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# A BILL FOR AN ACT

RELATING TO WATER CARRIERS.

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

1           SECTION 1. The legislature finds that the State's water  
2 cargo transportation industry is critical to the economic health  
3 of its island communities. In recognition of the significance  
4 of a healthy, efficient, and accessible water transportation  
5 system, the legislature passed the Hawaii water carrier act,  
6 codified as chapter 271G, Hawaii Revised Statutes, to subject  
7 water carriers to the regulatory oversight of the public  
8 utilities commission. The regulatory framework created by  
9 chapter 271G includes a requirement that a water carrier apply  
10 for and receive a certificate of public convenience and  
11 necessity from the public utilities commission before engaging  
12 in operations within the State. Issuance of a certificate of  
13 public convenience and necessity requires findings that the  
14 applicant is willing and able to properly perform the proposed  
15 service and conform to the applicable laws and rules and that  
16 the proposed service is currently required for the convenience  
17 and necessity of the public or that it will be in the future.



1 Experience has shown that efficient, reliable, frequent,  
2 and universal water carrier service depends on economies of  
3 scale and scope as well as the substantial investment of capital  
4 and other resources. A successful regulatory regime must take  
5 into account and accommodate these realities. In reviewing  
6 applications to offer new services within the existing  
7 regulatory environment, the public utilities commission must  
8 ensure that the entry of new services and service providers does  
9 not erode the underpinnings of the regulatory framework or  
10 threaten future investment in service and infrastructure in a  
11 manner that risks the loss of existing services. To this end, a  
12 mere recitation of the purported benefits of market competition  
13 is not, without specific supporting facts on the record,  
14 sufficient to support a finding of present or future public  
15 convenience and necessity.

16 The legislature finds that applications for entry into the  
17 regulated water carrier market require in-depth analysis of  
18 specific issues of public convenience and necessity to ensure  
19 that successful applications do, in fact, serve the public  
20 interest and protect communities from the risk of harm.  
21 Accordingly, the purpose of this Act is to clarify the  
22 legislative intent that underlies the existing requirement for a



1 finding of present or future public convenience and necessity  
2 for the issuance of a certificate of public convenience and  
3 necessity.

4 SECTION 2. Chapter 271G, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7 "§271G- Notice of hearing required. (a) Whenever the  
8 commission conducts a public hearing on an application for a  
9 certificate pursuant to section 271G-10, the commission shall  
10 provide reasonable notice in writing to the applicant for a  
11 certificate and to the public on each island that will be  
12 affected by the proposed service of the fact of the public  
13 hearing and the matter to be considered. Notice pursuant to  
14 this section shall be provided at least thirty days before the  
15 date fixed by the commission for the public hearing.

16 (b) Any notice provided pursuant to this section shall  
17 plainly state the proposed operations, routes, and services of  
18 the applicant and their proposed effective date.

19 (c) Any public hearing held pursuant to section 271G-10(c)  
20 shall be a noticed public hearing or hearings on the island or  
21 islands to which the water carrier proposes to provide services  
22 or which will be affected by the proposed service. Notice of



1 the hearing, its purpose, and the date, time, and place at which  
2 it will open shall be given not less than once in each of three  
3 weeks in the county or counties to which the water carrier  
4 proposes to provide services or which will be affected by the  
5 proposed service. The first notice shall be given not less than  
6 twenty-one days before the public hearing and the last notice  
7 shall be given not more than two days before the public  
8 hearing."

9 SECTION 3. Section 271G-10, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[~~§~~271G-10~~§~~] **Applications for certificates of public**  
12 **convenience and necessity.** (a) Except as otherwise provided in  
13 this section and in sections 271G-6 and 271G-12, no water  
14 carrier shall engage in operations between points within the  
15 State~~(7)~~ unless [~~such~~] the carrier holds a certificate of public  
16 convenience and necessity issued by the public utilities  
17 commission authorizing [~~such~~] the operation~~(7)~~; provided that no  
18 new application shall be required for any common carrier by  
19 water who is the holder of a certificate of public convenience  
20 and necessity issued by the public utilities commission.

21 (b) Applications for certificates shall be made in writing  
22 to the commission, be verified under oath, and [~~shall~~] be



1 presented in [~~such~~] a form [~~and~~], contain [~~such~~] the  
2 information, and be accompanied by proof of service upon  
3 interested parties as the commission shall, by rule or  
4 regulation, require.

