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# A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1           SECTION 1. Chapter 271G, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§271G-        Waivers. (a) Notwithstanding any provision of  
5 this chapter to the contrary, the commission, upon its own  
6 motion or upon the application of a water carrier or the  
7 consumer advocate and upon notice and hearing, may exempt the  
8 water carrier from any or all of the provisions of this chapter,  
9 upon a determination that the exemption is in the public  
10 interest. In determining whether an exemption is in the public  
11 interest, the commission shall consider whether the exemption  
12 will promote safe, adequate, economical, and efficient service  
13 among carriers; encourage the establishment and maintenance of  
14 reasonable rates and charges for transportation and related  
15 accessorial service without unjust discrimination, undue  
16 preference or advantage, or unfair or destructive competitive



1 practices; and promote the development, coordination, and  
2 preservation of a sound transportation system by water.

3 (b) The commission may condition or limit any exemption as  
4 the commission deems necessary in the public interest. The  
5 commission may provide a trial period for any exemption and may  
6 terminate the exemption or continue it for a period and under  
7 any conditions and limitations as the commission deems  
8 appropriate.

9 (c) Upon the petition of a water carrier or the consumer  
10 advocate, or upon its own motion, the commission may rescind any  
11 exemption or waiver granted under this section if, after notice  
12 and hearing, it finds that:

13 (1) The conditions prompting the granting of the exemption  
14 or waiver no longer apply;

15 (2) The exemption or waiver is no longer in the public  
16 interest; or

17 (3) The water carrier has failed to comply with one or  
18 more of the conditions of the exemption or applicable  
19 statutory or regulatory requirements."

20 SECTION 2. Section 266-19, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) There is created in the treasury of the State the  
2 harbor special fund. All moneys received by the department of  
3 transportation from the rates, fees, fines, and administrative  
4 penalties pursuant to sections 266-17(a)(1), 266-25, 266-28, and  
5 266-30 shall be paid into the harbor special fund. The harbor  
6 special fund and the second separate harbor special fund  
7 heretofore created shall be consolidated into the harbor special  
8 fund [~~at such time as~~] when there are no longer any revenue  
9 bonds payable from the second separate harbor special fund. The  
10 harbor reserve fund heretofore created is abolished.

11           All moneys derived pursuant to this chapter from harbor  
12 properties of the statewide system of harbors shall be paid into  
13 the harbor special fund and each fiscal year shall be  
14 appropriated, applied, or expended by the department of  
15 transportation for the statewide system of harbors for any  
16 purpose within the jurisdiction, powers, duties, and functions  
17 of the department of transportation related to the statewide  
18 system of harbors, including, without limitation [~~the~~]:

19           (1) The following costs [~~of operation~~], all or any of  
20           which in the judgment of the department of



1 transportation are necessary to the performance of the  
2 department of transportation's duties or functions:

3 (A) Operation, maintenance, and repair of the  
4 statewide system of harbors and reserves  
5 therefor[~~τ~~]; and [~~acquisitions~~]

6 (B) Acquisitions, including acquisitions of real  
7 property and any interests therein[~~τ~~];  
8 constructions[~~τ~~]; additions[~~τ~~]; expansions[~~τ~~];  
9 improvements[~~τ~~]; renewals[~~τ~~]; replacements[~~τ~~];  
10 reconstruction[~~τ~~]; engineering[~~τ~~];  
11 investigation[~~τ~~]; and planning[~~τ~~] for the  
12 statewide system of harbors[~~τ~~, all or any of which  
13 in the judgment of the department of  
14 transportation are necessary to the performance  
15 of its duties or functions.]; and

16 (2) Any loans, provided to water carriers engaged in the  
17 transportation of property, to address the impacts of  
18 the coronavirus disease 2019 pandemic and offset costs  
19 incurred by the water carriers as a result of  
20 providing transportation services to ports within the  
21 State."



1 SECTION 3. (a) For a period beginning on January 1, 2021,  
2 and ending on December 31, 2021, the department of  
3 transportation may use the harbor special fund to provide loans  
4 in an amount not to exceed \$3,000,000 per month to water  
5 carriers to address the impacts of the coronavirus disease 2019  
6 pandemic and offset costs incurred by the water carriers as a  
7 result of providing transportation services to ports within the  
8 State; provided that the aggregate amount of all loans provided  
9 pursuant to this section shall not exceed \$20,000,000 in any  
10 twelve-month period; provided further that the department of  
11 transportation shall only provide loans to a water carrier that,  
12 between the effective date of this Act and December 30, 2020,  
13 has received a combined total of \$10,000,000 in funding from one  
14 or more of the counties.

