



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
House Committee on Consumer Protection & Commerce
Tuesday, February 11, 2025
2:00 p.m.
Conference Room 329**

**On the following measure:
H.B. 914, H.D. 1, RELATING TO WATER CARRIERS**

Chair Matayoshi and Members of the Committee:

My name is Michael Angelo, 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: (1) require the Public Utilities Commission (Commission) to establish automatic adjustment mechanisms; and (2) authorize the Commission to grant exemptions to any water carrier from any requirement under the Hawai'i Water Carrier Act.

Specifically, this measure requires the Commission to establish a water carrier inflationary cost index automatic adjustment mechanism (Automatic Adjustment Mechanism) on or before January 1, 2026. This Automatic Adjustment Mechanism is to be tied to the annual percentage change in the Gross Domestic Product Price Index as reported by the Bureau of Economic Analysis of the United States Department of Commerce. In addition, this mechanism shall be required to be applied on an annual

basis, regardless of whether the factor is a positive or negative percentage change, and be capped at plus or minus 5% a year.

Under this measure, any request to establish the proposed Automatic Adjustment Mechanism made by a water carrier would be through a 45-day tariff transmittal. Additionally, it would expressly not constitute a rate increase application or request for a general rate increase. The provision would expand the Commission's discretion and waiver authority or its ability to exempt water carriers of all laws and any applicable decisions, orders, rules, or other laws upon a determination that such laws, decisions, orders, and rules should not apply to water carriers or that application of them would be unjust, unreasonable, or not in the public interest.

The Department appreciates the intent of this bill to support the water carrier industry. Water carriers play a crucial role in sustaining each island's economy and community. The Department recognizes that any disruptions in intrastate water carrier services present significant hardships to customers, especially for neighbor island communities.

However, the Department is concerned that adoption of such a mechanism may result in unnecessarily burdening customers with increasing and unchecked rates. The review of whether the establishment of an automatic rate adjustment mechanism for Young Brothers, LLC (YB) is in the public interest will be considered and evaluated in a Commission proceeding that has already been opened. In short, last year, YB submitted an application with the Commission requesting approval of essentially the same type of mechanism, which became a matter of Docket No. 2024-0092. By order issued on December 12, 2024, the Commission dismissed YB's application without prejudice, and stated that YB may include a request for an adjustment surcharge or rate adjustment mechanism as part of its next test year rate application. The Department notes that YB's current 2025 test year rate increase application includes a request for an automatic rate adjustment mechanism. The Department believes that such a mechanism should be thoroughly evaluated in the current Commission proceeding rather than be required through law. Through the rigors of the regulatory processes, the reasonableness and the need for such a mechanism can be carefully examined. For example, it is not clear that

the Gross Domestic Product Price Index (GDPPI) accurately reflects the water carrier's actual costs of operations, especially in light of the fact that the water carrier's fuel expenses are already passed through to customers as a surcharge. In addition, GDPPI indices measure overall inflation for all sectors producing goods and services in all regions in the United States. However, inflation impacts sectors and regions differently, and the GDPPI indices are unlikely to track the impact of inflation on the operations and maintenance expenses of the water carrier, whose regulated business operates only in Hawaii. Overall, the Department believes that such a mechanism warrants careful examination through the already opened Commission proceeding since the impacts of such a mechanism will likely affect consumers with higher rates, most likely on an annual basis, throughout the State.

For context, the Commission already attempted to implement certain regulatory programs that are similar to the mechanism proposed in this bill with the intention of providing the regulated water carrier with flexibility that would allow the water carrier to gradually re-balance its rates so that the rates for less than container load service would better match the cost of providing that service. This flexibility was granted in a zone of reasonableness program, as well as an annual freight rate adjustment program. After the water carrier used both programs to raise rates for all customers as well as file general rate increases to further increase rates, the Commission terminated both regulatory flexibility programs because they were not being used for their intended purposes.

Finally, the Department notes that the bill requires that the Commission establish the Automatic Adjustment Mechanism to address, among other things, inflation and regulatory lag. Inflation and regulatory lag have been prevalent throughout the history of public utilities. In exchange for a monopoly, regulated entities are generally required to undergo a process to scrutinize and approve any requests to increase their rates. In practical terms, this regulatory lag can serve to ensure that a properly and efficiently managed regulated entity is appropriately and prudently managing its costs in between rate cases to the benefit of customers.

