



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Finance
Friday, February 24, 2023
1:30 p.m.
Conference Room 308

On the following measure:
H.B. 24, H.D.1, RELATING TO WATER COMMON CARRIERS

Chair Yamashita and Members of the Committee:

My name is Dean Nishina, and I am the Acting Executive Director for the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department opposes this bill.

The purpose of this bill is to remove the requirement that water common carriers secure prior approval of the Public Utilities Commission (Commission) to enter into long term leases of more than three years and leverage leases.

While the Department acknowledges the desire to lessen regulatory requirements on water common carriers that operate in the State where warranted, which appears to be the intent of this bill, the Department believes that the bill will unintentionally hamper the Commission's and the Department's ability to fulfill our responsibilities of protecting the public interest.

The ability for residents and business to move goods between the islands at affordable rates is critical to our neighbor island communities' economic well-being as they are very much reliant on the interisland cargo services that water common carriers provide. Long term leases and leverage lease agreements impact and add to a businesses' costs. In turn, such costs are components of the rates that water common carriers will seek to impose on residents and businesses. The Department has also raised concerns in prior Commission proceedings regarding leases between regulated water carriers and their affiliates and whether regulated customers were being asked to bear costs associated with lease terms that favor the unregulated affiliate, who is leasing equipment to the regulated water carrier.

Furthermore, one of the regulated water carriers recently went through a financial crisis, which resulted in the Commission needing to authorize an emergency rate increase of approximately 47%. At this time, that emergency increase is still in effect. In granting that emergency increase, the Commission required a review of cost control measures to mitigate future emergency increases. The current statutory requirement allows the Commission to review leases that could further increase rates. Without a check or review of these types of arrangements before they are entered into as the law currently provides, the likelihood of increases in the rates charged for transporting goods throughout the islands is exacerbated. It is for that reason that removing the Commission's ability to review such long-term leases and leverage leases would negatively impact our neighbor island communities, which rely on the essential services provided by water common carriers.

The Department offers that allowing the current language does not impair a water carrier's ability to timely acquire equipment through leases nor does it impose a significant burden on the water carrier. The last application by a water carrier seeking approval of a lease was over ten years ago in 2012. That application was approved by the Commission within 43 days (Docket No. 2012-0074). The Department respectfully offers that removing the Commission's ability to review leases so that unreasonable costs are avoided will be impaired and is contrary to customers' interests and the Department offers that allowing

Testimony of DCCA

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the Commission to conduct such reviews outweighs any nominal reduction in regulatory burden for the water carrier.

We respectfully request that the committee hold this bill.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF
LEODOLOFF R. ASUNCION, JR.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEE ON
FINANCE

February 24, 2023
1:30 p.m.

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

MEASURE: H.B. No. 24, HD1

TITLE: RELATING TO WATER COMMON CARRIERS.

DESCRIPTION: Removes the requirement that water common carriers secure prior approval of the public utilities commission to enter into long term leases of more than three years and leverage leases. Effective 7/1/3000.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission appreciates the intent of this measure to allow water common carriers that the Commission regulates to enter into leases of a certain length without prior Commission approval.

It appears that the original intent of the statute was to allow the Commission the ability to review leases that could adversely impact ratepayers via increased costs, before such leases were executed. However, the Commission believes that land leases from governmental entities inherently serves the interests of the public, and thereby these specific leases do not need review by the Commission before execution. The Commission also believes that leases for equipment used by water common carriers that do not represent a financial risk, likewise, do not need review by the Commission before execution. The Commission wishes to retain its ability to review land leases from private entities and equipment above a certain threshold that may pose a financial risk to ratepayers.

Should the Legislature wish to enable water common carriers to enter into land leases and certain low-cost leases without having to secure prior Commission approval, the Commission suggests not amending language in Section 1 of this measure, thereby retaining HRS § 271G-17.5, and adding an amendment exempting land leases from governmental entities and equipment leases below a certain threshold as determined by the Commission.

SECTION 1. [] 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] a 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.

Exceptions:

(A) land leases from a governmental entity provided that either the water common carrier or governmental entity provides a letter to the commission outlining terms of the lease agreement in a reasonable timeframe after the agreement is executed; or

(B) leases of any equipment of which the annual cost of the lease is below a threshold as determined by the commission in the most recently approved rate case or other ratemaking proceeding.

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."

The Commission is willing to work with the Committee and stakeholders to further develop language that will accommodate the water common carriers in their endeavors.

Thank you for the opportunity to testify on this measure.

