

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

TO THE
SENATE COMMITTEE ON
TRANSPORTATION AND CULTURE AND THE ARTS

March 14, 2023
3:00 p.m.

Chair Lee, Vice Chair Inouye, 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 the existing language could be streamlined to improve regulatory efficiency for water carriers. The Commission has collaborated with stakeholders to identify certain amendments to the current statutory language that both achieves this regulatory efficiency while retaining the Commission’s ability to review high-risk leases that represents a financial risk to ratepayers.

Should the Legislature wish to enable water common carriers to execute low-risk leases without having to secure prior Commission approval, the Commission suggests not

amending language in Section 1 of this measure as proposed in the House Draft 1, and instead adding the following amendments that focus on enabling oversight on high-risk leases which in the case of water carriers encompasses vessels.

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:

(a) enter into vessel leases longer than five (5) years;

(b) enter into leverage leases for vessels; or

(c) 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

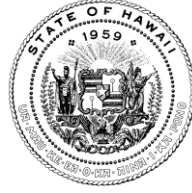
(4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes, except maintenance of service, 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.

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~~] vessel leases [~~of more than three~~] longer than five years, [~~and~~] or enter into leverage leases [~~7~~] for vessels, 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 vessel [~~long-term~~] leases longer than five [~~of more than three~~] years and all leverage leases entered into by a water carrier for vessels without an order of the commission authorizing the same then in effect shall be void. "

Thank you for the opportunity to testify on this measure.



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Transportation and Culture and the Arts
Tuesday, March 14, 2023
3:00 pm
Conference Room 224**

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

Chair Lee 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.

While it might be argued that the Commission can still protect the public interest by reviewing lease expense in the next rate case, that may not be always the case. If the water carrier is in financial distress, the ability for the Commission to disallow expenses or costs, even if they are unreasonable, will be impaired if the Commission determines that the water carrier needs to recover all expenses to avoid termination of regulated services. As noted above, the Commission recently granted an emergency increase of 47% even though the Munro Tulloch management audit noted that the water carrier did not seek to control costs or offset rising labor costs.¹

¹ <https://www.civilbeat.org/2021/09/audit-finds-that-young-brothers-failed-to-offset-rising-labor-costs/>

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. Thus, the Department offers that allowing the Commission to conduct such reviews outweighs any nominal reduction in regulatory burden for the water carrier.

Given the above, we respectfully request that this Committee hold this bill. Nonetheless, if this Committee wishes to move this bill forward, the Department believes that the language passed by the Senate in S.B. 479, S.D. 2, which is a similar bill, is a more measured approach and would better protect the interests of the public. Accordingly, we request that the contents of this bill be replaced with the language currently in S.B. 479, S.D. 2 if this measure will move forward..

Thank you for the opportunity to testify on this bill.

Testimony of the Hawaii Harbor Users Group
Support of HB24, HD1
Before the Committee on Transportation and Culture and the Arts
March 14, 2023

Dear Chair Lee, Vice Chair Inouye, 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 Transportation and Culture and the Arts
March 14, 2023

Dear Chair Lee, Vice Chair Inouye, 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.



March 14, 2023

Senator Chris Lee, Chair
Senator Lorraine R. Inouye, Vice Chair
Senate Committee on Transportation and Culture and the Arts

RE: House Bill 24, H.D. 1 – RELATING TO WATER COMMON CARRIERS
Hearing date: March 14, 2023, 3:00 p.m.

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

Thank you for the opportunity to submit testimony on behalf of Young Brothers, LLC (“YB”) offering **SUPPORT with amendments** 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.

In previously submitted testimony on this measure, YB raised detailed concerns with the unamended language of 271G-17.5, HRS and supported the proposed amendments which would 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. However, YB recognizes that some stakeholders believe the PUC should retain its authority to review certain types of leases for regulated water carriers prior to execution. Accordingly, YB has collaborated with the PUC to identify certain amendments to the current statutory language that both improves regulatory efficiency while retaining the PUC’s authority to review such leases for regulated water carriers prior to execution. These amendments are proposed below for this Committee’s consideration:

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:

(a) enter into vessel leases longer than five (5) years;

(b) enter into leverage leases for vessels; or

(c) 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.

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~~]vessel leases[~~of more than three~~] longer than five years, [~~and~~]or enter into leverage leases[~~7~~] for vessels, 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 vessel~~[long-term]~~ leases longer than five~~[of more than three]~~ years and all leverage leases entered into by a water carrier for vessels without an order of the commission authorizing the same then in effect shall be void. "

For the reasons stated above, YB offers **SUPPORT with amendments** 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