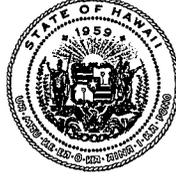


**SB 99**

**SD 1**



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](http://www.hawaii.gov/dcca)

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON WAYS AND MEANS

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2011

TUESDAY, MARCH 1, 2011  
9:20 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR,  
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS, TO THE HONORABLE DAVID Y. IGE, CHAIR,  
AND MEMBERS OF THE COMMITTEE

**SENATE BILL NO. 99, S. D. 1 – RELATING TO THE  
PUBLIC UTILITIES COMMISSION.**

**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. 99, S. D.1, 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. 99 (and S. B. No. 98). 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. 99, S. D. 1  
Senate Committee on Ways and Means  
Tuesday, March 1, 2011, 9:20 a.m.  
Page 2

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 18, beginning on line 20 and continuing on to page 19 up to line 5 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.

**WRITTEN TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON WAYS AND MEANS  
MARCH 1, 2011**

**MEASURE: S.B. No. 99 SD1**  
**TITLE: Relating to the Public Utilities Commission**

Chair Oshiro and Members of the Committee:

**DESCRIPTION:**

This bill:

- Establishes notice and fact-finding requirements for the issuance of certificates of public convenience and necessity for water carriers;
- Expands the composition of the PUC to five members with a representative from each county plus one at-large member;
- 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 certificates of public convenience and necessity; and
- Bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies.

**POSITION:**

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

**COMMENTS:**

The bill provides that the number of commissioners will be increased from three to five commissioners and the bill states, "At all times, the commission shall include at least two commissioners representing the counties of Hawaii, Kauai and Maui;" The Commission defers to the Legislature as to how many members should be on the Commission, and how the members of the Commission should be comprised and constituted. However, any residency requirements should be clearly specified, as the word "representing" can be open to many interpretations.

With the addition of two more Commissioners, an executive officer and other personnel, which this bill mandates, the cost to State Government will be significantly increased. An estimate of the total cost if the bill is fully implemented would be approximately \$700,000 annually.

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 contains all the filings in our dockets and 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 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. On page 18, line 9, 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.

If it is the Legislature's intent to effectively and significantly improve the Commission's resources and structure so that it can implement the State's policies set forth by the Legislature and prevent history from repeating itself year after year, the Legislature must correct and repeal the statutory provision that provides for an automatic annual raid on the Commission's Special Fund, which are funds primarily made up of monies paid by regulated public utilities, and which they collect from their customers to fund regulatory efforts. Chapter 269-33(d) HRS provides: "All monies in excess of \$1,000,000 remaining on balance in the public utilities special fund on June 30 of each year shall lapse to the credit of the general fund." Millions of dollars from the Commission's special fund lapse into the general fund every year because of this statute. Further, a budget ceiling is imposed on the Commission's budget, which caps the amount of money that the Commission can use during the fiscal year, since any amounts not expended by the Commission in excess of \$1,000,000, is automatically transferred to the General Fund every year to help balance the State's budget. Last year, over 67% of the Special Fund lapsed into the General Fund. This severely handicaps the Commission in its ability to control and use its own funding. Repealing section 33(d) in Chapter 269 HRS and increasing the budget ceiling would enable the Commission to maintain a higher level of resources that is required to fulfill its statutory duties in today's more complex and demanding regulatory arena.

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Page 3

Thank you for the opportunity to testify.



Pier 40, PO Box 3289, Honolulu, HI 96801-3289  
Ph: (808) 543-9311 Fax: (808) 543-9458  
www.youngbrothershawaii.com

**SENATE COMMITTEE ON WAYS AND MEANS**

**THE HONORABLE DAVID Y. IGE, CHAIR  
THE HONORABLE MICHELLE KIDANI, VICE CHAIR**

**SENATE BILL NO. 99, SENATE DRAFT 1, scheduled for decision-making on March 1, 2011**

**Comments of Roy Catalani, Vice President,  
Young Brothers, Limited**

Chair Ige, Vice Chair Kidani, and Members of the Senate Ways and Means Committee:

Thank you for the opportunity to comment on Senate Bill No. 99, Senate Draft 1 (**SB 99 SD1**).

