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KEALI'I S. LOPEZ
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TO THE HOUSE COMMITTEES ON TRANSPORTATION AND
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

WEDNESDAY, MARCH 16, 2011
11:00 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, TO THE HONORABLE JOSEPH M. SOUKI, CHAIR, AND
ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE COMMITTEES

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

Senate Bill No. 98, S.D. 2

House Committees on Transportation and Consumer Protection and Commerce

Wednesday, March 16, 2011, 11:00 a.m.

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Public Convenience and Necessity (CPCN) to an inter-island water carrier who 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 M. MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEES ON TRANSPORTATION AND
CONSUMER PROTECTION AND COMMERCE
MARCH 16, 2011**

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

Chairs Souki and Herkes 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.

ichiyama3 - Cu Ri

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2011 1:01 PM
To: TRNtestimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for SB98 on 3/16/2011 11:00:00 AM

Testimony for TRN/CPC 3/16/2011 11:00:00 AM SB98

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: Alan Gottlieb
Organization: Hawaiia Cattlemen's Council
Address:
Phone:
E-mail: gottlieb@hawaii.rr.com
Submitted on: 3/14/2011

Comments:

ichiyama3 - Cu Ri

From: barbara.haliniak@hawaiiantel.net
Sent: Tuesday, March 15, 2011 8:45 AM
To: TRNtestimony
Subject: Testimony for Senate Bill 98

Testimony of

Barbara Haliniak

President, Molokai Chamber of Commerce Foundation

Before:

House of Representatives

Committee on Transportation

Representative Joseph M. Souki, Chair

Representative Linda Ichiyama, Vice Chair

Committee on Consumer Protection & Commerce

Representative Robert N. Herkes, Chair

Representative Ryan I. Yamane, Vice Chair

Notice of Hearing

Date: Wednesday, March 16, 2011

Time: 11:00 am

Place: Conference Room 309

State Capitol

415 South Beretania Street

Testimony for Senate Bill 98

Thank you for this opportunity to address your committees. This testimony is in support of SB98, which will

cover the pukas in the existing regulatory rules on a water carrier's application for a Certificate of Public Convenience and Necessity (CPCN).

We know that SB98 was in direct response from the Senate Committee on Consumer Protection December 2, 2010 Informational Briefing regarding the Public Utilities Commission Docket No 2009-0059, Pasha Hawaii. Many testimonies were provided which cited huge pukas in the existing regulatory rules for water carriers and we thank the committee members who heard our pleas, thus crafted SB98.

I would like to direct your attention to page 3 of SB98, lines 7 through 13, which talks about a notice "to the public on each island that will be affected by the proposed service...." I hope that this notice will include Molokai and Lanai since there may be potential ripple effects, such as Pasha Hawaii's CPCN. Molokai and Lanai will not be served by Pasha Hawaii, but yet it may affect a rate increase to us, or a discontinuance of a barge service or a change in route because of the economics to Young Brothers Ltd. as outlined on page 6, lines 5 through 22 and continuing on to page 7. I hope that the contents on page 7, lines 9 through 16, covers that ripple effects which Pasha Hawaii's CPCN will do to both Molokai and Lanai. Pasha Hawaii got "cherry picking" privileges and Molokai and Lanai will get slapped with a higher rate increase and future possibility of less frequent barge service.

This SB 98 is a very important component to both Molokai's and Lanai's scales of economics, we are hopeful that this bill will ensure both islands will be included in future decision making. Yes, it should always include Molokai and Lanai, since we have unique economic challenges.

We strongly urge you to support SB98.



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**Testimony to the House Committee on Transportation
Wednesday, March 16, 2011; 11:00 a.m.
Conference Room 309**

RE: In Support of SB 98, SD2

Aloha Chair Souki, Vice Chair Ichiyama and Members of this Committee,

My name is Vivian Landrum and I am the President/CEO of the Kona-Kohala Chamber of Commerce (KKCC). KKCC represents over 550 business members and is the leading business advocacy organization on the west side of Hawai'i Island. KKCC also actively works to enhance the environment, unique lifestyle and quality of life in West Hawai'i for both residents and visitors alike.

KKCC applauds the efforts in SB 98, SD2 to make necessary changes to the public utilities commission. As reflected in the recent Pasha decision, it is strongly felt that the neighbor islands were not truly recognized nor represented during that process. Seeking greater transparency in the approval process and requiring neighbor island public hearings is a change we strongly support. The neighbor island perspective is imperative when making decisions that impact the entire State. As noted in this Bill, "the State's water cargo industry is critical to the economic health of its island communities." All impacted "island communities" must be informed, consulted and heard before any decisions can be finalized.

KKCC supports competition in a business market, however feels this works well only when the rules are clearly defined and followed. The proposed changes for application for certificates of public convenience and necessity elucidate the requirements and provide a clear level of measurement to assist in the decision making process.

We strongly urge this Committee to support this legislature. The neighbor islands often face different economic challenges than Oahu and need that recognition from this body. This Bill will help to correct that disparity with the public utilities commission.

