

**WRITTEN ONLY**

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
COMMITTEES ON CONSUMER PROTECTION & COMMERCE  
AND TRANSPORTATION  
JANUARY 27, 2010**

**MEASURE: H.B. No. 1887  
TITLE: Relating to Motor Carriers**

Chairs Herkes and Souki and Members of the Committee:

**DESCRIPTION:**

This bill repeals Chapter 271 (Motor Carrier Law), Hawaii Revised Statutes, ("HRS"), and amends other sections (§269-1, §46-1.5, §46-16.5, §92-28, §239-5, §269-20, §286-207, §286-231 and §486J-11) to effectively deregulate the motor carrier industry.

**POSITION:**

The Commission defers to the Legislature on the proposed policy determinations contained in this bill and offers the following comments.

**COMMENTS:**

- While the Commission continues to strive to effectively and efficiently regulate the motor carrier industry as may be required by law, we understand the Legislature's need to re-evaluate whether certain government functions and duties are still necessary during these trying economic times.
- Given the amount of competition in the motor carrier industry, it may be reasonable for the Legislature to re-evaluate whether motor carrier regulation is still required.
- The Commission is appreciative of the Legislature's intent as shown in this bill to enable the Commission to place more focus on higher priority regulatory matters, such as feed-in tariff implementation, integrated resource planning (IRP) revisions, decoupling and other matters arising from the Hawaii Clean Energy Initiative (HCEI) that will allow the State to generate more renewable energy, reduce our energy needs, and reduce our dependence on imported fossil fuels.

Thank you for the opportunity to testify.



LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

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LAWRENCE M. REIFURTH  
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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE  
AND  
TRANSPORTATION

THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

WEDNESDAY, JANUARY 27, 2010  
2:00 P.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE REPRESENTATIVES HERKES AND SOUKI,  
CHAIRS, AND MEMBERS OF THE COMMITTEES

**HOUSE BILL NO. 1887 RELATING TO MOTOR CARRIERS**

**DESCRIPTION:**

This measure proposes to repeal the motor carrier law and thereby exclude ground transportation of passengers and freight from the Public Utilities Commission's ("Commission") regulatory oversight.

**POSITION:**

The Division of Consumer Advocacy ("Consumer Advocate") supports the proposed measure.

**COMMENTS:**

If adopted, the proposed measure would remove the Commission's regulatory responsibilities over motor carriers. While motor carrier oversight might have served a greater purpose in the past, Commission and Consumer Advocate resources would be better allocated if the Commission did not have to regulate motor carriers.

H.B. No. 1887

House Committees on Consumer Protection and Commerce and Transportation

Wednesday, January 27, 2010, 2 p.m.

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There are a significant number of motor carriers that operate in Hawaii and there appears to be sufficient competition in this industry. The Commission's oversight generally involves minimal control over entry and exit into the market. Given the apparent level of competition, the continued oversight of entry and exit into the market does not appear necessary.

If Commission oversight over the motor carrier industry is removed, this would free up valuable resources to re-direct towards other objectives, such as the Hawaii Clean Energy Initiative.

Thank you for this opportunity to testify.



January 27, 2010

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION,  
AND ON CONSUMER PROTECTION & COMMERCE  
ON HOUSE BILL 1887 RELATING TO MOTOR CARRIERS**

Thank you chairman Herkes, chairman Souki, and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association with over 400 members involved in the motor carrier industry in Hawaii.

HTA opposes this bill to deregulate the motor carrier industry.

HTA supports an environment where the safety, efficiency, quality of service and stability of Hawaii's transportation industry is preserved to the benefit of the public being served. Regulation and structure facilitates this environment.

**ESSENTIAL INDUSTRIES**

The distribution of goods to supply Hawaii's citizens with accessible food, clothing, furniture, etc. is essential to our survival and standard of living. Other states have alternatives to the movement of goods: inland waterways; and rail. Hawaii's islands are limited to the trucking industry and we need to have appropriate controls to ensure the industry's safety, efficiency, service, and stability.

The safe and reliable movement of people is essential to the visitor industry and to the customized movements of our residents. It is essential that oversight is available to maintain the quality of experience for our unique location.

