

LATE TESTIMONY



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
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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

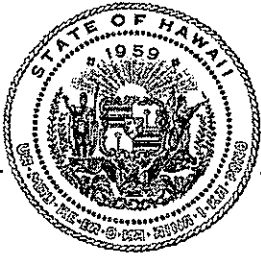
Honolulu, HI 96813

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.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LATE TESTIMONY
NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

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Statement of
RICHARD C. LIM
Interim Director

Department of Business, Economic Development, and Tourism
before the

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Monday, March 14, 2011

2:00 p.m.

State Capitol, Conference Room 325

in consideration of

SB 99 SD2

RELATING TO THE PUBLIC UTILITIES COMMISSION

Good Afternoon Chair Herkes, Vice Chair Yamane, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (“DBEDT”) supports the intent of Senate Bill 99 SD2. DBEDT’s Energy Office is actively engaged in energy policy-related proceedings before the Public Utilities Commission (“PUC” or “Commission”) over the past three years, when these proceedings were initiated in response to the HCEI policy objectives. As an intervener in these PUC proceedings, DBEDT confirms that the regulatory environment as well as the energy issues has grown increasingly complex, and changes to the commission structure are necessary to improve the commission’s capability in fulfilling its administrative and adjudicative powers and duties under Chapter 269, HRS. DBEDT’s comments and recommendations offered below are limited to the commission’s duties relating to energy matters.

SB99 SD2 provides the following amendments to HRS Chapters 269 and 271 to restructure the public utilities commission:

- 1) Amends §271G to require the commission to conduct public hearings on an application for certification on each island that will be affected by the proposed service;
- 2) Amends §269-2(a) to increase the number of commissioners from three to five, and requires the commission, rather than the governor as currently provided in the statute, to elect its chairperson. The amendment to this section also requires that two of the commissioners shall be from the counties of Hawaii, Kauai, and Maui.
- 3) Amends §269-2(b) to require the commission to establish two panels consisting of two commissioners plus the chairperson, with one panel devoted to energy, private water and sewage utilities while the other panel will be devoted to transportation, telecommunications, and warehousing.
- 4) Amends §269-3 to allow the commission to appoint an executive officer to define the duties of, and to supervise the support staff to the commission.

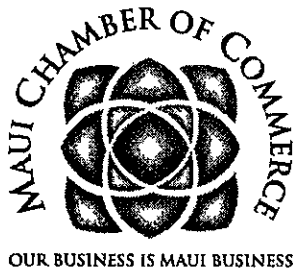
DBEDT offers the following comments:

- 1) DBEDT agrees with the need to re-structure the commission. DBEDT however, believes that increasing the number of commissioners from three to five and establishing a panelized structure may slow down even more the commission's decision-making rather than facilitate the expeditious rendering of the commission's decisions and orders. DBEDT instead suggest that the committee consider keeping the number of commissioners to three but limit the expanse of the commission's responsibility to only the regulation and oversight of the electric, gas, telecommunications, water and sewer public utilities; and to transfer the regulation,

certification, and other duties of the commission relating to transportation to the Department of Transportation.

- 2) DBEDT supports the proposed amendment requiring the PUC to conduct public hearings in the islands affected by the change in certification for service applications. DBEDT however, suggests for the committee's consideration to not limit such requirement to only the certification of service applications but to also apply the same requirement for dockets on utility-related applications. DBEDT also suggests for the committee's consideration to require the commission to establish a public utilities commission satellite office staffed with at least one professional and a support staff, on Maui County, Hawaii County, and Kauai County. This will allow the commission to more efficiently and effectively serve the other islands' residents and constituents.
- 3) To improve the commission's capability in fulfilling its administrative and adjudicative powers and duties under Chapter 269, HRS, requires that the commission has adequate and highly qualified staff with the appropriate analytic and technical skills and expertise. This will require adequate funding. To fund these changes, DBEDT suggests for the committee's consideration to repeal HRS §269-33 which puts a ceiling on the PUC's budget and allows the automatic annual transfer of funds from the PUC special fund to the general fund.

Thank you for the opportunity to testify on this important matter.



