
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in transportation
2 matters, the public utilities commission is tasked with
3 determining whether an entity meets the requirements to become a
4 for-hire motor carrier before providing a certificate of public
5 convenience and necessity. This is intended to protect the
6 public and ensure that a motor carrier applicant will deliver
7 the proposed services. In practice, an application is rarely
8 denied regardless of the entity's financial position or lack of
9 prospective customers.

10 The legislature further finds that a certificate of public
11 convenience and necessity has long been a substantial item on a
12 motor carrier's balance sheet because it represented actual
13 value. As applications are approved at a substantially
14 increased rate, however, that value has decreased. One means of
15 addressing this problem would be to allow any motor carrier to
16 oppose the application of an entity into their area of service.
17 Currently, the public utilities commission disallows



1 intervention, despite the fact that an application has an
2 obvious economic impact on all servicing carriers.

3 In addition, in 2010, the senate committee on economic
4 development and technology and the house committee on economic
5 revitalization, business, and military affairs convened an
6 informal small business discussion group to address the most
7 critical issues facing the small business sectors within
8 Hawaii's economy. Representatives from the Chamber of Commerce
9 of Hawaii, construction and trades industries, community
10 nonprofits, the agricultural sector, food and restaurant
11 industries, retailing, the science and technology sector, the
12 commercial transportation industry, and interested stakeholders
13 developed a package of bills that address the most pressing
14 problems facing Hawaii's small business community.

15 The purpose of this Act is to support the findings of the
16 small business working group and recommendations to allow
17 existing common carriers affected by an application for a
18 certificate of public convenience and necessity to intervene in
19 the matter; provided that at least ten per cent of the existing
20 common carriers file to do so.

21 SECTION 2. Section 271-12, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§271-12 Applications for certificates of public**
2 **convenience and necessity.** (a) Except as otherwise provided in
3 this section and in section 271-16, no person shall engage in
4 the business of a common carrier by motor vehicle on any public
5 highway in this State, unless there is in force with respect to
6 such carrier a certificate of public convenience and necessity
7 issued by the public utilities commission authorizing such
8 operation.

9 (b) Applications for certificates shall be made in writing
10 to the commission, be verified under oath, and shall be in such
11 form and contain such information, and be accompanied by proof
12 of service upon interested parties as the commission shall, by
13 regulation, require.

14 (c) Subject to section 271-15, a certificate shall be
15 issued to any qualified applicant therefor, authorizing the
16 whole or any part of the operations covered by the application
17 if it is found that the applicant is fit, willing, and able
18 properly to perform the service proposed and to conform to this
19 chapter and the requirements, rules, and regulations of the
20 commission thereunder, and that the proposed service, to the
21 extent to be authorized by the certificate, is or will be
22 required by the present or future public convenience and



1 necessity; provided that the commission shall give weight to,
2 among other considerations, whether the provision of the
3 proposed transportation services by existing common carriers
4 meets the present and future public need, whether the proposed
5 transportation services can be or are being properly performed
6 by existing common carriers, and the effect that approving the
7 application would have on existing common carriers; otherwise
8 the application shall be denied.

9 (d) Any certificate issued under this section covering the
10 transportation of property shall be issued as an irregular route
11 certificate and shall specify the island or islands or portion
12 or portions thereof within which service may be rendered. Any
13 certificate covering the transportation of passengers shall
14 specify the service to be rendered and the routes over which,
15 the fixed termini, if any, between which, and the intermediate
16 and off-route points, if any, at which the motor carrier is
17 authorized to operate, and the certificate may include authority
18 to transport in the same vehicle with the passengers, baggage of
19 passengers, express, and also to transport baggage of passengers
20 in a separate vehicle. There shall, at the time of issuance,
21 and from time to time thereafter, be attached to the exercise of
22 the privileges granted by the certificate such reasonable terms,



1 conditions, and limitations as the public convenience and
2 necessity may from time to time require, including terms,
3 conditions, and limitations as to the extensions of the service
4 territory or route or routes of the carriers, and such terms and
5 conditions as are necessary to carry out, with respect to the
6 operations of the carrier, the requirements established by the
7 commission under sections 271-9(a)(1) and 271-9(a)(4), provided
8 that the terms, conditions, or limitations shall not restrict
9 the right of the carrier to add to ~~[his or its]~~ the carrier's
10 equipment and facilities in the service territory or over the
11 routes or between the termini as the development of business and
12 the demands of the public shall require.

