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**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Friday, February 9, 2018
2:00 p.m.

**TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND MEMBERS OF THE COMMITTEE**

HOUSE BILL NO. 2555 – RELATING TO WATER CARRIERS.

DESCRIPTION:

This measure, which is a companion to S.B. 3013, amends the specific findings that must be included prior to the Public Utilities Commission making a finding of public convenience or necessity or issuing an authorization to operate. This measure also authorizes an exemption for cargo to be moved on an alternate carrier, if certain conditions are met.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) supports this bill.

COMMENTS:

This bill should make it easier for new water carriers to enter the market and carry cargo intrastate, which could lower costs to consumers and increase customers’ possible options to ship goods. Section 2 of this bill proposes to delete two of the five “detrimental impact[s] to the public’s interest in maintaining services” in Hawaii Revised Statutes

("HRS") section 271G-10(e)(4) that the Public Utilities Commission ("Commission") must find are outweighed by quantifiable benefits, among other findings, before granting a certificate of public convenience and necessity to any new water carrier seeking to provide service in the State. It also adds a subsection (i) to HRS section 271G-10 that would allow "an alternate carrier" to provide cargo service without a certificate of public convenience and necessity under limited circumstances. This bill recognizes that increased competition may be a benefit to intrastate cargo customers and the State, so the Consumer Advocate humbly suggests furthering that aim by deleting HRS section 271G-10(e) in its entirety. If HRS section 271G-10(e) is deleted in its entirety, the need for the proposed section (i) may be made moot as that alternate carrier might, and should, apply to be certificated as a regulated intrastate carrier of goods.

Thank you for this opportunity to testify.

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair

House Bill No. 2555

**Testimony of Shannon Mears,
Manager, Government Affairs,
Young Brothers, Limited**

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

POSITION:

Thank you for the opportunity to testify on House Bill No. 2555. On behalf of Young Brothers, Limited (“Young Brothers”), we **submit this testimony in opposition.**

DESCRIPTION:

This measure would: (1) repeal certain specific findings that must be made by the Public Utilities Commission (“PUC”) prior to issuing a certificate of public convenience and necessity (“CPCN”) to a water carrier; and (2) require the PUC to exempt an “alternate carrier” from State oversight, if certain conditions are met.

RATIONALE:

We oppose the entirety of House Bill No. 2555. If enacted, the proposed legislation would provide an unnecessary and unfair advantage, and a potential economic windfall, to a very profitable water carrier with a market cap that exceeds \$1.5 billion (1) circumventing State PUC oversight of water carriers; (2) partially deregulating the operations of the large “alternate carrier” while maintaining heavy regulation on the smaller incumbent carrier, thereby creating an unfair playing field for the benefit of the large “alternate carrier;” (3) allowing the large unregulated “alternate carrier” the discretion to cherry-pick the most lucrative sailings (e.g., to the most populated islands) while ignoring the least profitable sailings (e.g., to the least populated islands) and the most lucrative types of cargo (e.g., full containers) while ignoring the least profitable types of cargo (e.g., pallets of agricultural products, boxes of household goods); and (4) allowing for gaming of the system by the large unregulated “alternate carrier,” whether by causing cargo to “miss its intended regular sailing” in order to generate more business, or by

charging customers a premium based on the identity or desperation of the customer, without any oversight or corrective authority by the State.

The unfortunate and all-too-foreseeable result of this legislation is reduced cargo volumes for the only regulated water carrier in the State due to unfair competition from an unregulated “alternate carrier,” thereby increasing the likelihood of rate increases for ALL customers. The water carrier business is a very capital intensive operation, and the ability to spread those costs among a large volume of customers and cargo benefits everyone, whether it’s the customer directly or the neighbor island resident buying a bag of rice at the grocery store.

Moreover, if the State’s concern is to ensure water carrier services during a state of emergency, subsection (g) of this legislation already allows the PUC to issue a temporary CPCN to an alternate carrier in those instances.

