

CHAPTER 271G
HAWAII WATER CARRIER ACT

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Cross References

Intra-island water ferry transportation system; special fund, see §§268-2.5, 268-2.6.

" **[\$271G-1 Short title.]** This chapter shall be called the Hawaii Water Carrier Law. [L 1974, c 94, pt of §1]

" **[\$271G-2] Declaration of policy.** The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation, so administered as to recognize and preserve the inherent advantages of such transportation, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the needs of commerce: to promote safe, adequate, economical, and efficient service among carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy. [L 1974, c 94, pt of §1]

" **§271G-3 Administration; governing provisions of other acts.** This chapter shall be administered by the public utilities commission of the State and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-16 to 269-28 shall not apply in any respect to the regulation of water carriers. [L 1974, c 94, pt of §1; am L 1986, c 339, §28]

" **[\$271G-4] Application of chapter, interstate, or foreign commerce.** This chapter shall not apply to commerce with foreign nations or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States. [L 1974, c 94, pt of §1]

" **§271G-5 Definitions.** As used in this chapter:

- (1) "Chapter" means this Water Carrier Law.
- (2) "Commission" means the public utilities commission.

- (3) "Person" or "persons" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.
- (4) "Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by water.
- (5) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage.
- (6) "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, and delivery, carriage, preservation, and all incidental services affecting these activities.
- (7) "Water carrier" or "common carrier by water" means any person who holds oneself out to the general public as engaging in the transportation by water of passengers or property for compensation within the State or between points within the State.
- (8) "Vessel" means any watercraft or other artificial contrivance of whatever description which is used, or capable of being used, or intended to be used, as a means of transportation by water.
- (9) "Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise.
- (10) "Related companies" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the water carrier. The term "control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, and indirect as well as direct control.
- (11) "Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. [L 1974, c 94, pt of §1; gen ch 1985; am L 1991, c 57, §3]

Revision Note

Paragraph (11) designation added.

" **[§271G-6] Exemptions, generally.** Notwithstanding any other provisions of this chapter, its contents shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person except where the transportation is undertaken by a water carrier to evade the regulatory purposes of this chapter;
- (2) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members;
- (3) Persons engaged in the transportation over water of passengers or property for compensation, other than transportation referred to in section 271G-5(7) under continuing contracts with one person or a limited number of persons either (A) for the furnishing of transportation services through the assignment of vessels for a continuing period of time to the exclusive use of each person served, or (B) for the furnishing of transportation services designed to meet the distinct need of each individual customer;
- (4) Persons transporting their own property or employees where the transportation is in furtherance of a business or enterprise of fishing or taking of fish for profit or gain as a means of livelihood;
- (5) Persons engaged in business of transporting persons for sightseeing and other recreational activities. [L 1974, c 94, pt of §1]

" **§271G-7 General duties and powers of the commission.** The general duties and powers of the public utilities commission shall be:

- (1) To regulate water carriers, and to that end the commission shall have and utilize the investigative powers set forth in section 269-7 as well as all of the duties and powers specifically enumerated in this chapter, and water carriers shall be subject to the duties set forth in sections 269-8 and 269-9 as well as all of the duties specifically enumerated herein.
- (2) To establish such just and reasonable classifications of water carriers as the special nature of the services performed by the carriers shall require, and such just and reasonable rules, regulations, and requirements, consistent with this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest. Such classifications, rules,

regulations, and requirements shall be adopted and promulgated pursuant to the provisions of chapter 91 and shall have the force and effect of law.

- (3) Upon complaint in writing to the commission by any person or body politic, or upon its own initiative without complaint, the commission may investigate whether any water carrier has failed to comply with any provision of this chapter, or with any rule or order adopted or issued hereunder.
- (4) The commission may investigate any person acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.
[L 1974, c 94, pt of §1; am L 1991, c 57, §15]

" **[§271G-7.5] Electronic copies of documents.** (a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original and one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter and the consumer advocate shall accept service of one paper copy and one electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

- (1) Unless otherwise required by this chapter or the rules or guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original and one electronic copy of each document and shall serve one paper copy and one electronic copy of each document on the consumer advocate;
- (2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;
- (3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be

- clipped together or placed in a clearly marked three-ring binder, as appropriate;
- (4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;
 - (5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject;
 - (6) Electronic documents shall be submitted on a clearly marked compact disk and shall be in portable document format saved in separate files corresponding to the original paper document submission; provided that electronic documents submitted under confidential seal shall be submitted on a separate compact disk, clearly marked as confidential and indicating the appropriate docket number and subject; and
 - (7) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title.

Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section. [L 2011, c 69, §3]

" **[\$271G-8] Reports and decisions of commission.** Whenever the public utilities commission inquires into the operations, operating rights, rates, safety of operations, or directs inquiry and investigation into water carrier activities regulated under this chapter, and holds public hearing thereon, it shall make a report in writing in respect thereto, which shall state its findings of fact and conclusions of law, together with its decision, order, or requirement in the

premises. The provisions of chapter 91 shall apply. [L 1974, c 94, pt of §1]

" **[\$271G-9] Copies of schedules, tariffs, contracts, etc., kept as public records; evidence.** The copies of schedules and classifications and tariffs or rates, fares, and charges, and all contracts, agreements and arrangements between water carriers filed with the public utilities commission as herein provided, and any reports filed with the commission as required under this chapter shall be preserved as public records. [L 1974, c 94, pt of §1]

" **§271G-10 Applications for certificates of public convenience and necessity.** (a) Except as otherwise provided in this section and in sections 271G-6 and 271G-12, no water carrier shall engage in operations between points within the State unless the carrier holds a certificate of public convenience and necessity issued by the public utilities commission authorizing the operation; provided that no new application shall be required for any common carrier by water that is the holder of a certificate of public convenience and necessity issued by the public utilities commission.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, be presented in a form, contain the information, and be accompanied by proof of service upon interested parties as the commission shall, by rule, require.

(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures under section 271G-23.5.

(d) The commission shall issue a certificate to any qualified applicant, authorizing the whole or any part of the operations proposed in the application only if the commission finds that:

- (1) The applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements and rules of the commission; and
- (2) The proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity.

(e) The commission shall not make a finding of public convenience and necessity or issue an authorization, whether interim, permanent, or otherwise, to operate as a water carrier

without the following specific findings supported by evidence in the record:

- (1) Existing water carrier services are inadequate to presently service the public or meet demonstrated and quantifiable future demands for service;
- (2) The proposed service is designed for and necessary to meet demonstrated and quantifiable unmet public needs for present water carrier service or demonstrated and quantifiable future demands for service;
- (3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G-23.5, including demonstrated and quantifiable benefits with respect to reliability, affordability, and security of the service line;
- (4) The specific, identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including:
 - (A) Economies of scale and scope of current water carriers;
 - (B) Future capital costs of existing water carriers;
 - (C) Ability of existing water carriers to make necessary capital and resource investments;
 - (D) The financial health, stability, and revenue stream of existing water carriers; and
 - (E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and
- (5) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each ground for objection articulated by the consumer advocate.

The commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate would diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier.

(f) Any water carrier transporting passengers under a certificate issued pursuant to this chapter may occasionally deviate from the route over which it is authorized to operate under the certificate pursuant to the rules of the commission.

(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation; provided that an emergency situation shall mean a state of emergency or local state of emergency pursuant to chapter 127A. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state of emergency or local state of emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted under this subsection beyond the expiration of the state of emergency or local state of emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter.

(h) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted under this subsection shall include a short description of the document to which the link refers, shall be active within twenty-four hours of the filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order. [L 1974, c 94, pt of §1; am L 2011, c 213, §3; am L 2014, c 111, §§10, 28]

" **[\$271G-11] No proprietary right in water.** No certificate issued under this chapter confers any proprietary or property right in the use of the waterways. [L 1974, c 94, pt of §1]

" **[\$271G-12] Temporary authority.** To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a water carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for no more than a period of one hundred twenty days for any one immediate and urgent need. [L 1974, c 94, pt of §1]

" **[\$271G-13] Security for protection of public.** No certificate shall be issued to a water carrier or remain in force unless such carrier complies with such reasonable rules and regulations as the public utilities commission shall

prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the commission may require. [L 1974, c 94, pt of §1]

" **§271G-14 Transfer of certificates of public convenience and necessity, and carrier property.** (a) For the purpose of the administration and application of subsections (a) and (b), the term "carrier" includes any water carrier subject to this chapter, or any carrier subject to the act of any other state or any act of the Congress of the United States under which interstate or foreign commerce by land, sea, or air, is regulated.

(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same is void.

(c) No water carrier shall purchase or acquire, take or hold, any part of the capital stock of any other water carrier organized or existing under or by virtue of the laws of the State, without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of any of the provisions of this section is void and of no effect, and no transfer shall be made on the books of any water carrier. Nothing herein shall prevent the holding of stock heretofore lawfully acquired.

