

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

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

March 29, 2023
10:01 a.m.

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

MEASURE: H.B. No. 24, HD1, SD1

TITLE: RELATING TO WATER COMMON CARRIERS.

DESCRIPTION: Clarifies that a common water carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels upon prior approval of the Public Utilities Commission. Effective 7/1/3000. (SD1)

POSITION:

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

COMMENTS:

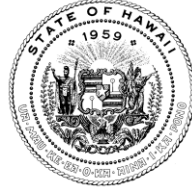
The Commission appreciates the intent of this measure to clarify that a common water carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels upon prior approval of the Commission.

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.

The Commission's suggested amendments¹ to the current statute are consistent with the proposed language in H.B. No. 24, HD1, SD1. This should enable water common carriers to execute low-risk leases without having to secure prior Commission approval, while enabling Commission oversight of high-risk leases. As such, the Commission is in support of the proposed language of HB 24, HD1, SD1.

Thank you for the opportunity to testify on this measure.

¹ Commission testimony on HB 24, HD1, submitted for the Senate Committee on Transportation and Culture and the Arts hearing held on March 14, 2023.



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

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

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

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, March 29, 2023
10:01 a.m.
Room 229**

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

WRITTEN TESTIMONY ONLY

Chair Keohokalole 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 provides comments on this bill expressing strong concerns.

The purpose of this bill is to clarify that a common water carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels upon prior approval of the Public Utilities Commission (Commission).

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 or impairing 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 expenses 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

The Department offers that the current statutory 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 or impairing the Commission's ability to review leases so that unreasonable costs are avoided 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 offer that the Department would prefer that this Committee defer this bill. Nonetheless, if this Committee wishes to move this bill forward, the Department believes that the amendments made by the previous Senate committee, which is similar to the language passed by the Senate in S.B. 479, S.D. 2, a similar bill, is a somewhat measured approach that can, to a certain extent, protect the interests of the public.

Thank you for the opportunity to testify on this bill.

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

Testimony of the Hawaii Harbor Users Group
Support of HB24, HD1, SD1
Before the Committee on Commerce and Consumer Protection
March 29, 2023

Dear Chair Keohokalole, Vice Chair Fukunaga, 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 **strongly supports** HB24, SD1, Relating to Water Common Carriers.

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.

HB24, SD1 amends section 271G-17.5, Hawaii Revised Statutes, to clarify that a common water carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels only upon prior approval of the Public Utilities Commission. HHUG recognizes that some stakeholders believe the Public Utilities Commission should retain its authority to review certain types of leases for regulated water carriers prior to execution. Accordingly, our common water carrier member has collaborated with the Public Utilities Commission to identify certain amendments to the current statutory language that both improves the regulatory efficiency while retaining the Commission's authority to review such leases for regulated water carriers prior to execution. The collaborative amendments are reflected in the current draft of HB24.

For these reasons, HHUG strongly supports this measure. Thank you for considering our testimony.

Matson Navigation Company, Inc.
Support of HB24, HD1, SD1
Before the Committee on Commerce and Consumer Protection
March 29, 2023

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Matson Navigation Company, Inc. supports HB24, SD1, Relating to Water Common Carriers.

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.

HB24, SD1 amends section 271G-17.5, Hawaii Revised Statutes, to clarify that a common water carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels only upon prior approval of the Public Utilities Commission. Hawaii's common water carrier member has collaborated with the Public Utilities Commission to identify certain amendments to the current statutory language that both improves the regulatory efficiency while retaining the Commission's authority to review such leases for regulated water carriers prior to execution. The collaborative amendments are reflected in the current draft of HB24.

For these reasons, Matson supports this measure. Thank you for considering our testimony.



WRITTEN TESTIMONY ONLY

March 29, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

RE: House Bill 24, H.D. 1 S.D. 1 – RELATING TO WATER COMMON CARRIERS
Hearing date: March 29, 2023, 10:01 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, 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 S.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 clarify that a water common carrier may enter into vessel leases longer than five years or enter into leverage leases for vessels only upon prior approval of the PUC.

In its initial testimony on this measure, YB raised detailed concerns with the unamended language of 271G-17.5, HRS and supported the removal of 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, as stated in our testimony submitted to the previous committee, 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 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 collaborative amendments are reflected in the current draft of this measure, which YB supports.

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 on this measure.

Sincerely,

Kris Nakagawa
Vice President, External and Legal Affairs

We appreciate the opportunity to provide testimony **in support of HB 24, HD1, SD1.**

My name is R. Erik Soderholm, Vice President & General Counsel of Soderholm Sales & Leasing, Inc. (SSL), SSL is the largest & only statewide licensed commercial motor vehicle dealer in Hawaii selling & leasing buses & vans. We also operate in another 30 Pacific Islands.

My experience includes the following:

- 1978 - BA U.H – Political Science

- 1981 - JD U.H.

- 1982 - 1990 - VP BOH equipment leasing including funding small ticket, mid ticket & large ticket leverage leasing of equipment, ships, airplanes & vehicles. Set up BOH leasing operations in Guam & Arizona. Structured, documented & sold more BOH equipment leasing than others.

- 1989 -2023 - Structuring millions of dollars in bus leasing for SSL's own portfolio & 3rd party.

The equipment leasing industry standard is for private companies to be able to lease equipment, copiers, computers, phone systems, healthcare equipment, vehicles, etc. for at least five years for sale financing from vendors & 3rd parties. YB should have this standard industry right to facilitate funding including the planned electrification of their port equipment.

Five year terms offer lower regular payments, more value, and increased flexibility.

Mahalo for your time, consideration, and understanding.

R. Erik Soderholm

Vice President and General Counsel of Soderholm Sales and Leasing, Inc.