On the other hand, an automatic adjustment mechanism, such as the one proposed in the bill, could serve to disincentivize a regulated entity from appropriately

managing its costs in between its rate cases. Along those lines, the water carrier's business model is an open issue before the Commission. By order issued on December 31, 2024, the Commission has already noted an unsustainable pattern by which the water carrier has: (1) sought urgent assistance from the Commission, (2) received said urgent relief, and (3) sought even more assistance, and sometimes before the previous request for assistance has been resolved. Based off this unsustainable pattern, the Commission has encouraged the water carrier to incorporate specific improvements to its business model and suggested cost control measures in its actively pending rate case. The Department offers that it is premature to require any automatic rate adjustment through this bill without first gaining a better understanding of, and potentially improving upon, the water carrier's business model as well as its ability to enact and emplace cost control measures.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

LEODOLOFF R. ASUNCION, JR.
CHAIR

NAOMI U. KUWAYE
COMMISSIONER

COLIN A. YOST
COMMISSIONER

Telephone: (808) 586-2020
Facsimile: (808) 586-2066

Website: puc.hawaii.gov
E-mail: puc@hawaii.gov

Testimony of the Public Utilities Commission

To the
House Committee on
Consumer Protection and Commerce

February 11, 2025
2:00 p.m.

Chair Matayoshi, Vice Chair Chun, and Members of the Committee:

Measure: H.B. No. 914, H.D. 1
Title: RELATING TO WATER CARRIERS.

Position:

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

Comments:

The Commission appreciates the intent of this measure to address inflation and regulatory lags water carriers may experience, at a minimum, by establishing a Water Carrier Inflationary Cost Index ("WICI") automatic adjustment mechanism.¹ The Commission offers the following comments on this measure.

During the 2020 Legislative Session, Senate Resolution 125, SD1 was passed, requesting that the Commission convene a working group to discuss and recommend both mid-term and long-term solutions to balance the need for interisland water carrier service in the State with the need for water carriers to maintain a level of financial sustainability. Following the working group stakeholder meetings, which included a number of members from the Legislature, the Commission submitted the Hawaii Water Carriers Working Group ("HWCWG") final report to the Legislature on December 27, 2021.² In the report, the HWCWG developed recommendations, which included a two-

¹ The Commission notes that discussions of an automatic adjustment mechanism for water carriers in the State was presented in the final report of the Hawaii Water Carriers Working Group ("HWCWG"). The HWCWG was formed as a result of Senate Resolution Number 125, Senate Draft 1, 2020 Legislative Session.

² The Commission maintains a repository of the HWCWG activities and final report on the Commission's website at <https://puc.hawaii.gov/water-carriers/hwcwg/>.

tiered interim annual rate adjustment for regulated cargo rates along with the requirement for the water carrier to submit a general rate case every three years.

Over the course of the past five years, Young Brothers and Hone Heke have filed various applications for general rate increases, financing, and automatic adjustment mechanisms. While some of these proceedings remain active, for the most part, the Commission has approved many of these requests, with conditions. As an example, Young Brothers now has final rates from full resolution of its 2020 Test Year Rate Case, which resulted in a 46 percent increase, and required Young Brothers to provide refunds to customers. In 2024, Young Brothers included a request for approval of a WICI within their currently open rate case.³ More recently, Young Brothers filed a Motion for Temporary Rate Relief on February 7, 2025 in the same rate case. In that motion, YB requested at least a 20 percent increase by April 1, 2025, and another increase of an additional 5 percent by July 1, 2025. As for Hone Heke, in 2024, final rates were approved, accommodating their use of Ma‘alaea Small Boat Harbor while Lahaina Small Boat Harbor is being rebuilt (with further investigation time certain).

Should this measure take effect, the Commission would be required to establish a WICI for all current (i.e., Young Brothers and Hone Heke) and future regulated water carriers. While the Commission understands the intent for the annual inflationary adjustments of approved rates, the Commission observes the potential for a compounding effect on rates and impact on customers, including Young Brothers' recent Motion for Temporary Rate Relief. If the Legislature proceeds with the current language in this measure, the Commission prefers the discretion to determine whether establishing an automatic adjustment mechanism is in the public interest. For this reason, the Commission offers the following amendment for your consideration:

Page 1, Line 5-6

(a) On or before January 1, 2025, for each water carrier subject to this chapter, the commission ~~shall~~ may establish

The Commission appreciates that this measure would provide clear statutory language for any future automatic adjustment mechanism for regulated water carriers.

Thank you for the opportunity to testify on this measure.

³ Docket No. 2024-0255, 2025 Test Year Rate Case.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEAN M. MATSUKAWA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TUESDAY, FEBRUARY 11, 2025

2:00 PM

CONFERENCE ROOM 329

HOUSE BILL NO. 914 HD1

RELATING TO WATER CARRIERS

Chair Matayoshi, Vice Chair Chun and Members of the Committee:

Thank you for the opportunity to testify on House Bill 914 HD1. This bill requires the Public Utilities Commission (PUC) to establish automatic adjustment mechanisms and grants the PUC the authority to exempt any water carrier from any requirement under the Hawai'i Water Carrier Act. The Department of Agriculture (Department) appreciates the opportunity to offer the following comments.

While the Department recognizes the potential economic impact of this bill on all consumers across the state, our comments are limited to local farmers, ranchers, and allied operators. It wasn't too long ago that interisland shipping rates increased by 46 percent in August 2020, during the COVID-19 Pandemic.