As mentioned above, this legislation evades PUC oversight and Division of Consumer Advocacy (“Consumer Advocate”) and public review of the “alternate carrier,” which is critical to ensuring: reasonable rates to all islands; public safety; employee safety and appropriate work conditions; reliable and frequent service to all islands (e.g., Young Brothers conducts 12 regulated, roundtrip sailings per week from Oahu to the neighbor islands, regardless of cargo volumes); a mechanism to resolve customer issues; compliance with all applicable laws; and the financial viability of the carrier, including proper/reasonable expenditures. As you can see, the PUC’s oversight is extensive and ensures that water carriers operate properly (e.g., safely, efficiently, environmentally-friendly), and customers are treated fairly (e.g., without preference or discrimination). Importantly, the rates charged by a regulated water carrier undergo a great deal of scrutiny by the PUC, Consumer Advocate, and the general public, to ensure the reasonableness and fairness of the rate. On the other hand, the unregulated “alternate carrier” would have unfettered discretion to alter or adjust their rates for any reason, including the desperation of, or relationship with, a particular customer, without any oversight or corrective authority by the State.

This legislation would also create an unfair playing field in the intrastate shipping industry because Young Brothers, as a regulated water carrier, is unable to adjust sailings or service levels due to demand, and has a service obligation to maintain 12 regulated, roundtrip sailings per week to all islands for cargo of all kinds. Meanwhile, the unregulated “alternate carrier” would be allowed to sail to the islands of their choosing, at the time of their choosing, loaded with the cargo of their choosing. This unfettered discretion for the unregulated “alternate carrier” will only increase risk and uncertainty for customers whose cargo may or may not be shipped by the “alternate carrier.”

In addition to the foregoing concerns, the language of this legislation raises a number of other questions.

In closing, water carrier services are essential for many of the residents and visitors of our State. If it is the State's desire to deregulate the intrastate water carrier industry; that decision should only be made after thoughtful and careful deliberation that takes into account the impacts to all residents of the State, especially those who would not be served by an "alternate carrier," but would likely see their costs of shipping and goods go up to offset this unfair competition in the marketplace. The partial deregulation of the water carrier industry for the benefit of one water carrier at the detriment of residents of the State is untenable. For these reasons, I ask that you defer this measure indefinitely.

Thank you for the opportunity to testify.

Shannon Mears
Manager, Government Affairs



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KU`UHAKU PARK
*Vice President -
Government and Community
Relations*

Testimony of Ku`uhaku Park of Matson, before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
On February 9, 2018
In regards to, HB2555:
RELATING TO WATER CARRIERS

Chair Takumi, Vice Chair Ichiyama and Committee Members,

On behalf of Matson, thank you for receiving our testimony in support of HB2555.

The flow of commerce to the neighbor islands are completely dependent on the hub and spoke maritime system based out of Honolulu Harbor. To ensure essential, reliable service, the state has awarded a regulated monopoly to a single carrier which requires that carrier to make regularly scheduled port calls to all commercial harbors, including those that are non-profitable.

The unintended consequences of this set up is that while it may be economically fair to that carrier, having the whole system limited to a single carrier can cause significant delays to essential cargo deliveries to the neighbor islands.

Since the timing of the sailings are currently regulated, cargo that misses its intended sailing may be delayed by a week. In cases where there are, additionally, capacity issues these delays may stretch into multiple weeks, and as was demonstrated in 2017, sometimes over a month.

In order to ensure the regular flow of commerce to the neighbor islands are unimpeded, HB2555 would amend HRS271G-10 (2011, SB98; Act 213) to declare that an exemption will be made for the ability of cargo to be moved on an alternate carrier, if the cargo misses its intended regulated sailing and:

1. The alternate carrier has a scheduled sailing to the same port at least 24 hours before the next regulated sailing.
2. The alternate carrier already operates a similar freight mode.
3. The alternate carrier already has an established regularly scheduled call to that neighbor island.

There are also two items in the statute that overprotect the current carrier by creating unattainable requirements and may have anti-trust implications. HRS271G-10(e)4(B) is a rule that is based on support data that is speculative and easily manipulated and HRS271G-10(e)4(D) is so specious in nature that it alone prohibits alternative service and competition, no matter how reasonable or fair it may be.

Thank you for considering our testimony in this matter.



Brian Kitagawa, President
Dave Rolf, Executive Director

HADA TESTIMONY WITH COMMENTS

On HB2555

RELATING TO WATER CARRIERS

Presented to the House Committee on Commerce and Consumer Protection

At the Public Hearing, 2 p.m. Friday, February 9, 2018

Conference Room 329, Hawaii State Capitol

Chair Takumi , Vice Chair Ichiyama, and members of the committee:

The members of the Hawaii Automobile Dealers Association, Hawaii's franchised new car dealers, appreciate the opportunity **to offer comments** on this bill which proposes to authorize an exemption to the provision of specific findings that must be included prior to the public utilities commission making a finding for cargo to be moved on an alternate carrier, if certain conditions are met.