LATE TESTIMONY

**Testimony in Support of SB99SD2
Relating to Tax Credits**

Submitted to the House Committee on
Consumer Protection & Commerce
Monday, March 14, 2011
Conference Room 325 at 2pm

Dear Chair Herkes, Vice-Chair Yamane,
and Members of Committee,

The Maui Chamber of Commerce is an organization whose mission it is to advance and promote a healthy economic environment for business; advocating for a responsive government and quality education, while preserving Maui's unique community characteristics. We are the voice of Maui businesses.

We also identify and overcome obstacles that are detrimental to the business climate and community growth and feel that this legislation helps address issues we testified on in back in December, 2010 with the Pasha case, including: recognizing the critical importance of transportation to our island communities and economic development; broadly considering the ramifications to businesses, agricultural producers, and residents when making decisions regarding transportation; creating a competitive environment with a level playing field; allowing neighbor island participation in processes that impact neighbor islanders; and providing equitable neighbor island representation on the Public Utilities Commission (PUC).

This bill addresses those concerns and others by:

- Adding a new section to require hearing notices;
- Changing the make-up and structure of the PUC to include neighbor island representation; and
- Clarifying the Water Carrier law to address issues that arose in the Pasha case.

We would like to ask that the bill:

- Spell out "representing" with respect to neighbor island participation on the commission so that it is clearer for qualification purposes;
- Consider requiring a Maui County representative as Maui County is the only multi-island County and, left without a representative who better understands these needs, the impacts to Molokai and Lani can get overlooked in this process; and
- Use language such as "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, allowing an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier" with respect to HRS § 271G-10(e). The Maui Chamber of Commerce believes in and supports a fair and equitable competitive environment. We want to see the rules and standards equally applied.

We appreciate the opportunity to provide testimony on this important matter and request your support of SB99SD2 with these additional considerations. If you have any questions on our testimony, please do not hesitate to contact me.

Sincerely

Pamela Tumpap
President

- The new position of executive officer created by SB99 would be tremendously important to the efficient and effective functioning of the Commission but, due to the uncertainties noted above and below, the executive officer position would not likely be filled by one individual for any substantial length of time.
 - Under existing statutes, the Commission Chair serves essentially as the CEO of the Commission with responsibilities to oversee all aspects of agency administration. Similar to most Hawaii agencies, the duties, responsibility and authority for agency administration are clearly understood and rest ultimately with a single individual. SB99 would transfer all administrative duties to a newly created executive officer position who serves at the will of the commissioners collectively. Ultimate responsibility and authority for agency administration, however, would be shared uncomfortably between the executive officer and a set of five commissioners.
 - SB99 does not explicitly state how the executive officer would receive direction from the commissioners, whether individual commissioners could discuss or give direction, whether the Chair could be delegated authority to provide direction or whether the Commission would have to meet and decide agency administrative matters by majority.
 - Similarly, the bill does not specify how the executive officer is selected, retained or excused of duties.
 - In short, the new executive officer position would be a tough rub. This is not a trivial concern.
- Although there is a clear desire being expressed to provide broader representation of neighbor island concerns by the Commission, moving towards constituency-based decision making by the commission is problematic.
 - The Commission must function effectively as an adjudicatory body. As such, it is the duty of each commissioner to set aside all constituency-based concerns sufficiently to make sound findings of fact and conclusions of law based exclusively on an evidentiary record. Failure to do so constitutes legal error. The Commission must not let constituency-based allegiances interfere with its core adjudicatory duties.
 - The Hawaii Commission on Water Resource Management is an example of what has essentially become a constituency-based commission that consequently has a very poor adjudicatory record with most of its contested cases reversed by the Hawaii Supreme Court.
 - Broader representation of neighbor island concerns can be provided by other more effective means:
 - requirements for conducting hearings on impacted islands (already addressed in SB99)
 - 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)

Any major restructuring of the Public Utilities Commission should be done very carefully to enhance the efficiency and effectiveness of the Commission. The provisions in SB99 are not sufficiently vetted and, as currently drafted, would harm rather than promote the purposes of the Commission.

For the reasons above I recommend against implementing the provisions in SB 99 that would restructure the PUC without substantial further consideration and modifications.

Respectfully submitted,

Carl Freedman