of the committee:

I strongly support this measure. I was very disturbed by the shortsightedness of the recent Pasha/Young Bros decision.

Introducing unfair competition into an environment of shrinking world oil supplies and a likely decline in economic activity, exhibits a detachment from how things actually work. We need a neighbor island perspective.

Sincerely
Richard Ha



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

DATE: Monday, March 14, 2011 TIME: 2:00 pm PLACE: Conference Room 325

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Ryan I. Yamane, 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 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

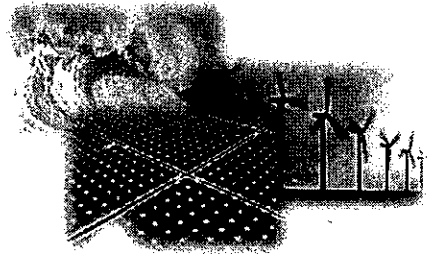
Honolulu, HI 96813

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.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

March 14, 2011, 2:00 P.M.

Room 325

(Testimony is 5 pages long)

TESTIMONY IN SUPPORTING INTENT OF SB 99 SD2 WITH AMENDMENTS

Chair Herkes and members of the Committee:

The Blue Planet Foundation generally supports SB 99 SD2, a measure to significantly restructure the public utilities commission (PUC). This measure seeks to structurally address some of the issues impeding the PUC's ability to fully execute their diverse and extensive duties. Blue Planet's testimony is directed solely at the energy obligations of the PUC.

Blue Planet generally supports many of the proposed changes in SB 99 SD2, including:

- Expanding PUC membership to five individuals;
- Bifurcating the PUC into two issue panels; and
- Creating an executive officer for the PUC.

We believe, however, that further policy changes are necessary for the PUC to effectively navigate Hawaii's transition to clean energy. We iterate some of those changes later in this testimony and we have attached amendments to achieve those preferred policy changes. We hope that they can be incorporated into future drafts of this measure.

Major changes in Senate Bill 99 SD2

The two major energy-related changes in SB 99 SD2 are the expansion of the PUC to five members and the establishment of two issue panels. While we are neutral on expanding the PUC to five members, we understand the value in increasing the number of voices and expertise on the commission, particularly to avoid situations where two members effectively control energy policy in Hawai'i. We also understand the desire to require that a minimum of two members be appointed from the neighbor islands, although we take no position on that policy.

We also support the intent behind creating two focused issue panels to give these subjects more dedicated attention. We are concerned, however, about the ability of the Chair to have the time and attention to dedicate to fully understanding the issues to make informed decisions if

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the chair's time is split across the individual panels (which are solely immersed in their subject area). We support the establishment of an executive officer position, much like the Land Use Commission, to guide the process and reduce the tasks of the chair of the commission.

Challenges requiring policy solutions within the Commission

Navigating the major transition to Hawaii's clean energy future requires a significant change in the regulatory structure. New policies are needed to align utility profitability with Hawaii's clean energy future, provide independent oversight of grid reliability and interconnection, and other changes. ***Senate Bill 99 SD2 should be the vehicle to implement these regulatory changes.***

Hawaii's electric utilities are currently regulated such that their fiduciary responsibility to advance the interests of their shareholders puts their goals at odds with the public interest in moving as rapidly as possible toward energy self-sufficiency. Existing laws give the utility little economic incentive to pursue clean energy projects. Long-term utility profits are tied mostly to capital investments that the utility makes, encouraging them to purchase expensive new plants or undertake major upgrades to existing ones. Since third-party renewable energy projects displace the need for utility investments, and energy efficiency reduces electricity use, the utility does not profit directly from such clean energy initiatives.

Further, adding substantial amounts of renewable energy and energy efficiency will render existing fossil generation facilities useless, leaving the utility holding the bag with "stranded" investments on their books. Finally, when the utility purchases power from independent power producers, like large solar farms, the utility is exposed to additional financial risk (something it can't afford, given its current credit rating of triple-B minus, one notch above junk bond status). These institutional barriers—decreasing sales on top of increasing costs to enable a system that doesn't help their bottom line—makes change incredibly difficult for the utility.

What's needed here is "institutional acupuncture." The Public Utilities Commission (PUC) should be directed to implement a "performance incentive mechanism" to reward the utility for achieving clean energy goals. This will give Wall Street reasons to invest in the utility and help fund Hawaii's clean energy transition. The PUC should also be given guidance to adopt a policy allowing for the recovery of the utility's "stranded assets," preventing these facilities from becoming anchors that restrain clean energy progress.