15 (b) The department of transportation shall require all  
16 loan recipients to repay to the department of transportation the  
17 entire amount of the loans plus a reasonable rate of interest;  
18 provided that the department of transportation may negotiate the  
19 terms of the loan repayment plan with the applicable loan  
20 recipient.



1 (c) The department of transportation may enter into a  
2 contract by direct negotiation with an applicable water carrier  
3 for the purposes of this Act.

4 (d) Notwithstanding any order by the public utilities  
5 commission, the department of transportation shall include in  
6 any contract entered into pursuant to subsection (c), provisions  
7 requiring that, between July 1, 2020, and December 31, 2021, the  
8 water carrier:

- 9 (1) Maintains the same number of port calls in effect as  
10 of January 1, 2020;
- 11 (2) Continues to transport less than container load  
12 shipments to or from the islands of Lanai and Molokai;  
13 and
- 14 (3) Negotiates in good faith with agriculture or livestock  
15 entities or businesses to set standards for the  
16 interisland shipment of livestock.

17 (e) No funds provided by the department of transportation  
18 to any water carrier pursuant to this Act shall be used for the  
19 following purposes:



- 1 (1) As payment in any form or nature to any parent company  
2 of the water carrier or affiliate of any parent  
3 company of the water carrier;
- 4 (2) As profits for the water carrier, any parent company  
5 of the water carrier, or any affiliate of any parent  
6 company of the water carrier;
- 7 (3) As repayment of any loan, bond, or other form of  
8 indebtedness of any parent company of the water  
9 carrier or affiliate of any parent company of the  
10 water carrier;
- 11 (4) As payment for any capital expenditure made by the  
12 parent company of the water carrier for assets held by  
13 the water carrier; or
- 14 (5) As payment for executive bonuses; any advertising or  
15 marketing except customer and employee communications;  
16 club or membership dues; charitable or political  
17 contributions; business travel; seminars, conferences,  
18 or conventions; entertainment expenses; or any other  
19 non-operating expenses.
- 20 (f) As used in this Act, "water carrier" shall mean any  
21 water carrier engaging in the transportation of property and



1 holding a certificate of public convenience pursuant to chapter  
2 271G, Hawaii Revised Statutes.

3 SECTION 4. Notwithstanding any law to the contrary, and to  
4 the extent applicable, any authority granted to the public  
5 utilities commission pursuant to chapters 269 and 271G, Hawaii  
6 Revised Statutes, to establish and revise the rates, fares, and  
7 charges charged by a water carrier engaging in the  
8 transportation of property is hereby transferred to the  
9 department of transportation; provided that:

10 (1) This section shall not affect the authority of the  
11 public utilities commission to render any decision  
12 regarding a water carrier that is pending as of the  
13 effective date of this Act;

14 (2) The department of transportation may base any  
15 ratemaking decisions on annual freight rate adjustment  
16 recommendations; and

17 (3) Any authority transferred to the department of  
18 transportation pursuant to this section shall revert  
19 back to the public utilities commission on  
20 December 31, 2021.



1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 6. This Act shall take effect upon its approval;  
4 provided that section 2 shall be repealed on December 31, 2021,  
5 and section 266-19, Hawaii Revised Statutes, shall be reenacted  
6 in the form in which it read on the day prior to the effective  
7 date of this Act.



**Report Title:**

DOT; PUC; Loans; Water Carriers; Harbor Special Fund

**Description:**

Authorizes the Public Utilities Commission to exempt a water carrier from any or all the provisions of the Hawaii Water Carrier Act if the exemption is in the public interest. Authorizes the use of moneys in the Harbor Special Fund for loans provided to certain water carriers to address the impacts of the coronavirus 2019 disease pandemic and offset certain costs incurred by the water carriers. Authorizes the Department of Transportation to provide loans to water carriers who meet certain conditions. Temporarily transfers to the Department of Transportation the Public Utilities Commission's ratemaking authority for water carriers engaged in the transportation of property. (SB1427 HD1 PROPOSED)

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