**Young Brothers, Limited (*Young Brothers*) strongly supports this bill.**

SB99 SD1 clarifies the legislative intent underlying the existing requirement for a finding of present or future public convenience and necessity in admitting new entrants into the regulated intra-state water transportation industry. This finding is required before the Hawaii State Public Utilities Commission (the *PUC*) issues a certificate of public convenience and necessity (*CPCN*) to a new water carrier. SB99 SD1 also calls for the *PUC*'s restructuring.

Young Brothers suggests the following very minor grammatical revisions to Section 6 of SB99 SD1, with respect to amendments to section 271G-10, Hawaii Revised Statutes (*HRS*):

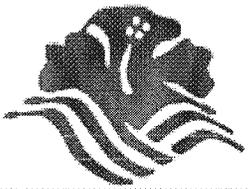
- In the **proposed HRS § 271G-10(d)(1)**, we suggest changing the placement of the word “properly” to have the provision read as follows:

(1) The applicant is fit, willing, and able [~~properly~~] to properly perform the service proposed and to conform to this chapter and the requirements, rules, and regulations of the commission [~~thereunder,~~]; and [~~that the~~]
- In the **proposed HRS § 271G-10(e)(5)**, we suggest the addition of “of the” between “each” and “grounds” to have the provision read as follows:

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

We would be happy to work with Committee staff and/or State administrative agencies to address these matters as your Committee may direct.

Thank you for this opportunity to comment on SB99 SD1.



February 24, 2011

**TESTIMONY**

**COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**RE: SB 99 SD1: RELATING TO THE PUBLIC UTILITIES COMMISSION**

Chair Ige and Members of the Committee:

Maui County Farm Bureau on behalf of our commercial farm and ranch families and organizations on the island **strongly supports** SB99 SD1, clarifying the decisionmaking process for water carriers by the PUC.

MCFB has found ourselves in PUC hearings many times over the past few years. We have advocated for affordable and reliable transportation for our farmers and ranchers. In 2009, we heard about PASHA Hawaii's application for a certificate for need. Our initial excitement about an alternative was quickly dampened when told agricultural products would not be transported. Hawaii is a small State. We saw the impacts of too much competition with the airlines.

The D&O issued for Pasha Hawaii does not seem to be consistent with the Hawaii Water Carrier Act. We therefore agree with this measure. It is critical to ensure that we continue to have a strong and viable interisland transportation system. PUC did not follow the requirements of the Hawaii Water Carrier Act. Decisions that do not consider unintended consequences will be detrimental to the people of Hawaii.

For this reason, **we respectfully request that this measure be moved forward.** If there are any questions, please contact Warren Watanabe at 2819718. Thank you.



**Hawaii Farm Bureau**  
F E D E R A T I O N

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 FINANCE**

**RE: SB 99 SD1: RELATING TO THE PUBLIC UTILITIES COMMISSION**

Chair Ige 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** SB99 SD1, clarifying the decisionmaking process for water carriers by the PUC.

We appreciate the leadership by this body to pursue this issue and conduct an informational briefing to gather information. You listened and acted. We need more to do the same. Thank you.

**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.** This is why this measure is important. It clarifies the requirements under which PUC decisions need to be made.

We respectfully **request your support in passing this measure.** HFBF is willing to work with you to improve our transportation system for the people of Hawaii. If there are any questions please contact Warren Watanabe at 2819718. Thank you.



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

DATE: Tuesday, March 1, 2011 TIME: 9:20 a.m. PLACE: CR 211

TO: COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair; Senator Michelle Kidani, Vice Chair

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

RE: SB 99 RELATING TO THE PUBLIC UTILITIES COMMISSION

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 is very grateful for Senator Baker's very important work in stabilizing the inter-island water carrier industry and her efforts to make this critical form of cargo transportation sustainable now and into the future.

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.