13 (e) Any common carrier by motor vehicle transporting
14 passengers under any such certificate may occasionally deviate
15 from the route over which and the fixed termini between which it
16 is authorized to operate under the certificate under such rules
17 and regulations as the commission may prescribe.

18 (f) Whenever an application is filed under this section,
19 the commission shall allow existing common carriers that would
20 be impacted by the application to intervene in the docket or
21 filing; provided that a motion to intervene that makes reference



1 to that impact is filed by at least ten per cent of the existing
2 common carriers, in accordance with the commission's rules."

3 SECTION 3. Section 271-13, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Subject to section 271-15, a permit shall be issued
6 to any qualified applicant therefor, authorizing in whole or in
7 part the operations covered by the application, if it is found
8 that the applicant is fit, willing, and able properly to perform
9 the service of a contract carrier by motor vehicle, and to
10 conform to this chapter and the lawful requirements, rules, and
11 regulations of the commission thereunder, and that the proposed
12 operation to the extent authorized by the permit will be
13 consistent with the public interest and the transportation
14 policy declared in this chapter; otherwise, the application
15 shall be denied. In determining whether issuance of a permit
16 will be consistent with the public interest and the
17 transportation policy, the commission shall consider the number
18 of shippers to be served by the applicant, the nature of the
19 service proposed, whether the proposed service can be or is
20 being properly performed by existing common carriers, the effect
21 which granting the permit would have upon the services of the
22 protesting carriers[-] allowed to intervene in the docket or



1 filing pursuant to section 271-12(f), the effect which denying
2 the permit would have upon the applicant's proposed shipper or
3 shippers, and the changing character of shipper requirements;
4 provided, however, that a permit shall not be issued in any case
5 where it has been established that an existing common carrier is
6 properly performing[7] the proposed service. The commission
7 shall specify in the permit the business of the contract carrier
8 covered thereby and the scope thereof, and it shall attach to it
9 at the time of issuance, and from time to time thereafter such
10 reasonable terms, conditions, and limitations consistent with
11 the character of the holder of the permit as a contract carrier,
12 including terms, conditions, and limitations respecting the
13 person or persons, their names, the number or class thereof for
14 which the contract carrier may perform transportation service,
15 as may be necessary to assure that the business is that of a
16 contract carrier and within the scope of the permit, and to
17 carry out with respect to the operation of the carrier the
18 requirements established by the commission under sections
19 271-9(a)(2) and 271-9(a)(4). Any permit covering the
20 transportation of passengers may include authority to transport
21 in the same vehicle with the passengers, baggage of passengers,
22 and also authority to transport baggage of passengers in a



1 separate vehicle; provided that within the scope of the permit
2 and any terms, conditions, or limitations attached thereto, the
3 carrier shall have the right to substitute or add to its
4 equipment and facilities as the development of its business may
5 require; and provided further that no motor carrier shall
6 commence operations under any contract carrier authority granted
7 under this section until it has filed with the commission a
8 certified copy of a written contract or contracts executed with
9 the shipper or shippers for whom the service is authorized in
10 the permit to be provided, the contract or contracts to be
11 bilateral and impose specific obligations upon both carrier and
12 shipper or shippers and to set forth all terms and conditions of
13 any transportation agreement obtaining between the motor carrier
14 and the shipper or shippers."

15 SECTION 4. Section 271-18, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) Whenever a transaction is proposed under subsection
18 (b) or (c) [~~of this section~~], the motor carrier or motor
19 carriers, or person or persons, seeking approval thereof shall
20 present an application to the commission in such form as the
21 commission may require and the commission may thereupon act upon
22 the application [~~with or without first holding a public hearing,~~



1 ~~provided that if requested, it shall afford reasonable~~
2 ~~opportunity for interested parties to be heard.]; provided that~~
3 a public hearing shall be held if requested by any affected
4 parties. If the commission finds that subject to such terms and
5 conditions as it shall find to be just and reasonable the
6 proposed transaction will be consistent with the public
7 interests, the commission shall enter an order approving and
8 authorizing the transaction, upon the terms and conditions, and
9 with the modifications, so found to be just and reasonable. In
10 passing upon any transaction under subsection (b) or (c), the
11 commission shall give weight, among other considerations, to the
12 effect of the proposed transaction upon (1) adequate
13 transportation service to the public, (2) other motor carriers,
14 and (3) the employees of any transferring motor carrier."

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: *[Signature]*
[Signature]

JAN 25 2011



Report Title:

Public Utilities Commission; Transportation

Description:

Allow existing common carriers affected by an application for a certificate of public convenience and necessity to intervene in the matter; provided that at least ten per cent of the existing common carriers file to do so.

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