



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

THURSDAY, MARCH 31, 2011
3:00 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 98, S.D. 2 – RELATING TO WATER CARRIERS.

DESCRIPTION:

This measure establishes notice and fact-finding requirements for the issuance of a certificate of public convenience and necessity ("CPCN") for water carriers; expands the composition of the PUC to five members, with two Commissioners representing the counties of Hawaii, Kauai, and Maui; creates specialized subject-matter panels within the PUC; mandates the hiring of sufficient staff; creates the position of executive officer; requires electronic posting of information in connection with applications for CPCNs; bars interim or temporary orders for CPCNs except in state-declared emergencies.

POSITION:

The Consumer Advocate supports S. B. No. 98, S. D. 2, with reservations.

COMMENTS:

The Consumer Advocate worked with Young Brothers, Limited and Senators Rosalyn Baker and Kalani English concerning the language of S. B. No. 98 (and S. B. No. 99). The Consumer Advocate had expressed concern that this legislation should not be overly broad so as to prevent the issuance of a Certificate of Public Convenience and Necessity (CPCN) to an inter-island water carrier who

Senate Bill No. 98, S.D. 2
House Committee on Finance
Thursday, March 31, 2011, 3:00 p.m.
Page 2

proposes to transport primarily passengers. The language of the legislation that was agreed upon by the Consumer Advocate and Young Brothers, Limited, with the approval of both Senators Baker and English was as follows:

Page 8, lines 1 through 8 should be numbered as paragraph (6) and should read as follows:

"(6) Issuance of the certificate would not permit an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier; provided that an applicant shall not be considered to be in the same line of service as an existing cargo carrier if such applicant's proposed service is to transport primarily passengers and any cargo transported is accompanied by, and is incidental to the transport of, a passenger."

Thank you for this opportunity to testify.

**TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON FINANCE
MARCH 31, 2011**

MEASURE: S.B. No. 98 SD2
TITLE: Relating to Water Carriers

Chair Oshiro and Members of the Committees:

DESCRIPTION:

This bill:

- Requires public hearings subject to specified notice requirements before PUC approval of a water carrier's application for certificate of public convenience and necessity.
- Specifies required findings for a certificate of public convenience and necessity (CPCN); and
- Bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies;
- Requires posting of a link on the Commission's website of each application for a CPCN and to each order of the Commission, including the final decision and order.

POSITION:

The Commission defers to the Legislature on much of the substantive matters of this bill, and offers the following comments.

COMMENTS:

The Commission defers to the Legislature as to whether the State's policy should be to prohibit the entry of additional water carriers into the market in Hawaii. This bill would make it extremely difficult, if not impossible, for companies to gain entry into the water carrier market in Hawaii. The bill states, "the commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate will diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high profit ports or lines of service that are currently served by an existing water carrier." The Commission defers to the Legislature on what findings should be required to issue a CPCN, but this Committee should be aware that this

paragraph, among others, would make it very difficult for any new water carrier to enter the market, which could give consumers other options for shipping goods intrastate.

In regard to the requirement that the Commission post a link to the front page of the Commission's website for each application for a certificate of Public Convenience and Necessity ("CPCN") and the corresponding decision and order, the Commission notes that its staff resources are currently very limited and this action would require substantial time and resources. Our Docket Management System (DMS) already provides access to dockets opened since 1998 and also includes the ability to subscribe to a docket and receive email notification when anything is filed in the docket. Additionally, the public can subscribe to receive the Commission's daily activity reports. The Commission could place a list of active CPCN applications on its homepage with links to each the dockets (where all the filings for that docket would be available), provided sufficient staff resources are available.

The Commission would also like to note that barring temporary and interim orders would prevent the Commission from being able to seek actual data and supporting evidence as to whether there would be any harmful effects to an existing water carrier by other water carriers who wish to enter the intrastate shipping market.

Thank you for the opportunity to testify.



2343 Rose Street, Honolulu, HI 96819
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272
Fax: (808) 848-1921; e-mail: info@hfbf.org

January 31, 2011

TESTIMONY

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

RE: SB 98SD2: RELATING TO WATER CARRIERS

Chair Oshiro and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of our commercial farm and ranch families and organizations across the State **strongly supports** SB98SD2, clarifying the decisionmaking process for water carriers by the PUC.

Since 2009, HFBF has commented on the certificate of convenience application by Pasha Hawaii to the PUC. All of our comments were in vain and there was no indication that they were considered. Interisland transportation is one of the critical aspects of agricultural viability. The service must be affordable, reliable and able to deliver our goods with good product integrity.

Everyone in Hawaii speaks of how they want agriculture. Agricultural viability is dependent upon affordable inputs. This means the transportation system I have described above must be affordable. In the past PUC has allowed for subsidization of Island Fresh agricultural product transport by other lines of service to accommodate Hawaii's Constitutional Mandate to increase local self sufficiency. Recent decisions have urged movement toward compensatory pricing - this will put some neighbor island farms out of business. During the last price hike by YB, several of our neighbor island farms on the Big Island and Maui closed down. This happened as YB applied for the rate hike. The farmers found themselves in a position where the risk of another cost could not be borne and left the business before they faced bankruptcy. .