Changes also need to be made on a broader scale. Hawaii's current utility regulatory structure is a holdover from the 19th century. A vertically integrated monopoly that controls all aspects of electricity generation, transmission, and distribution no longer makes sense in a world where entrepreneurial independent power producers (including homeowners and business owners), enabled by technological advances, can develop Hawaii's renewable energy resources.

Hawaii's electric utilities control the economic conditions and pace at which clean energy investments occur in Hawai'i. The following problems arise:

- *Market signals.* There is a lack of transparent market price signals in Hawai'i because renewable energy projects can sell power only to utilities. This slows and hampers clean energy investment.
- *Utility control.* Utilities manage the price, terms and conditions and pace at which renewable projects are developed through control of Power Purchase Agreement (PPA) negotiations and competitive bidding processes.
- *New technologies.* Utilities determine when, at what pace, and the terms and conditions new technologies can be utilized to accommodate additional renewable generation (e.g., Demand response and storage, which can be used to provide ancillary services and supply capacity).

Change cannot and will not happen under the existing regulatory structure. Therefore, changes to the state's electricity markets must be undertaken with the goals of removing utility control over who gets to generate electricity and replacing it with control by a neutral entity the goal of which is to establish rules that will lead to energy self-sufficiency for Hawaii.

Regulatory solutions within the commission to accelerate clean energy

Policy solutions are available—and modeled elsewhere—to achieve the important regulatory objectives of the commission. These include:

- Establishment of a formal independent process to establish reliability and interconnection standards for clean energy;
- Legislative policy direction supporting the recovery of costs for "stranded assets," to create a "performance incentive mechanism" to reward the utility for achieving clean energy goals;
- Unbundling ancillary services and perhaps electricity transmission and generation; and
- Adequate funding, staffing, and resources for the commission.

Independent reliability and interconnection standards

Ensuring reliable electricity while enabling private clean energy producers to access Hawaii's power grids requires the establishment of formal, objective, and verifiable reliability and interconnection standards. This is best achieved by replacing utility control of grid access with control by a neutral entity tasked with establishing reliability and interconnection rules that encourage clean energy development in all appropriate forms. Such a third-party oversight model for grid access has succeeded elsewhere in democratizing power production.

Hawaii's main utility is the only major electric utility system in the United States that is not subject to any formal and transparent bulk power electric reliability standards. Hawai'i was exempted from federal mandatory electric reliability standards applicable to all mainland electric utilities established by the North American Electric Reliability Corporation (NERC) and approved

by the Federal Energy Regulatory Commission (FERC). Today there are no reliability standards upon which to objectively assess impact of additional renewable energy projects, such as new distributed solar projects.

Hawaii's main utility's systems are not currently planned and operated according to NERC-equivalent reliability standards. Virtually all electric systems in the continental United States operate under NERC reliability standards. Hawaii's utility's systems are basically the same as other United States systems operating under NERC reliability standards insofar as all systems must maintain adequate voltage, balance supply and demand in real time, and maintain system stability. The experience of the Electricity Reliability Council of Texas and New Zealand demonstrates that formal reliability standards are appropriate and utilized not only in North America, but on isolated electric grids similar to those in Hawai'i.

Historically, a compelling need did not exist for formal bulk power electric reliability standards in Hawai'i, as Hawai'i was not electrically interconnected with the mainland, nor were individual island grids interconnected to each other. But with the increase in distributed power systems, the need for reliability and interconnection standards is clear.

Formal bulk power electric reliability standards and measures are essential to objectively assess grid reliability impacts for any electric utility and to insure reliable grid operation. Standards will:

- Provide an objective basis by which to measure the level of and trend in system reliability in general; and
- Provide an objective basis to measure the reliability impacts, if any, of incorporating increasing quantities of intermittent renewable energy resources.

Due to the absence of formal reliability standards, the Hawaii's main utility is at present under no requirement to publish official reports concerning compliance with standards. Reporting on compliance with formal reliability standards will allow verification and increased knowledge and understanding about reliability issues by the Public Utility Commission (PUC) and stakeholders.

Hawaii's clean energy transformation requires formal and transparent bulk power electric reliability standards. Since the potential exists for trade-offs between system reliability and greater utilization of renewable energy, it is essential to have bulk power electric reliability standards in place to provide a benchmark to measure over time the impacts of additional renewable energy integration. Further, formal and transparent electric reliability standards provide the reliability and operational rules of the road for various stakeholders: utilities, independent power producers, renewable energy developers, regulators, and others.