5 (c) The commission shall not approve an application for a  
6 certificate or otherwise grant authorization pursuant to an  
7 application, whether interim, permanent, or otherwise, to  
8 operate as a water carrier under this chapter until the  
9 commission has given notice and held public hearings conducted  
10 in accordance with the procedures outlined in section 271G- .

11 [~~(e)~~] (d) [~~A certificate shall be issued~~] The commission  
12 shall issue a certificate to any qualified applicant [therefor,  
13 authorizing the whole or any part of the operations [covered by]  
14 proposed in the application [if it is found that] only if the  
15 commission finds that:

16 (1) [~~the~~] The applicant is fit, willing, and able  
17 [~~properly~~] to properly perform the service proposed  
18 and to conform to this chapter and the requirements,  
19 rules, and regulations of the commission  
20 [~~thereunder,~~] i and [~~that the~~]

21 (2) The proposed service, to the extent to be authorized  
22 by the certificate, is or will be required by the



1 present or future public convenience and necessity[+  
2 otherwise the application shall be denied].

3 (e) The commission shall not make a finding of public  
4 convenience and necessity or issue an authorization, whether  
5 interim, permanent, or otherwise, to operate as a water carrier  
6 without the following specific findings supported by evidence in  
7 the record:

8 (1) Existing water carrier services are inadequate to  
9 presently service the public or meet demonstrated and  
10 quantifiable future demands for service;

11 (2) The proposed service is designed for and necessary to  
12 meet demonstrated and quantifiable unmet public needs  
13 for present water carrier service or demonstrated and  
14 quantifiable future demands for service;

15 (3) The proposed service will provide demonstrated and  
16 quantifiable benefits to the general public, business  
17 community, and the economy of all islands that are  
18 entitled to notice under section 271G- ;

19 (4) The specific identified benefits of the proposed  
20 service outweigh its detrimental impact to the  
21 public's interest in maintaining services, including:



- 1           (A) Economies of scale and scope of current water  
2           carriers;
- 3           (B) Future capital costs of existing water carriers;
- 4           (C) Ability of existing water carriers to make  
5           necessary capital and resource investments;
- 6           (D) The financial health, stability, and revenue  
7           stream of existing water carriers, including  
8           whether the proposed service will diminish an  
9           existing water carrier's ability to realize its  
10           allowed rate of return; and
- 11           (E) The likelihood that existing levels of service  
12           will be maintained after the enactment of the  
13           proposed service;
- 14       (5) Issuance of the certificate would not permit an  
15       applicant to serve only high-margin or high-profit  
16       ports or lines of service that are currently served by  
17       an existing carrier; provided that an applicant shall  
18       not be considered to be in the same line of service as  
19       an existing cargo carrier if the applicant's proposed  
20       service is to transport primarily passengers and any  
21       cargo transported is accompanied by and is incidental  
22       to the transport of a passenger; and



1        (6) If the commission's finding of public convenience and  
2        necessity differs from the recommendation of the  
3        consumer advocate, specific findings to address each  
4        of the grounds for objection articulated by the  
5        consumer advocate.

6        [~~d~~] (f) Any water carrier transporting passengers under  
7        [any such] a certificate issued pursuant to this chapter may  
8        occasionally deviate from the route over which it is authorized  
9        to operate under the certificate [under such] pursuant to the  
10       rules and regulations [as the] of the commission [may  
11       prescribe].

12       (g) The commission shall not issue any certificate that is  
13       designated as interim or temporary or that otherwise does not  
14       conform to the requirements of this chapter except in response  
15       to an emergency situation. For the purposes of this subsection,  
16       an emergency situation shall mean a state-declared emergency,  
17       including disaster relief pursuant to chapter 127 and a civil  
18       defense emergency pursuant to chapter 128. Any certificate  
19       issued pursuant to this subsection shall expire upon the  
20       expiration of the state-declared emergency or an earlier date  
21       determined by the commission in response to prevailing  
22       conditions. An extension of a certificate granted pursuant to



1 this subsection beyond the expiration of the state-declared  
2 emergency or date determined by the commission shall be granted  
3 only subject to the notice, hearing, and findings requirements  
4 of this chapter."

5 SECTION 4. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2011.

8



**Report Title:**

Public Utilities Commission; Water Carriers

**Description:**

Requires public hearings before PUC approval of a water carrier's application for certificate of public convenience and necessity. Clarifies the required findings for a finding of public convenience and necessity. Clarifies notice requirements for public hearings. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