I don't think our story is unique to farming. We believe many small businesses across the State may be in the same situation.

We respectfully request your support in passing this measure. Thank you for this opportunity to provide comments on this measure.



Your Neighbor Island Partner

Pier 40, P.O. Box 3283, Honolulu, HI 96801-3283
Ph: (808) 543-9311 Fax: (808) 543-9459
www.youngbrothershawaii.com

HOUSE COMMITTEE ON FINANCE
THE HONORABLE MARCUS R. OSHIRO, CHAIR
THE HONORABLE MARILYN B. LEE, VICE CHAIR

SENATE BILL NO. 98, Senate Draft 2, scheduled for hearing on March 31, 2011

Testimony of Roy Catalani, Vice President of Strategic Planning and Government Affairs,
Young Brothers, Limited

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance:

Thank you for the opportunity to testify on Senate Bill No. 98, Senate Draft 2 (**SB98 SD2**).

Young Brothers, Limited (*Young Brothers*) strongly supports SB98 SD2.

In the context of water carriers, Young Brothers respectfully submits that this bill addresses two critical issues of legislative policy that are of immediate concern:

- (1) Does a regulatory or competitive system best serve those who depend upon it, particularly Neighbor Island residents and businesses?
- (2) What is the appropriate legislative response where a State agency has permitted unfair competition?

Although Young Brothers believes a regulatory system best serves the public interest, whatever policy choice the Legislature makes, we respectfully submit that, in fairness, the same rules should apply to all those who seek to provide service. We appreciate and support the answers provided in this bill.

As the Committee well knows, Young Brothers is a water carrier regulated by the Hawaii State Public Utilities Commission (*PUC*). We transport cargo mainly to serve and support the State's Neighbor Island communities. And, as the Committee may also well know, a recent PUC decision allows a new carrier to serve only a profitable line of service on profitable routes (known as "cherry-picking"). This decision raises serious concerns for Young Brothers and, more importantly, for many Neighbor Island communities and their leadership: That is, without a legislative mandate, the PUC's decision changed the regime by which water carriers are to be regulated in this State and created an unfair playing field. The PUC decision allows a new property carrier to, in effect, operate on a competitive model, in which the new carrier has been allowed to choose the most profitable routes and the most profitable line of service.

Young Brothers, on the other hand, operates on a regulatory model, and continues to fulfill an obligation to provide universal and frequent service, serving all islands as well as all lines of service. In contrast to the new carrier, Young Brothers' service is driven by public convenience and necessity rather than by the convenience and profitability of the carrier.

An unfair and unlevel playing field certainly hurts business, but inevitably and ultimately it hurts consumers. The current obviously unfair and unlevel playing field for water carriers is not only contrary to legislative policy, it has serious implications for the sustainability of the just-in-time, universal, and frequent system of service provided by Young Brothers to State residents. In this very capital-intensive industry, an unfair and unlevel playing field will diminish Young Brothers' ability to attract capital and, as a result, threatens the ability of Young Brothers to invest in and financially support the system that is essential to Neighbor Island economies and development. It is critical to recognize that this threat is to both larger and smaller neighbor islands – at risk is not only service to smaller Neighbor Islands, but the frequency of (just-in-time) service upon which larger Neighbor Islands depend.

In SB 98 SD2, the Legislature rightfully takes back this issue of State policy and reaffirms longstanding State policy that the regulation of water carriers is based on fairness and **public** convenience and necessity rather than the convenience of any one carrier. This bill reiterates and clarifies the Legislature's policy with respect to regulation of water carriers by, among other things, clearly enumerating the factors that the PUC should have considered, even under the law as it stands today, with respect to determining whether an application for a water carrier certificate of public convenience and necessity, or CPCN, is in the public interest and meets the standard of public convenience and necessity.

Thank you for this opportunity to testify.



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Carol Reimann
Executive Director
Maui Hotel & Lodging Association
on
SB98
RELATING TO WATER CARRIERS

COMMITTEE ON FINANCE
Thursday, 03-31-11 3:00pm
Conference room 308

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes approximately 120 property and allied business members – all of whom have an interest in the visitor industry. Collectively, the MHLA membership employs over 10,000 Maui County residents.

MHLA supports SB98, which will clarify the existing decision making process for water carrier by the PUC.

We are grateful for the responsiveness in drafting SB98 after an informational briefing last December before the Senate Committee on Commerce and Consumer Protection regarding the Public Utilities Commission Docket No 2009-0059, Pasha Hawaii. Many testimonies were provided which exposed huge issues in the existing regulatory rules for water carriers and we appreciate the response to our pleas.

The suggested amendments requiring PUC to better address neighbor island needs are essential to the viability of our economy. MHLA also supports the suggested amendment language introduced by the Hawaii Farm Bureau which will improve staff's ability to better evaluate compliance with the HWCA.

The visitor industry is the economic engine for Maui County – the majority of our businesses and residents rely on a healthy industry in order to survive. The visitor industry is just beginning to see signs of a steady recovery. Any increase to the cost of doing business could jeopardize our ability to provide first class goods & services, increase the cost of travel to our visitors, and ultimately put our viability at risk.

Thank you for the opportunity to testify.