Testimony of the Hawaii Harbor Users Group
Support of HB24, HD1
Before the Committee on Finance
February 24, 2023

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users statewide. HHUG supports HB24, HD1 which removes the requirement that water common carriers secure prior approval from the State of Hawaii Public Utilities Commission (“PUC”) to enter leases of more than three years and leverage leases.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii’s imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

Current law necessitates water common carriers obtain additional PUC regulatory approval, which may impede a water carrier’s ability to timely secure equipment or property necessary to transport goods across our State. Statutory protections already exist. Commercial harbor leases are already subject to the jurisdiction of the Hawaii Department of Transportation and require approval from the Department of Land and Natural Resources. Other entities regulated by the PUC are not required to secure PUC approval before entering a lease of more than three years.

Thank you for considering our testimony in support.

Testimony of Matson Navigation Company, Inc.
Support of HB24, HD1
Before the Committee on Finance
Thursday, February 24, 2023

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

Matson Navigation Company, Inc. (Matson) supports HB24, HD1, which removes the requirement that water common carriers secure prior approval from the State of Hawaii Public Utilities Commission (“PUC”) to enter leases of more than three years and leverage leases.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii’s imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

Current law necessitates water common carriers obtain additional PUC regulatory approval, which may impede a water carrier’s ability to timely secure equipment or property necessary to transport goods across our State. Statutory protections already exist. Commercial harbor leases are already subject to the jurisdiction of the Hawaii Department of Transportation and require approval from the Department of Land and Natural Resources. Other entities regulated by the PUC are not required to secure PUC approval before entering a lease of more than three years.

Thank you for considering our testimony in support.



February 24, 2023

Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
House Committee on Finance

RE: House Bill 24, H.D. 1 – RELATING TO WATER COMMON CARRIERS
Hearing date: February 24, 2023, 1:30 p.m.

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

Thank you for the opportunity to submit testimony on behalf of Young Brothers, LLC (“YB”) offering **STRONG SUPPORT** for House Bill 24, H.D. 1 – Relating to Water Common Carriers.

YB is a common carrier by water, transporting property by tug and barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. YB is currently the only water common carrier authorized to transport property under Chapter 271G, Hawaii Revised Statutes (“HRS”) (i.e., the Hawaii Water Carrier Act), subject to the regulatory authority of the Public Utilities Commission of the State of Hawaii (“PUC”). Since 1900, customers across Hawaii have relied on YB’s frequent, regular, and universal sailings to serve as the bridge that connects all communities in this island-state.

This measure would amend Section 271G-17.5, HRS to remove the requirement that water common carriers secure prior approval of the PUC to enter into leases of more than three-years and leverage leases.

The unamended language of 271G-17.5, HRS unduly necessitates additional PUC regulatory approval processes which may impede a water carrier’s ability to timely secure equipment or property necessary to serve its customers. Furthermore, the unamended language of 271G-17.5, HRS is vague and ambiguous, and could be interpreted to require PUC approval for “long-term” leases of **any** type or amount. Such interpretation could require additional PUC approvals that could impede YB’s ability to timely execute proposed programs in support of sustainability, resiliency, electrification, and renewable energy initiatives, including the potential implementation of electric vehicles, lifts, etc. It could also be interpreted to require an additional PUC approval process for water carriers to secure land leases with the Hawaii Department of Transportation (DOT) for port space – a necessity for water carriers – despite the fact that the Hawaii DOT already has its own set of statutory protections and processes in reviewing and approving such leases via the Department of Land and Natural Resources.

No other PUC regulated entities (electric, gas, telecommunications, water, wastewater, motor carriers, etc.) are currently required to secure PUC approval before entering a long-term

lease. If there is concern that a water carrier will incur unreasonable expenses (whether for a long-term lease or otherwise), then the PUC already has the regulatory authority to deny recovery for such expenses during the general rate case review process. This authority exists for all PUC regulated entities subject to rate regulation, including water carriers like YB.

Finally, this requirement puts water carriers like YB at a significant competitive disadvantage when negotiating long-term leases with 3rd parties. Under this requirement YB must either:

- (A) negotiate a conditional 3+ year lease that cannot be made effective until PUC approval is granted (3rd parties regularly express concern with this approach due to the uncertainty and unknown timing associated with PUC approval); or
- (B) Limit its leases to under 3 years (thus foregoing any potential discounts for longer term leases).

Both paths place YB in a disadvantageous negotiating position with 3rd parties and may impact the costs and options available to YB for such leases.

For the reasons stated above, YB offers **STRONG SUPPORT** for this measure.

Thank you for your service to the State of Hawaii, and for the opportunity to testify offering comments on this measure.

Sincerely,

Kris Nakagawa
Vice President, External and Legal Affairs