Mahalo for the opportunity to submit our testimony.

Sincerely,

A handwritten signature in cursive script that reads "Vivian Landrum".

Vivian Landrum
President/CEO

**HOUSE COMMITTEE ON TRANSPORTATION
THE HONORABLE JOSEPH M. SOUKI, CHAIR
THE HONORABLE LINDA ICHIYAMA, VICE CHAIR
and**

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
THE HONORABLE ROBERT N. HERKES, CHAIR
THE HONORABLE RYAN I. YAMANE, VICE CHAIR**

SENATE BILL NO. 98, Senate Draft 2, scheduled for hearing on March 16, 2011

**Testimony of Roy Catalani, Vice President of Strategic Planning and Government Affairs, and
Sandra Hoshida, Manager of Government Affairs, Young Brothers, Limited**

Chairs Souki and Herkes, Vice Chairs Ichiyama and Yamane, and Members of the House
Committees on Transportation and on Consumer Protection and Commerce:

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.



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Wednesday, March 16, 2011 at 11:00 am PLACE: Conference Room 309

TO: COMMITTEE ON TRANSPORTATION

Rep. Joseph M. Souki, Chair

Rep. Linda Ichiyama, Vice Chair

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Government Relations

RE: SB 98 RELATING TO WATER CARRIERS

Chairs & Committee Members:

The Hawaii Food Industry Association supports this bill.

The Hawaii Food Industry Association is an organization made up of retailers, wholesalers, manufacturers, and brokers.

HFIA represents many neighbor island businesses that are greatly affected by the PUC's decision to alter the rules regulating inter-island carriers by changing from a CPCN (Certificate of Public Convenience and Necessity) requirement to carrier convenience.

HFIA is concerned with ensuring that all neighbor island ports receive an adequate supply of food within the necessary time frame for food to remain safe and fresh.

Hawaii Food Industry Association

1188 Bishop St. Suit 608

Honolulu, HI 96813

It has come to our attention that Pasha does not offer any refrigerated services and that their vessels are only designed for roll on roll off equipment such as trucks and autos. It has also come to our attention that although Young Brothers is required to offer all lines of service, some of which are subsidized by others, Pasha will not be required to provide all lines of service. HFIA is concerned that the PUC's decision may hinder Young Brothers' ability to subsidize less profitable lines of service to remote neighbor island communities and that this will negatively affect just in time delivery and even food security for these areas.

It is our position that the neighbor island communities affected by the PUC's decision should have been allowed more input prior to the PUC's decision.

This bill is an important step forward and it will help to rectify some of the problems that allowed decisions that did not incorporate neighbor island perspectives.

Thank you for the opportunity to testify.



Hawaii Farm Bureau

F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

March 14, 2011

TESTIMONY

Re: SB98 SD2 RELATING TO WATER CARRIERS

Chair Souki, Chair Herkes and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations in the State **strongly support SB98 SD2** clarifying the PUC decisionmaking process for the certificate of need for water carriers.

The actions of the PUC is of major concern to the agricultural industry. The viability of farmers and ranchers in Hawaii is largely dependent upon services provided by entities under the direction of the Public Utilities Commission. Recent decisions by the PUC make it imperative to clarify their decisionmaking process in law.

Most recently, in the case of PASHA Hawaii, **PUC seemed to go beyond its' authority creating new procedures while ignoring existing laws** such as the **Hawaii Water Carrier Act that requires fair and impartial regulation "without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices."** The law does not prohibit competition. It requires that competition be fair and just. **We do not agree with PUC's prior assertions that the existing law "makes it impossible for companies to gain entry into the water carrier market in Hawaii"**.

Current law has provisions allowing for 'temporary authority' addressing emergencies for periods no more than 120 days. The PASHA Hawaii decision is an interim order effective unless there is an adverse affect upon parties without clearly defining "adverse conditions". **We suggest the following amendment to clearly define parameters by which the order would cease when issued on an interim basis.**

§271G-10(g)**Conditions that will result in termination of certificates designated as "interim" shall be clearly defined in the Decision and Order.**

Farm Bureau submitted comments during the Pasha decisionmaking process including an affidavit expressing our concerns. They were virtually ignored and impacts on consumers were given passing mention in the D&O. Focus was on the water carriers without equal regard to users of the service. The PUC policy stating that services should be in the “interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the needs of commerce”, the current certificate of need process does not include public benefit considerations. **We strongly support changes proposed in Section 3 to further clarifying the public interest requirements for issuance of a certificate of need.**

The efforts in the measure to improve communication to affected parties is critical. We believe that many were not aware of the Pasha certificate of need request and therefore did not express their opinions. We support the proposed expanded public notification requirements.

We respectfully request your strong support of this measure with the suggested amendment and appropriate funding for staff to adequately and timely conduct the background research needed for good decisionmaking by the Commissioners. It impacts not only those of us in agriculture but every small business and consumer in Hawaii. We appreciate this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 2819718.