Comment #1: Neighbor island auto dealers recently have been experiencing ever-increasing delays for vehicles shipped between islands.

Comment #2: Dealers report that cars purchased on Oahu at the Manheim Auto Auction, in the past, would arrive at the dock on a neighbor island, on average, in under a week's time. Today, however, dealers regularly see these cars taking a week and a half, and frequently a month for a car to make the inter-island passage by barge.

Comment #3: One neighbor island dealer reports a vehicle purchased at the Manheim auction on January 12, 2018 wasn't delivered by barge to the port in Hilo until February 6, 2018—some 27 days later-- shipping that used to take under a week.

Comment #3: Dealers say such delays can cost them "loss of a book" meaning the depreciated value of the vehicle, due to the loss of the Kelley Blue Book Value, (or other car value-setting authority), which, in many instances shows a drop of \$100 to \$300 in value, for every two weeks of delay, according to one dealer.

The members of Hawaii Automobile Dealers Association thank the committee for the opportunity to offer these comments.

Respectfully submitted,

David H. Rolf
For the Members of the Hawaii Automobile Dealers Association



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

HB 2555

Relating To Water Carriers

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Friday, February 9, 2018, 2:00pm

Conference Room 329

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 185 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA’s membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **in opposition** of HB 2555, which amends the specific findings that must be included prior to the public utilities commission making a finding of public convenience or necessary or issuing an authorization. Authorizes an exemption for cargo to be moved on an alternate carrier, if certain conditions are met.

MHLA believes this Bill is attempting to sidestep PUC oversight of an “alternate carrier” and exempts “alternate carriers” from PUC regulation in certain situations. There is concern that reducing PUC oversight and exempting “alternate carriers” from PUC regulation, as proposed by this bill, will place consumers at risk, namely by compromising the requirements that are currently in place to protect consumers under a regulated framework as well as the public interest in having a sound intrastate water transportation system.

Furthermore, allowing an “alternate carrier” to selectively provide unregulated water carrier service, as proposed by this bill, will likely result in increased rates for regulated water carriers, who are required to serve all routes and customers, regardless of profitability. In particular, there is a concern that allowing this exemption will result in increased shipping rates for customers located on less populated islands such as Molokai and Lanai.

Thank you for the opportunity to testify.

The Business Depot, Inc.

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February 7, 2018

To: House Committee on Consumer Protection & Commerce
Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

RE: Notice of Hearing Friday, February 9, 2018, 2:00 P.M. Conference Room 329 State Capitol
HB 2555 Relating to Water Carriers

In Opposition:

My name is Barbara Haliniak, I own a small business on Molokai for over 20 years and have been directly involved with our island's water carrier, Young Brothers (YB) for over 10 years. In 2006, we held many community meetings with YB regarding the possibility of losing less than container load (LCL) shipping to Molokai, due to the state designating YB's LCL space at Kahului Harbor to the Super Ferry. Even though the Super Ferry was not going to serve our island, it would have had a major negative effect to our shipping. The state without foresight, did not solicit Molokai's community and businesses for comments regarding any negative impact to our island. Losing LCL service would have drastically put Molokai in economically and financially devastation, since our island receives and ships approximately 98% LCL cargo.

HB2555 contents has been proposed and considered in the past which was to allow Pasha to operate between major ports in Hawaii without having to apply for public convenience and necessity certificate with the Public Utilities Commission (PUC). We on Molokai opposed this proposal since it would have allowed Pasha to serve only the profitable ports which would not have included Molokai for sure. Although, YB's PUC tariffs and regulations would have required YB to continue service to smaller ports thus placing a financial negative impact on YB, this negative impact would have had a ripple effect to Molokai and Lanai. Molokai and Lanai would have seen an increase in our shipping rates. These higher shipping cost would be passed on to consumers and since our cost of living is already the highest in the state; more unemployment, more government subsistence and assistance?