This rate hike had a significant impact on Hawai'i's agricultural sector. A comprehensive survey conducted by USDA-NASS in 2021, found that approximately 40 percent of agricultural producers surveyed identified shipping and transportation costs as a major barrier to their business expansion. A year later, the 2022 Agricultural Census for Hawai'i reported a notable 10.4 percent decline in the number of farms, bringing the total to 6,569 statewide. Farm losses were particularly higher on the neighbor islands. In contrast, the number of farms on Oahu increased by eight percent.

The Department recognizes the unique challenges faced by local farmers, ranchers, and allied operators, particularly those on the neighbor islands, in managing shipping costs. These hardworking individuals experience a "double jeopardy" in their business operations. First, they must incur the shipping costs for essential farm inputs, including fertilizer, herbicide, fuel, and feed. Secondly, they face additional shipping expenses when transporting their harvested crops and raised animals to markets. Given these circumstances, Hawai'i's agricultural producers are effectively "price takers" with regards to shipping costs. No formal mechanism exists to offset the impact of escalating transportation costs.

The high cost of living is an ongoing concern for many residents of Hawai'i. According to the 2024 *State of ALICE in Hawai'i* report, 1 in 3 households considered moving away over the past year. While housing affordability is a primary factor, other regulated goods and services also contribute to this challenge. The Department recognizes the importance of maintaining consistent and reliable shipping services across the state while ensuring fair returns for existing carriers. While the automatic rate increase via the cost index mechanism offers efficiency, the Department will defer regulatory and arbitration responsibilities to the PUC.

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Finally, the Department respectfully requests that the committee revise the GDP price index in page 1, lines 9 to 13, to reflect Hawai'i, rather than the U.S. National GDP. The current National GDP index is subject to frequent revisions and may be adjusted back by several years.

Thank you for the opportunity to testify on this important measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
CURT T. OTAGURO
ROBIN K. SHISHIDO

LATE

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 11, 2025
2:00 P.M.
State Capitol, Room 329

**H.B. 914 H.D. 1
RELATING TO WATER CARRIERS**

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) **supports** this measure that establishes an automatic adjustment mechanism for water carriers based on an inflationary cost index.

DOT was a member of the Water Carriers Working Group established by the legislature in 2020, and finds that H.B. 914 H.D. 1 is also consistent with the recommendation of the working group.

This new mechanism allows for water carrier rates to keep pace with inflation without requiring a formal rate case to be considered and approved by the Public Utility Commission. Formal rate cases are time consuming, and consequently rates are typically not adjusted annually and the lags between rate cases necessitate large increases when the rate cases are considered. This has a significant impact and burden on businesses that rely on water carriers.

Thank you for the opportunity to provide testimony.

Testimony of Matson Navigation Company, Inc.
Support of HB914, HD1
Before the Committee on Consumer Protection and Commerce
February 11, 2025

Dear Chair Matayoshi, Vice Chair Chun, and Members of the Committee:

Matson Navigation Company, Inc. supports HB914, HD1, which among other things, establishes a water carrier cost inflationary index mechanism.

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. This measure will provide for water carriers and rate payers more predictability with respect to establishing rates for regulated, intrastate shipping.

Thank you for considering our testimony in support.



Testimony for HB 914 HD1, Relating to Water Carriers

House Committee on Consumer Protection & Commerce
February 11, 2025

Aloha Chair Matayoshi, Vice Chair Chun, and members of the committee,

The Hawaii Harbors Users Group is in strong **support** of HB 914 HD1, relating to water carriers.

This bill is a critical step toward ensuring the financial sustainability and operational stability of Hawai'i's interisland shipping transportation sector. Our state depends on a reliable and efficient hub-and-spoke intrastate water carrier system to move goods, supplies, and essential resources between our island communities. Each aspect of the supply chain is vital to our state's economy. However, without a modernized regulatory framework, intrastate carriers of passengers and property are forced to navigate an outdated rate-setting process that does not timely account for inflationary pressures or the rising costs of operation. Establishing a Water Carrier Inflationary Cost Index Mechanism will provide much-needed predictability and transparency, allowing carriers to continue serving our island communities without disruption, and offers a more incremental approach to adjusting intrastate rates, helping local families and businesses absorb cost increases over time and ensuring that rates keep up with rising costs.

The Water Carrier Working Group, convened under Senate Resolution No. 125, SD1 (2020), has studied the challenges facing our interisland shipping sector and identified regulatory lag as a primary issue. The current ratemaking process does not facilitate rate adjustments in a timely manner, making it difficult to respond to rising costs and market fluctuations due to increased competition. This bill provides the Public Utilities Commission with the necessary flexibility and authority to grant waivers and adopt cost-adjustment mechanisms, ensuring that our interisland water carriers remain financially viable while continuing to provide safe, efficient, and affordable service to all businesses and residents. Without these changes, our supply chain will face increasing strain, potentially leading to service reductions and higher long-term costs for consumers.

Mahalo for the opportunity to testify in strong support of this bill.