

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

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

February 21, 2023
10:00 a.m.

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

MEASURE: S.B. No. 479, SD1

TITLE: RELATING TO WATER COMMON CARRIERS.

DESCRIPTION: Removes requirement that common water carriers receive approval from the Public Utilities Commission prior to executing a long-term lease of more than five years or a leverage lease. Requires common water carriers to receive approval from the Public Utilities Commission before entering into long-term leases of more than five years and leverage leases of waterborne vessels. Takes effect 7/1/2050. (SD1)

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 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

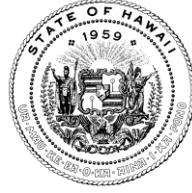
(B) leases of any equipment of which the annual cost of the lease is below a threshold as determined by the commission in the most recently approved rate case or other ratemaking proceeding.

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.



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
Senate Committee on Commerce and Consumer Protection
Tuesday, February 21, 2023
10:00 a.m.
Conference Room 229**

**On the following measure:
S.B. 479, S.D. 1, RELATING TO THE PUBLIC UTILITIES COMMISSION**

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 opposes this bill.

The purpose of this bill is to: (1) remove the requirement that common water carriers receive approval from the Public Utilities Commission (Commission) prior to executing a long—term lease of more than five years or a leverage lease; and (2) requires common water carriers to receive approval from the Commission before entering into long—term leases of more than five years and leverage leases of waterborne vessels.

While the Department appreciates efforts to increase administrative efficiency 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 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 it appreciates that S.D. 1 does not delete the requirement for Commission review but the Department believes that the current unaltered 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). Increasing the term of leases that the Commission could not review also increases the risk that certain leases not in the customers' interest could be executed.

Thus, the Department respectfully offers that the existing statutory language that allows the Commission to review leases so that unreasonable costs are avoided remains reasonable and in the customers' interests and requests that the committee hold this bill.

Thank you for the opportunity to testify on this bill.



WRITTEN TESTIMONY ONLY

February 21, 2023

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

RE: Senate Bill 479, S.D. 1 – RELATING TO THE PUBLIC UTILITIES COMMISSION
Hearing date: February 21, 2023, 10:00 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 **SUPPORT with CLARIFYING AMENDMENTS** for Senate Bill 479, S.D. 1 – Relating to the Public Utilities Commission.

This measure would amend Section 271G-17.5, HRS to narrow the scope of the types of leases for which water common carriers must secure PUC approval prior to execution.

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.

While the amendments proposed in the S.D. 1 of this measure do not completely address the concerns raised above, they represent a significant improvement over the status quo. Accordingly, YB appreciates and supports the S.D. 1. However, to improve and clarify this measure, YB respectfully requests the following clarifying amendments:

- 1) At p.1, ln. 3 – 10:

~~[[§271G-17.5]]~~ **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 years, (b) enter into leverage leases for vessels, and (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][. . .]

- 2) At p.2, ln. 17 – 19:

A water carrier ~~[may] shall~~ not issue securities~~[nor]~~, enter into ~~[long term]vessel~~ leases~~[of more than three]~~ longer than five years, [and]or enter into leverage leases[;] for waterborne vessels[. . .]

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

SB-479-SD-1

Submitted on: 2/19/2023 7:46:12 PM

Testimony for CPN on 2/21/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

To Much Government!!!!

LATE

Testimony of Matson Navigation Company, Inc.
Support of SB479
Before the Committee on Commerce and Consumer Protection
February 21, 2023

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

Matson Navigation Company, Inc. (Matson) supports SB479, SD1 which narrows the scope of leases for which water common carriers secure approval from the State of Hawaii Public Utilities Commission ("PUC") prior to execution.

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.

Matson respectfully requests two clarifying amendments:

Page 1, lines. 3 to 10: "[~~H~~]**§271G-17.5**[~~H~~] **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 years, (b) enter into leverage leases for vessels, and (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~~][. . .]"

Page 2, lines 17 to 19: "A water carrier [~~may~~] shall not issue securities [~~nor~~], enter into [~~long-term vessel leases~~ [~~-of more than three~~] **longer than five years, [~~and~~] or enter into leverage leases** [~~, for waterborne vessels~~][. . .]"

Thank you for considering our testimony in support with amendments.

LATE

Testimony of the Hawaii Harbor Users Group
Support of SB479, SD1 with Amendments
Before the Committee on Commerce and Consumer Protection
February 21, 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 supports SB479, SD1 with clarifying amendments. SB479, SD1 amends section 271G-17.5, Hawaii Revised Statutes, to narrow the scope of leases for which water common carriers must secure approval from the Public Utilities Commission prior to execution.

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 unduly 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. The unamended language of section 271G-17.5, HRS, is vague and could be interpreted to require PUC approval for "long-term leases" of any type or amount. Such an interpretation could require additional PUC approval that would impede a common water carrier's ability to execute timely proposed programs for sustainability, resiliency, electrification, and renewable energy, including the potential implementation of electric vehicles, lifts, and other types of equipment.

None of the other PUC-regulated entities are required to secure PUC approval before entering long-term lease. Concerns that a water common carrier may incur unreasonable expenses are addressed through the PUC's general rate case review process just as with other regulated entities. Currently, our common water carriers are at a significant disadvantage when negotiating leases. The water common carrier must either (1) negotiate a conditional lease three years or longer that cannot be made effective until PUC approval is granted which is not ideal as third parties regularly express concern with this approach due to the uncertainty and unknown timing associated with PUC approval; or (2) must limit its leases to less than three years and forego any discounts for longer-term leases.

Accordingly, HHUG respectfully requests the following amendments:

Page 1, lines 3-19 to read: "[~~§~~271G-17.5] **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 years, (b) enter into leverage leases for vessels, and (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][. . .]"~~

Page 2, lines 17-19 to read: "A water carrier ~~[may]~~ shall not issue securities~~[-nor]~~, enter into ~~[long-term]~~vessel leases~~[-of more than three]~~ longer than five years, ~~[and]~~or enter into leverage leases~~[.] for waterborne vessels~~,[. . .]"

Amending and passing this measure will allow a water common carrier to be in a more advantageous position when negotiating leases with third parties and will allow a water common carrier to continue to provide service to our residents.

Thank you for considering our testimony in support with amendments.