We do not object to competition, however the rules should be consistent to all water carriers. I ask that the House Committee on Consumer Protection and Commerce (CPC) not support HB2555. You will be doing an injustice to interisland water shipping. By supporting this bill, you will be providing unfairness, prejudice, inequality and discrimination, which will definitely affect our bottom line. It is encumbered on the CPC to fact find all the statewide negative effects of this bill. All alternate water carriers should seek a public convenience certification from the PUC. What's fair is fair.

Molokai has had a good relationship with YB, from YB providing notices when barges are delayed, timely updates in shipping fuel adjustments, supporting our community in community events and being visible on Molokai; corporate executives reaching out to local businesses here. This is the right way to do business and our community appreciates the transparency.

Thank you for the opportunity to submit testimony.

Barbara Haliniak

Super Foods, Inc.

P. O. Box 30332 Honolulu, Hawaii 96820, U.S.A.

Phone (808) 834-1541 Fax (808) 839-3636

February 8, 2018

Aloha,

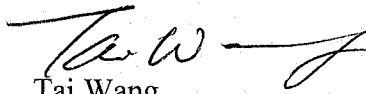
My name is Tai Wang, and my company Super Foods, Inc. regularly uses Young Brothers' water carrier service as our carrier of choice transport cargo to and from the Big Island to Oahu, and from Oahu to Kauai.

I am testifying in opposition to House Bill No. 2555, which attempts to sidestep PUC oversight and exempts "alternate carriers" from PUC regulation in certain situations. I am concerned that reducing PUC oversight and exempting "alternate carriers" from PUC regulation, as proposed by this bill, will place consumers at risk, namely by compromising the requirements that are currently in place to protect consumers under a regulated framework as well as the public interest in having a sound intrastate water transportation system.

For example, the current law provides avenues for customer complaints, PUC investigations, public hearings, rate regulation, safety standards, and more. It is unclear what protections customers of an unregulated water carrier would have.

Furthermore, allowing an "alternate carrier" to selectively provide unregulated water carrier service, as proposed by this bill, will likely result in increased rates for regulated water carriers, who are required to serve all routes and customers, regardless of profitability. In particular, there is a concern that allowing this exemption will harm customers located on less populated islands such as Molokai and Lanai, who rely on regulated water carrier services for cargo transportation.

Thank you for the opportunity to testify on this measure.


Tai Wang
President
Super Foods, Inc.



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February 9, 2018

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TESTIMONY ON HB 2555
RELATING TO WATER CARRIERS

Room 329
2:00 PM

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFB opposes HB2555, amending requirements for Certificate of Need requirements that have protected the fragile Hawaii water carrier industry.

Hawaii's agriculture is largely dependent on water carriers to transport our inputs and goods between islands. Over the years, we have intervened in cases in which Young Brothers (YB) sought to adjust their rates, while strongly opposed entry of Pasha who declared that they had no intention of transporting agricultural cargo, thus weakening YB's viability as being left with difficult cargo as their business. We worked with the Consumer Advocate to make sure that the interests of Hawaii's agriculture was considered in all cases.

The bill is confusing. The deleted, item (B) could be included as part of item (A) and former (C) but as it is not clearly articulated, it could imply that the future capital costs are no longer included. Similarly deleted (D) could be considered to be part of former (C) and €

(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)]~~ (B) Ability of existing water carriers to make necessary capital and resource investments; and

~~[(D) The financial health, stability, and revenue stream of existing water carriers; and~~

~~(E)]~~ (C) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and

The interisland transportation business is fragile. We saw it most dramatically when Mesa Airlines entered the picture resulting in the collapse of Aloha Airlines through a crazy airfare battle – Recall the \$19 interisland fares? Did anyone believe that the fare was covering the cost of the flite? It was a battle of who would survive. Those who enter the market without a commitment to Hawaii, will walk, leaving Hawaii in the dust. The entity hurt at the end of the day was Hawaii.

Exclusion of the impact on other existing carriers will deny the opportunity to evaluate the overall impact to Hawaii's ocean transportation capacity. If this measure truly reduces the capacity for thorough review of the proposed service and its' impact on existing services, it will be detrimental to Hawaii.

Lacking a preamble, it is unclear if the intent of this measure is housekeeping. If it is housekeeping, then it may not be covering the intent as it has created a doubt to users of water carriers.

For these reasons, we respectfully request your opposition of this measure. Thank you for this opportunity to provide our opinion on this important matter.