

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
SENATE COMMITTEE ON
TRANSPORTATION

February 10, 2022
3:00 p.m.

Chair Lee and Members of the Committee:

MEASURE: S.B. No. 1348

TITLE: RELATING TO WATER CARRIERS.

DESCRIPTION: Establishes the maritime commission to oversee the regulation of water carriers in the State. Transfers the oversight of water carriers by the public utilities commission to the maritime commission and makes associated conforming amendments. Establishes the maritime commission special fund. Makes an appropriation. Effective 7/1/2022.

POSITION:

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

COMMENTS:

This measure would establish a maritime commission within the Department of Commerce and Consumer Affairs (“DCCA”) and transfer oversight of water carriers from the Commission to this new entity.

The Commission has worked in recent years to improve regulated water carrier services in the state, including through convening a stakeholder working group, initiating a financial and management audit of Young Brothers (“YB”), and enacting regulatory policies to facilitate improved services and efficiency.

Pursuant to Senate Resolution No. 125, S.D. 1 (2020), the Commission convened a Water Carriers Working Group (“WCWG”) to recommend mid-term and long-term

solutions to balance the need for continuous interisland water carrier service throughout the State with the need for water carriers to maintain financial sustainability.

The 18-member WCWG, consisting of government agencies, water carriers, legislators, and other stakeholders, developed recommendations focused on annual rate adjustments, improving customer service, and establishing broad subsidies for trans-Pacific and interisland cargo, among other issues. The Commission submitted the WCWG's report to the Legislature on December 27, 2021, detailing the WCWG's findings and recommendations.¹

In addition to convening the WCWG, the Commission in 2020 initiated a financial and management audit of Young Brothers ("YB").² The final audit report was filed in Docket No. 2019-0117 on September 9, 2021.³ On November 24, 2021, the Commission issued Order No. 38085,⁴ which addressed the audit's findings and adopted several of its recommendations that will help to deliver improvements in reliable service, ratepayer protection, and cost mitigation, among other matters.

Transferring oversight to a new Commission before fully implementing the audit's findings and recommendations will delay the benefits to customers from the ongoing reform efforts. In addition, a new Commission will require establishing positions that duplicate existing professional and administrative services at the PUC.

Thank you for the opportunity to testify on this measure.

¹ *Report to the Hawaii State Legislature in Response to Senate Resolution No. 125, S.D. 1 (2020)*, transmitted on December 27, 2021, <https://puc.hawaii.gov/water-carriers/hwcwg/>.

² Order No. 37280, filed in Docket No. 2019-0117 on August 17, 2020, at 74.

³ *Financial and Management Audit of Young Brothers, LLC as per Order No. 37280*, filed in Docket No. 2019-0117 on September 9, 2021.

⁴ Order No. 38085, filed in Docket No. 2019-0117 on November 24, 2021.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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CATHERINE P. AWAKUNI COLÓN
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JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Transportation
Thursday, February 10, 2022
3:00 p.m.
Videoconference**

**On the following measure:
S.B. 1348, RELATING TO WATER CARRIERS**

Chair Lee and Members of the Committee:

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

The purpose of this bill is to establish the Maritime Commission to oversee the regulation of water carriers in the State; to transfer the oversight of water carriers by the Public Utilities Commission to the Maritime Commission and make associated conforming amendments; to establish the Maritime Commission Special Fund; and, to make an appropriation.

The Department notes that similar proposals to transfer the ratemaking oversight over water carriers from the Public Utilities Commission to the Department of Transportation have been made in the past (e.g., SB1427 SD1 proposed HD1 (2020 session)) and, while the Department recognizes that this bill would address some of the concerns raised about proposals in 2020 to transfer ratemaking authority from the Public Utilities Commission to the Department of Transportation, the Department is

unclear on the need for the creation of a separate Maritime Commission to regulate water carriers in the State. The Public Utilities Commission is currently reviewing a thorough management audit of the State's only current regulated water carrier, Young Brothers LLC, and it would appear to the Department to be inefficient to transfer regulatory oversight in the middle of that process and any appropriate regulatory changes imposed pursuant to the audit findings.

If it is the Legislature's will that a separate commission ensures reasonable rates and services for the State's interisland water carrier needs, the Department respectfully recommends that the management audit findings and the implementation of various recommendations within the audit report be allowed to be completed before that transfer. Also, the Department notes that it is unclear whether Hawaii Administrative Rules Chapter 16-605 would still apply, and it may take the new Maritime Commission a substantial amount of time to promulgate revised rules per Hawaii Revised Statutes ("HRS") Chapter 91 before the Maritime Commission could effectively regulate water carriers.