**WHAT IS REGULATED**

The Hawaii Motor Carrier Act, chapter 271 of the Hawaii Revised Statutes, provides for the regulation of entry, rates and service.

Entry regulation is intended to ensure that each motor carrier is fit, willing, and able to properly perform the service and that the service is required by the present or future public convenience and necessity.

Rate regulation ensures that every common carrier establishes, observes, and enforces just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices. At any hearing involving a change in rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, or classification, rule, regulation, or practice is just and reasonable.

Service regulation designates the geographic area of authority and the type of service that can be offered.

Additional regulations: insurance, baggage and property liability limits and rules on conducting business.

## THE DEREGULATED SCENARIO

### Entry regulation

The loss of entry regulation means any person off the street can rent a vehicle and offer transportation services to the public. This person, with no investment in facilities, rolling stock or insurance can charge prices no serious carrier can compete with. You can expect that this type of individual would be remiss in complying with other requirements as well: workers compensation coverage, health coverage, payment of general excise and income taxes, etc.

**In a deregulated environment the public is at risk with motor carriers who are unqualified, have no financial stability, no insurance, nor acceptable rules of conducting business. This low price, no “frills” scenario is very attractive to the unsuspecting public and places their belongings at risk. There is a need to guard against this type of operator. Who shall the public turn to for redress?**

The construction industry warns the public about the dangers of using unlicensed contractors. With motor carrier deregulation, there would be no licensed carriers to direct the public to for safe and reliable service.

The loss of entry regulation also means large, well financed, domestic and foreign corporations can freely enter the motor carrier market and implement pricing policies that local companies cannot compete with.

Many foreign companies have the backing of their respective governments so are willing to absorb financial losses for an extended period. Well heeled domestic giants can do the same as the local losses are insignificant to their overall operations.

Although these entities can apply for a certificate of public convenience and necessity today, they elect not to go through the process, nor divulge their financial information as is required in the process.

**Unrestricted entry results in a rush of entities. The increase in operators and vehicles will create additional chaos in traffic congestion and noise, especially in high density areas like downtown and Waikiki, as more and more companies and vehicles clamor to pick up and deliver less and less freight and passengers per vehicle.**

### Rate regulation

The loss of rate regulation means a cost advantage for the person off the street with no investments in the business, nor appropriate insurance. It also means unfair pricing practices with well heeled large domestic and foreign companies.

**After the local industry has been culled down, prices will adjust upwards quickly and have no ceiling, nor any oversight to ensure prices are appropriate for the costs incurred. The public deserves protection from this.**

To exacerbate the situation, elements of the existing industry will risk the "knee jerk" reaction of a price war in an attempt to gain market share. Although our local carriers cannot afford such a war an attempt will be made by a few, forcing the rest to follow it to some extent.

The financial requirements to operate seriously in this industry are quite substantial. Rolling stock can cost upwards of \$100,000 for some truck applications, boosted by new EPA requirements, and upwards of \$500,000 for motor coaches.

Land is an extremely costly business expense, and the operation must have a terminal to house the fleet, maintenance facility, office, and warehouse. Otherwise, vehicles will be parked and maintained on public streets.

The industry is also very labor intensive with drivers, dispatchers, mechanics, office personnel, etc.

**No rate regulation means reducing revenue from already thin, or non-existent, margins results in cutting pay and/or benefits, and/or staff, and/or safety compliance. Assets are utilized longer and expenditures delayed resulting in an older fleet which is detrimental to the environment. Newer equipment must meet increasingly stringent emission levels. Equipment maintenance and repair are delayed resulting in less safe vehicles on the road interacting with the consumer.**

### Service Regulation.

Each segment of the industry is rather specialized, and the type of vehicle used for the application is also specialized. The loss of service regulation runs the risk of inappropriate equipment application.

### Insurance

It does not seem appropriate to return these essential industries to basic no-fault insurance. There is also a definite need to have liability coverage for the property being transported.

## NATIONAL DEREGULATION

The interstate deregulation of trucking took place in 1980 to the primary benefit of long haul carriers. The deregulation of intrastate trucking took place in 1996, initiated by the long haul segment of the industry. The action was opposed by truckers with shorter haul services. There was a difference of economic dynamics that battled each other over this issue.