(d) Whenever a transaction is proposed under subsection (b) or (c) of this section, the water carrier or water carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon the application with or without first holding a public hearing; provided that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interest, the commission

shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more water carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more water carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred twenty days or for such additional period as the determination of an application may require, of the operation of the water carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to such water carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. [L 1974, c 94, pt of §1; am L 1980, c 202, §3]

" **[§271G-15] Suspension, change, and revocation of certificates.** Certificates shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any certificate may, upon application of the holder thereof, in the discretion of the public utilities commission, be amended or revoked, in whole or in part, or may upon complaint, or on the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provisions of this chapter, or with any lawful order, rule, or regulation of the commission promulgated thereunder, or with any term, condition, or limitation of the certificate; provided that no such certificate shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply within a reasonable time, not less than thirty days, to be fixed by the commission, with a lawful order of the commission, made as provided in this chapter, commanding obedience to this chapter, or to the rule or regulation of the commission thereunder, or to the term, condition, or limitation of the certificate or permit, found by the commission to have been violated by the holder; and provided further that the right to engage in transportation by virtue of any certificate or any application filed pursuant to section 271G-10 or by virtue of temporary authority under section 271G-12 may be suspended by the commission, upon reasonable notice of not less than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply, and until compliance, with section 271G-

17(a) or with any lawful order, rule, or regulation of the commission promulgated thereunder. [L 1974, c 94, pt of §1]

" **[\$271G-16] Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for

transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. [L 1974, c 94, pt of §1]

" **§271G-17 Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The

notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation, or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts

received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings. [L 1974, c 94, pt of §1; am L 1980, c 202, §1]

" **[\$271G-17.5] Issuance of securities; execution of leases.**

A water common carrier may, on securing the prior approval of the public utilities commission, and not otherwise, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than three years and leverage leases, for the following purposes and no other, namely:

- (1) For the acquisition of property; or
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service; or
- (3) For the discharge or lawful refunding of its obligations; or
- (4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the water carrier has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

As used herein, "property" and "facilities" mean property and facilities used in all operations of a water carrier whether or not included in its regulated operations or rate base. A water carrier may not issue securities nor enter into long-term leases of more than three years and leverage leases, to acquire property or to construct, complete, extend or improve or add to its facilities or service, if the commission determines that the proposed purpose will have a material adverse effect on its operations. No carrier shall repurchase or reissue its own common stock without prior commission approval.

All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a water carrier not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void. In addition, all long-term leases of more than three years and all leverage leases entered into by a water carrier without an order of the commission authorizing the same then in effect shall be void. [L 1980, c 131, §1]

" **[\$271G-18] Accounts, records, and reports.** The public utilities commission may require annual, periodical, or special reports from all water carriers, prescribe the manner and form in which the reports shall be made, and require from the carriers specific and full, true, and correct answers to all questions upon which the commission may deem information to be necessary. [L 1974, c 94, pt of §1]

" **§271G-19 Unlawful operation.** (a) Any person knowingly and wilfully violating any provision of this chapter, or violating any certificate for which violation a penalty is not otherwise herein provided, shall be fined not less than \$100 nor more than \$500 for the first offense, and not less than \$200 nor more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for water carriers, shall be fined not less than \$200 nor more than \$500 for the first offense and not less than \$250 nor more than \$2,000 for any subsequent offense.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of section 271G-18, except as the special

agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than \$500 or imprisonment for not exceeding one year, or both.

(d) Any water carrier, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, filed tariff or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100, nor more than \$5,000 for each offense, and, in the case of a continuing violation, not to exceed \$5,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing reasonably describing the violation and advising that the penalty is due.

(e) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules adopted thereunder.

- (1) The citation may contain an order of abatement and an assessment of civil penalties of not less than \$100, nor more than \$500 for each such offense, and, in the case of a continuing violation, not less than \$200 nor more than \$500 for each day that uncertified activity continues. All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.

- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal, subject to chapter 602, in the manner provided for civil appeals from the circuit courts; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies, either civil or criminal, provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection. [L 1974, c 94, pt of §1; am L 1980, c 202, §2; gen ch 1985; am L 1991, c 57, §16; am L 2004, c 202, §33; am L 2006, c 94, §1; am L 2010, c 109, §1]

" **[§271G-20] Collection of rates and charges.** No water carrier shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid if such delivery or relinquishment without payment of all such rates and charges has been prohibited or restricted by rules and regulations of the commission, and if so prohibited and restricted, then delivery or relinquishment shall be made only under such rules and regulations as the public utilities commission may from time to time prescribe to govern the settlement of all the rates and charges, including rules and regulations for weekly or monthly

settlement, and to prevent unjust discrimination or undue preference or prejudice; provided that this section shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any state or political subdivision thereof. [L 1974, c 94, pt of §1]

" **[§271G-21] Recovery of overcharges or undercharges.** (a)

All actions by water carriers or common carriers by water for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) For recovery of overcharges, actions shall be begun within three years from the time the cause of action accrues, and not after, subject to subsection (c) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof specified in the notice.

(c) If on or before the expiration of the three-year period of limitation in subsection (b) a common carrier by water begins action under subsection (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, the period shall be extended to include ninety days from the time the action is begun or the charges are collected by the carrier.

(d) The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(e) The term "overcharges" as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission. [L 1974, c 94, pt of §1]

" **[§271G-22] Allowance to shippers for transportation services.** If the shipper of property transported under this chapter, directly or indirectly, renders any service connected with the transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable; and the public utilities commission may, after hearing on a

complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order. [L 1974, c 94, pt of §1]

" **§271G-23 Hearings.** (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any water carrier, including any rule, regulation, rate, or charge, heretofore established or fixed by or for any water carrier, in violation or claimed to be in violation, of any law or of any order or rule of the commission. [L 1974, c 94, pt of §1; am L 1980, c 202, §4 and c 232, §9]

" **[§271G-23.5] Notice of hearing required.** (a) Whenever the commission conducts a public hearing on an application for a certificate pursuant to section 271G-10, the commission shall provide reasonable notice in writing to the applicant for a certificate and to the public on each island that will be affected by the proposed service of the fact of the public hearing and the matter to be considered. Notice pursuant to this section shall be provided at least thirty days before the date fixed by the commission for the public hearing.

(b) Notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and the proposed effective date. Notice under this section shall be effective upon compliance with subsection (c); provided that the commission shall retain and make available for public inspection copies of all notices and related documents issued pursuant to this section.

(c) Any public hearing held pursuant to section 271G-10(c) shall be a noticed public hearing or hearings on the island or islands to which the water carrier proposes to provide services or which will be affected by the proposed service. Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks on each island in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service. The first notice shall be given not less than twenty-one days before the public hearing and the last notice shall be given not more than two days before the public hearing. [L 2011, c 213, §2]

" **§271G-24 Appeals.** From an order of the public utilities commission under this chapter, an appeal shall lie, subject to chapter 602, in the manner provided for civil appeals from the circuit courts and by the rules of court; provided that the order is final, or if preliminary, is of the nature defined by section 91-14(a). The appeal, of itself, shall not stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, revised, or modified in whole or in part. [L 1974, c 94, pt of §1; am L 1979, c 111, §14; am L 2004, c 202, §34; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeals, see Hawaii Rules of Appellate Procedure.

" **§271G-25 Agreement between carriers.** (a) For purposes of this section the term "antitrust laws" means any law of the State previously enacted pertaining to unlawful restraints of trade and monopolies.

(b) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, may, under such rules and regulations as the public utilities commission may prescribe, apply to the commission for approval of the agreement, and the commission shall by order approve any agreement, if approval thereof is not

prohibited by subsection (c), if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (e) should apply with respect to the making and carrying out of the agreement; otherwise, the application shall be denied.

(c) The commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that the agreement is of the character described in subsection (b) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this subsection carriers by aircraft are carriers of one class; carriers by motor vehicles are carriers of one class; carriers by water are carriers of one class.

(d) The commission is authorized upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted is not or are not in conformity with the standard set forth in subsection (b), or whether any such terms and conditions are not necessary for purposes of conformity with the standard, and, after the investigation, the commission shall by order terminate or modify its approval of the agreement if it finds the action necessary to insure conformity with the standard, and shall modify the terms and conditions upon which the approval was granted to the extent it finds necessary to insure conformity with the standard or to the extent to which it finds the terms and conditions not necessary to insure each conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the commission determines to be reasonably necessary to avoid undue hardship.

(e) Parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsection (c), relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of the agreement in conformity with the terms and conditions prescribed by the commission. [L 1974, c 94, pt of §1; am L 1980, c 232, §10]

Cross References

Restraint of trade, see chapter 480.