Finally, if the Legislature intends to transfer oversight, the Department notes the Section 11 of the bill deletes the current HRS § 271G-3, which indicates that any section of HRS Chapter 269 applies where HRS Chapter 271G is silent. Operation of HRS Chapter 271G currently benefits from the augmentation of provisions in HRS Chapter 269. Without that tie, the Department is concerned that the customers of water carriers would not be protected since there is no provision in HRS § 271G that allows or requires consumer protection. If the intent is to also create a different agency to protect, advance and represent the consumers' interests before the Maritime Commission, additional language may need to be incorporated within 271G to reflect that purpose. If, on the other hand, the intent is for the Department to continue representing consumers' interests before this new Maritime Commission, additional consideration with respect to the funding, and the statutory language enabling such funding, of the Department to fulfill that purpose may need further consideration

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON TRANSPORTATION
ON
SENATE BILL NO. 1348

February 10, 2022
3:00 p.m.
Via Videoconference

RELATING TO WATER CARRIERS

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 1348: 1) establishes the Maritime Commission (MC), to be administratively attached to the Department of Commerce and Consumer Affairs (DCCA), to be led by three commissioners with the power to examine, investigate, and enforce against the affairs of water carriers; 2) establishes the MC Special Fund (MCSF) to be used for expenses of the MC and for DCCA's administrative functions; 3) assesses a biannual Water Carrier Fee (WCF) equal to 0.25% of gross income of a water carrier's business during the preceding year, to be deposited into the MCSF; 4) provides exemptions for certain towage, salvage, hauling, and cruise ship providers; 5) repeals the Public Utilities Commission's (PUC) statutory authority over Certificates of Public Convenience and Necessity for Water Carriers; 6) transfers the PUC's rights, powers, functions, duties, staff, and legal documents under Chapter 271G (Hawaii Water Carrier Act), HRS, to the MC; 7) appropriates an unspecified amount of general funds for FY 23 to be deposited into the MCSF; 8) appropriates an unspecified amount

of special funds to the MCSF for FY 23; and 9) enacts various other provisions pertaining to water carriers and the MC.

B&F notes the scope of the proposed MC's budget and the number of water carrier-related budget items to be transferred from the PUC have yet to be determined. It is unclear if establishing an entirely new entity to regulate only water carriers, with a new set of paid commissioners and staff, will yield any consumer benefit. B&F also defers to DCCA and the PUC on the feasibility of the MCSF, WCF, and the transfer of authority and positions from the PUC to the MC.

As a matter of general policy, B&F does not support the creation or continuance of any special fund or special fund subaccount which does not meet the requirements of Section 37-52.3, HRS. Special funds and any related subaccounts should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Even with the proposed WCF, it is unclear if the MCSF will be self-sustaining without future general fund infusions.

B&F also notes that, with respect to the general fund appropriations in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



February 10, 2022

The Honorable Senator Chris Lee, Chair
The Honorable Senator Lorraine R. Inouye, Vice Chair
Senate Committee on Transportation

RE: Senate Bill 1348 – RELATING TO WATER CARRIERS
Hearing date: February 10, 2022, 3:00p.m.

Aloha Chair Lee, Vice Chair Inouye, and Members of the Senate Committee on Transportation:

Thank you for allowing me to submit testimony on behalf of Young Brothers, LLC (“YB”) in **SUPPORT OF THE INTENT** of Senate Bill 1348 – Relating to Water Carriers.

Generally, this measure seeks to transfer the same responsibilities and authorities currently performed by the Public Utilities Commission of the State of Hawaii (“Commission”) in relation to their oversight and regulation of intrastate water carriers to a newly established maritime commission. The newly established maritime commission would be comprised of three commissioners "who have had experience in maritime transportation or similar fields." This measure also establishes a special fund to enable the establishment of such a maritime commission.

YB understands that the services it provides are vital to local communities around our state, and thus understands the importance of having fair and impartial regulation to promote the safe, adequate, economical, and efficient service among water carriers. YB notes that it is in an unusual, if not unique position amongst both water carriers in the industry and other regulated public utilities in the state. Unlike most domestic water carriers of property, YB must adhere to strict regulatory requirements and an established regulatory framework that are rooted in years of regulatory principles and history that were developed for application to traditional public utilities, such as electric utilities. For example, YB is currently subject to a ratemaking process that is nearly identical to the rigorous ratemaking processes that are currently applied to traditional public utilities, such as electric utilities, while other domestic water carriers of property are subject to a relatively simple and flexible form of economic regulation enforced by the federal Surface Transportation Board. Furthermore, unlike other domestic water carriers of property, YB is also required, by law, to adhere to a mandated sailing schedule and to carry a wide array of cargo types that most, if not all, water carriers of property in the industry are unable or unwilling to ship. Accordingly, due to its unusual, if not unique, position amongst both water carriers in the industry and other regulated public utilities in the state, YB supports

The Honorable Senator Lee, Chair
The Honorable Senator Inouye, Vice Chair
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the intent of establishing a new maritime commission that is rooted in experience in maritime transportation or similar fields.

YB also notes that, pursuant to Senate Resolution No. 125 S.D. 1 (2020), a working group was formed to recommend mid-term and long-term solutions to balance the need for continuous interisland water carrier service throughout the State with the need for water carriers to maintain financial sustainability. The final report of the findings and recommendations reached through this working group were published on December 27, 2021,¹ and include several findings and recommendations regarding the establishment of regulatory processes or mechanisms that are tailored specifically to the needs of regulated water carriers and their customers and allow the flexibility to meet the unique operational challenges faced by YB and other potential intrastate water carriers of property. YB supports the review and consideration of these recommendations by any regulatory commission charged with oversight of water carriers within the State.

Thank you for your service to the State of Hawaii, and for the opportunity to testify in support of the intent of this measure.

Sincerely,

Kris Nakagawa
Vice President, External and Legal Affairs

¹ Available at: <https://puc.hawaii.gov/wp-content/uploads/2021/12/Final-Water-Carriers-Working-Group-Report-12-01-2021.pdf>

SB-1348

Submitted on: 2/7/2022 2:16:57 PM

Testimony for TRS on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

Un nesasary. This is an Example Government wast!

All of you need to go!!!!