The process used by NERC to establish and maintain bulk power reliability standards is open, transparent and utilizes significant stakeholder involvement to develop and modify the standards. The hallmark of the NERC standard-setting process is that an entity other than the local utility manages the process and maintains an open and transparent process with substantial stakeholder participation. This also ensures that interested parties that may make

important substantive contributions to the standards and capacity determinations are not excluded from the process.

Reliability standards could be established by an independent council attached to the PUC, through a contract administered similar to the Public Benefits Fund for efficiency, or some other arrangement—as long as the standards are developed in a formal, objective, and independent manner. These standards for grid interconnection should then apply to all producers of clean energy who wish to access the electricity grid.

Aligning utility incentives with clean energy

To encourage greater utility support for integrating non-fuel renewable energy onto Hawaii's electricity grids, a policy should be established to allow for the recovery of the utility's "stranded assets"—existing power plants and other fossil facilities—preventing these facilities from becoming anchors that restrain clean energy progress. Further, the PUC should be required to consider a "performance incentive mechanism" to reward the utility for achieving clean energy goals. This will align the financial decision making within the organization with achievement of Hawaii's aggressive clean energy goals. It will also give Wall Street reasons to invest in the utility and help fund Hawaii's clean energy transition.

Finally, the PUC should be required to direct the electric utilities to "unbundle" or separate ancillary services and procure those services from non-fossil fuel sources. The Federal Energy Regulatory Commission (FERC) defines ancillary services as those "necessary to support the transmission of electric power from seller to purchaser given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system." Unbundling of such ancillary services is commonplace in other utility markets. This measure will create competitive markets that will most efficiently determine the suppliers and prices for many ancillary services. The bill also helps to foster Hawaii's clean energy future by requiring electric utilities to purchase ancillary services derived from sources other than fossil fuel (including but not limited to energy storage and demand response measures)—if feasible and reasonably economical.

Of course, none of the important PUC policy and regulatory work will be complete without proper funding and resources. Blue Planet fully supports allocating 100% of the Public Utilities Commission special fund to the PUC.

Please forward SB 99 SD2 with these added critical policy changes to help Hawai'i create a robust, modern power system that fosters innovation and puts Hawaii's clean, indigenous, and renewable energy sources to work for Hawaii's people. ***We have attached proposed language to achieve these policy goals. Blue Planet is happy to work with this Committee to further refine these amendments as necessary.***

Thank you for the opportunity to testify.



March 13, 2011

TESTIMONY

Re: SB99 SD2 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Herkes and Members of the Committee:

Maui County Farm Bureau on behalf of commercial farm and ranch families and organizations **strongly support SB99 SD2** reorganizing and clarifying the role of the Public Utilities Commission.

Electricity, transportation and water are unavoidable and significant input costs for farmers and ranchers. In 2008, skyrocketing energy costs caused havoc among agricultural businesses and many reached deep into savings accounts to continue operations. In many cases, costs could not totally be passed on to customers and hence the incurred losses. In certain cases, it became the tipping point resulting in multigeneration farms going out of business.

Maui experienced loss of farmers during the last YB rate hike. The rate hike was not the cause but it was the last straw for struggling farmers. We therefore were very disturbed by the total disregard by PUC of our concerns of the potential negative impact of Pasha's entry into the marketplace. The D&O refers to revocation of the certificate if adverse conditions occur, without identifying what the adverse conditions are. If farmers and ranchers go out of business because of increased YB rates approved by the PUC due to increased costs forced upon them by the compensatory rate structure advocated by the commission, is this adverse? Too often we have been told by PUC that we have no proof ...that our fears are theoretical. Yet, we know, the increased rates that occurred due to changes in YB at the time of Superferry put some of our farmers out of business. If anything, the Pasha decision was Oahucentric disregarding needs of neighbor islands.

We respectfully request your strong support towards the passage of this measure. PUC refers to a statute that requires raiding of collected funds. Please seek to amend the cap associated with the fund so adequate resources will be available to carryout the intent of this measure. Thank you for this opportunity to provide our opinion on this matter. If there are any questions, please contact Warren Watanabe, Executive Director of MCFB at 2819718.



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

March 13, 2011

TESTIMONY

Re: SB99 SD2 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Herkes and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations in the State **strongly support SB99 SD2** reorganizing and clarifying the role of the Public Utilities Commission.