Long haul carriers had very little cost associated with carrying freight on backhaul after their initial run. That very little cost scenario competed against fully allocated cost scenarios for short haul carriers.

The bus industry followed suit, initiated by the motor carriers themselves. The same economic battles ensued, but the longer haul segments prevailed again.

During these actions, the interstate regulation of household goods trucking was reinstated. Then various states began to re-regulate the intrastate movements, we currently stand at 37 states.

Talk has also recently surfaced about the re-regulation of the bus industry.

## CONCLUSION

Deregulation made some sense on the mainland where economic disparities existed and whole segments of the industry desired it and initiated it. The vast majority of Hawaii carriers desire to maintain regulation to help ensure that reasonably reputable and properly supported entities are permitted to provide service.

### PUC Economic Burden

Motor carrier related fees account for over \$1.5 million to the PUC. We believe that is more than adequate for the relatively few services they require.

Much of the work involves the application process where documents must be scrutinized and a fitness adjudication made. The application process costs about \$35. This is not commensurate to the work involved and should be increased ten fold.

The real culprit creating this problem is section 269.33(d). We believe that should be eliminated to permit the PUC to do the job it is currently tasked to do.

### Consumer Protection

When the "Joe" on the street is wronged where will they go to complain or seek redress when there are no PUC rules on:

safe and adequate service, equipment and facilities;  
just and reasonable practices;  
compensation for belongings;  
loss damages, defaults;  
just and reasonable charges;  
freight liens; and  
unreasonable preference, or unjust discrimination based on person, island, etc.?

### Safety

While it is true that safety regulations come under the purview of the Federal Motor Carrier Safety Administration and the State Motor Vehicle Office, safety will suffer nonetheless.

When there is an environment of no regulation, you will invariably have elements who will operate in any way they please trying to make the quick buck. These elements offer services at very low rates.

In order to make these rates pay you must:

- overload the vehicle;
- speed to fit more jobs into a 24 hour period;
- exceed hours of service limitations;
- park illegally;
- use cell phones, and text, while driving;
- put off proper maintenance; etc.

These are all dangerous actions that jeopardize the safety of the public. Yes, there are agencies that regulate motor carrier safety, but they are static agencies, and the police simply cannot be everywhere to enforce traffic violations. Furthermore, budget cuts across the nation have severely impacted motor carrier safety enforcement.

#### Business Stability

Deregulation will result in chaos in the motor carrier industry.

Shippers, tour companies, retail stores, hotels, etc. need a stable industry to plan their business. A volatile transportation industry results in not knowing who might be operating tomorrow, what rates can reasonably be expected tomorrow, or what level of equipment and experience will exist.

Maintaining high standards requires reasonable controls. Industry members must be fit, willing, and able to properly service the general public. Rates must be just and reasonable to properly maintain equipment and level of service to our customers, and ultimately to all the consumers in the state.



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American Samoa  
684.639.5187

To the committees on Consumer Protection & Commerce and Transportation,

I am writing to you on the motor carrier deregulation bill, House Bill 1887, Relating to Motor Carriers, to be heard on Wednesday, January 27, 2010, 2 p.m..

Dependable Hawaiian Express—DHX is against deregulation. We are an island economy, much smaller than the mainland economy. Infrastructure is different here, as so the cost of individual carriers. The regulation is needed to protect the public from inconsistent service and a potential of dangerous equipment being on the road as the carriers with different cost structures compete in a deregulated environment. The safety of the public is tantamount, and the island economy and size just does not allow room for error that there is on the mainland. Without proper regulation by our public utilities commission the public and our communities would be put into jeopardy with their safety and overall services being performed.

Thank you for allowing us to submit testimony on this matter as our opinion is to maintain regulation here in our Islands.

Aloha

Kane McEwen  
Regional Manager  
Kane.mcewen@dhx.com

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**COMMENTS:**

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- Given the amount of competition in the motor carrier industry, it may be reasonable for the Legislature to re-evaluate whether motor carrier regulation is still required.
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Thank you for allowing us to submit testimony on this matter as our opinion is to maintain regulation here in our Islands.

Aloha

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