The actions of the PUC is of major concern to the agricultural industry. The viability of farmers and ranchers in Hawaii is largely dependent upon services provided by entities under the direction of the Public Utilities Commission. Recent decisions by the PUC make it imperative to clarify their decisionmaking process in law.

Most recently, in the case of PASHA Hawaii, **PUC seemed to go beyond its' authority creating new procedures while ignoring existing laws** such as the **Hawaii Water Carrier Act that requires fair and impartial regulation "without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices."** Through its' Pasha decision, the PUC is experimenting with users of interisland transportation services. Review of the D&O will reveal an unbalanced focus on Pasha and YB without serious consideration of the impacts on the users of the service ... the very mission of PUC. We are not attorneys, however, the current Water Carrier Act does not appear to provide for interim D&Os. What the law does provide for is a "temporary authority" for 120 days under near emergency conditions. The law does not prohibit competition. It does require that it be fair and just. For these reasons, **we disagree with PUC's prior testimonies that the existing law "makes it impossible for companies to gain entry into the water carrier market in Hawaii"**.

Farm Bureau submitted comments during the Pasha decisionmaking process including an affidavit expressing our concerns. They were virtually ignored and

impacts on consumers were given passing mention in the D&O. **We strongly support changes proposed in Section 2,5 and 6.**

Something needs to be done. We agree that the scope of responsibility for PUC has expanded not only in volume but in complexity. **Expansion of the number of members, and specifically those that understand neighbor island needs should provide increased capacity to address this need.**

In the Senate hearings, PUC referred to a statutory raid of funds collected from customers to fund regulatory efforts. **The cap associated with the fund to the PUC should be adjusted to meet the needs as identified in this measure.**

The efforts in the measure to improve communication to affected parties is critical. We believe that many were not aware of the Pasha certificate of need request and therefore did not express their opinions.

We respectfully request your strong support of this measure with appropriate funding. It impacts not only those of us in agriculture but every small business and consumer in Hawaii. We appreciate this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 2819718.

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
THE HONORABLE ROBERT N. HERKES, CHAIR
THE HONORABLE RYAN I. YAMANE, VICE CHAIR

SENATE BILL NO. 99, Senate Draft 2, scheduled for hearing on March 14, 2011

Testimony of Roy Catalani, Vice President of Strategic Planning and Government Affairs, and,
Young Brothers, Limited Sandra Hoshida, Manager of Government Affairs,
Young Brothers, Limited

Chair Herkes, Vice Chair Yamane, and Members of the House Consumer Protection and
Commerce Committee:

Thank you for the opportunity to testify on Senate Bill No. 99, Senate Draft 2 (*SB99 SD2*).

Young Brothers, Limited (Young Brothers) strongly supports SB99 SD2.

In the context of water carriers, Young Brothers respectfully submits that this bill addresses a
two critical key issues question of legislative policy that are of immediate concern:

- (1) Does a regulatory or competitive system best serve those who depend upon it,
particularly Neighbor Island residents and businesses?
- (2) What is the appropriate legislative response where a State agency has permitted unfair
competition?

Although Young Brothers believes a regulatory system best serves the public interest, whatever
policy choice the Legislature makes, we respectfully submit that, in fairness, the same rules
should apply to all those who seek to provide service. We appreciate and support the answers
provided in this bill.

As the Committee well knows, Young Brothers is a water carrier regulated by the Hawaii State
Public Utilities Commission (PUC). We transport cargo mainly to serve and support the State's
Neighbor Island communities. And, as the Committee may also well know, a recent PUC
decision allows a new carrier to serve only a profitable line of service on profitable routes
(known as "cherry-picking") the PUC recently decided to grant "interim" approval of Pasha
Hawaii Transport Lines LLC's (*Pasha*) application for a certificate of public convenience and
necessity (*CPCN*) to operate as an intra-state water carrier of property. This decision raises

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serious concerns for Young Brothers and, more importantly, for many neighbor Neighbor Island communities and their leadership: That is, without a legislative mandate, the PUC's decision changed the regime by which water carriers are to be regulated in this State and created an unfair playing field. The PUC decision allows a new One-property carrier (namely, Pasha) to, in effect, essentially operate on a competitive model, in which the new carrier has been allowed to choosing the most profitable these routes and the most profitable lines of service that best suits its business plan. Young Brothers, on the other hand, operates on a regulatory model, and continues to fulfilling an obligation to provide universal and frequent service, serving all islands as well as well as and all lines of service, as well as frequent service. In contrast to the new carrier, Young Brothers' service is driven by public convenience and necessity rather than by the convenience and profitability of the carrier, regardless of competitive considerations.

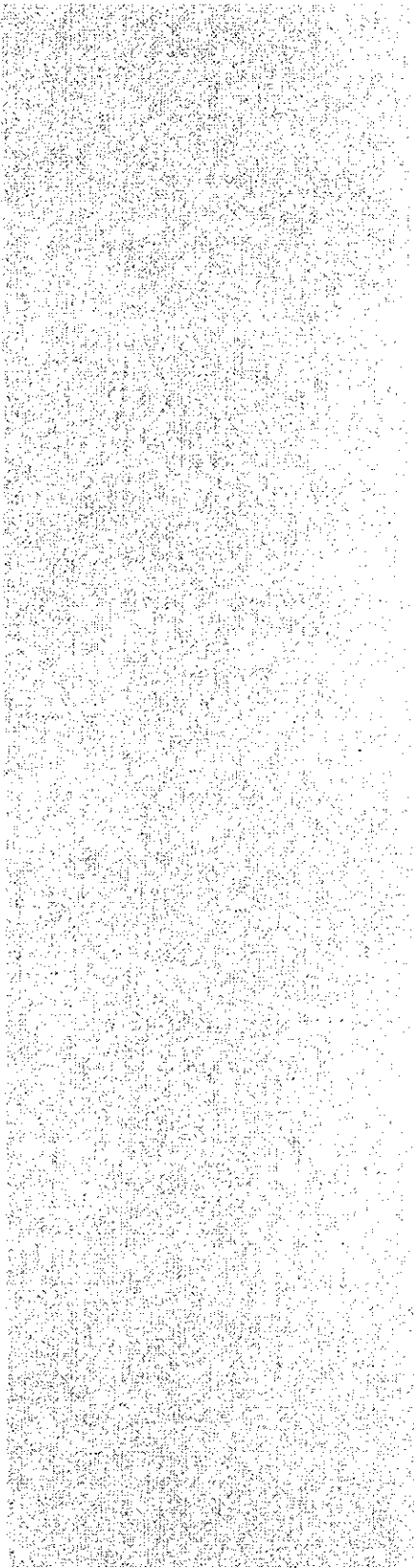
An unfair and unlevel playing field certainly hurts business, but inevitably and ultimately it hurts consumers. The current obviously unfair and unlevel playing field for water carriers is not only contrary to legislative policy, it has serious implications for the sustainability of the just-in-time, universal, and frequent system of service provided by Young Brothers to State residents. In this very capital-intensive industry, an unfair and unlevel playing field will These changes have diminished Young Brothers' ability to attract capital and, as a result, threatens the ability of Young Brothers to invest in and financially support the system that is essential to Neighbor island economies and development. It is critical to recognize that this threat is to both larger and smaller neighbor islands – at risk is not only service to smaller Neighbor Islands, but the frequency of (just-in-time) service upon which larger Neighbor Islands depend. thereby carry economic risks that impact most heavily those Neighbor Island communities served by Young Brothers.

In SB 99 SD2, the Legislature rightfully takes back this issue of State policy and reaffirms longstanding State policy that the regulation of water carriers is based on fairness and public convenience and necessity rather than the convenience of any one carrier. This bill reiterates and clarifies the Legislature's policy with respect to regulation of water carriers by, among other things, The bill clearly enumerates the factors that the PUC should have considered, even under the law as it stands today, with respect to determining reviewing whether an applications for a water carrier certificate of public convenience and necessity, or CPCN, is in the public interest and meets the standard of public convenience and necessity.

In addition, SB99 SD2 also 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". SB99 SD2 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 focus upon and address planning and policy matters affecting the State's essential utility services.

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Thank you for the opportunity to testify.





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**Testimony to the House Committee on Consumer Protection and Commerce
Monday, March 14, 2011; 2 p.m.
Conference Room 325**

RE: In Support of SB 99, SD2

Aloha Chair Herkes, Vice Chair Yamane 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

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2011 1:22 PM
To: CPCtestimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for SB99 on 3/14/2011 2:00:00 PM

Testimony for CPC 3/14/2011 2:00:00 PM SB99

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
Address:
Phone:
E-mail: gottlieb@hawaii.rr.com
Submitted on: 3/13/2011

Comments: