

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR  
  
ROBERT YU  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 1427, S.D. 1, H.D. 1

**June 29, 2020**  
**2:00 p.m.**  
**Room 329**

**RELATING TO TRANSPORTATION**

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 1427, S.D. 1, H.D. 1.

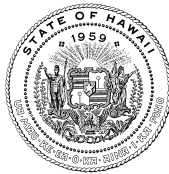
Among other provisions, S.B. No. 1427 authorizes the Department of Transportation to provide loans from the Harbors Special Fund to water carriers who meet certain conditions. The loans are for a period beginning on January 1, 2021 and ending on December 31, 2021 in an amount not to exceed \$3.0 million per month up to an aggregate amount of \$20.0 million for the specified period. To be eligible for the loan, the water carrier must have received a combined total of \$10.0 million in funding from one or more of the counties between the effective date of the Act and December 30, 2020.

To avoid potential bond certificate issues, the State's bond counsel recommends editing Section 2 of the bill (page 4, line 21) by adding the following text to the end of the new Section 266-19(a)(2) after State: "provided, however, that any such loan shall be subject in all respects to the provisions of the Certificate of the Director of

Transportation Providing for the Issuance of State of Hawaii Harbor System Revenue  
Bonds dated as of March 1, 1997, as amended from time to time.”

Thank you for your consideration of our comments.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR  
  
ROBERT YU  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
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**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
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OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 1427, S.D. 1, PROPOSED H.D. 1

**June 29, 2020**  
**2:00 p.m.**  
**Room 329**

RELATING TO TRANSPORTATION

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 1427, S.D. 1, Proposed H.D. 1.

Among other provisions, S.B. No. 1427 authorizes the Department of Transportation to provide loans from the Harbors Special Fund to water carriers who meet certain conditions. The loans are for a period beginning on January 1, 2021 and ending on December 31, 2021 in an amount not to exceed \$3.0 million per month up to an aggregate amount of \$20.0 million for the specified period. To be eligible for the loan, the water carrier must have received a combined total of \$10.0 million in funding from one or more of the counties between the effective date of the Act and December 30, 2020.

To avoid potential bond certificate issues, the State's bond counsel recommends editing Section 2 of the bill (page 4, line 21) by adding the following text to the end of the new Section 266-19(a)(2) after State: "; provided, however, that any such loan shall be subject in all respects to the provisions of the Certificate of the Director of Transportation Providing for the Issuance of State of Hawaii Harbor System Revenue Bonds dated as of March 1, 1997, as amended from time to time."

Thank you for your consideration of our comments.

TESTIMONY OF  
JAMES P. GRIFFIN, Ph.D.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEE ON  
FINANCE

June 29, 2020  
2:00 p.m.

Chair Luke and Members of the Committee:

**MEASURE:** S.B. No. 1427 SD1 PROPOSED HD1

**TITLE:** RELATING TO TRANSPORTATION.

**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.

**POSITION:**

The Public Utilities Commission offers the following comments for consideration.

**COMMENTS:**

The Commission believes that maintaining affordable and reliable intrastate cargo transportation service in Hawaii is paramount in protecting the public interest.

The Commission is currently conducting an emergency investigation regarding the financial condition of Young Brothers LLC, following Young Brothers' May 26, 2020 letter notifying the Commission of its liquidity crisis, dire financial situation, and potential suspension of operations. Given the company's stated condition, the Commission believes that it is prudent to provide additional flexibility and regulatory options to ensure affordable and reliable water carrier services are maintained throughout the State.

As such, the Commission supports Section 1 of this bill, which would allow the Commission to exempt water carriers from certain provisions of §271G, Hawaii Revised Statutes (HRS), after notice and hearing, when in accordance with the public interest. This additional regulatory flexibility would equip the Commission to act swiftly to protect or restore essential water carrier services in the event that it became necessary to do so. The Commission, in consultation with other state agencies, believes this flexibility may be necessary if Young Brothers seeks external debt financing to fund their operations.

The Commission takes no position with respect to Sections 2 and 3 of this bill, regarding the harbors special fund and the potential state- and county-funded subsidies of up to \$30 million for Young Brothers. The Commission notes that if Young Brothers were to receive financial assistance from county or state funding sources, the Commission would consider that financial assistance in evaluating Young Brothers' financial condition in pending and future proceedings before the Commission. However, with respect to Section 3, paragraph d, the Commission respectfully recommends that the Legislature require Young Brothers to continue to provide less-than-container-load (LCL) service to all islands, not just Molokai and Lanai. This level of service is consistent with what is currently offered by Young Brothers, and reducing service levels could have negative impacts on neighbor island customers.

Section 4 of this measure would transfer the Commission's authority to establish and revise rates, fares, and charges collected by water carriers to the Department of Transportation until December 31, 2021. The Commission notes that the State's policy with respect to water carriers in Hawaii, as stated in §271G-2, HRS, is to "provide for fair and impartial regulation of [water] transportation," to "promote safe, adequate, economical, and efficient service among carriers," and to "encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water."

When setting rates and conducting other regulatory functions, the Commission is bound by this legislative guidance, as well as the established ratemaking procedures currently reflected in §271G-16, HRS, which require the Commission to consider "the effect of rates upon the movement of traffic by the carrier," "the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the

furnishing of the service,” and “the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.”

The Commission diligently implements the State’s policies described above, in accordance with the extensive procedures detailed in the Commission’s Administrative Rules and in Chapter 91, HRS, the Administrative Procedure Act. These procedures ensure transparency of the rate setting process, enable the Commission to provide informed and balanced oversight of regulated entities, and are essential to protecting the public interest.

Thank you for the opportunity to testify on this measure.

Council Chair  
Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Riki Hokama  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura



Director of Council Services  
Traci N. T. Fujita, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
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WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

June 28, 2020

TO: The Honorable Sylvia Luke, Chair  
House Committee on Finance

FROM: Alice L. Lee  
Council Chair 

SUBJECT: **HEARING OF JUNE 29, 2020; TESTIMONY IN SUPPORT OF SB 1427, SD1, PROPOSED HD1, RELATING TO TRANSPORTATION**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this bill is to provide exemptions and funding to water carriers, particularly to address the impacts of the coronavirus pandemic.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Maintaining a reliable system for water transportation is essential to ensure the County will continue to receive the goods and supplies necessary for daily life, particularly in these uncertain and economically challenging times.
2. The provisions of the bill relating to exemptions, waivers, and changes to ratemaking authority are designed to be temporary in order to promote the public interest during an unprecedented crisis.
3. Funding is to be used specifically to offset costs and maintain operations, including making the same number of port calls in effect as of January 2020, and transporting less than container load shipments to and from the islands of Lanai and Molokai.

For the foregoing reasons, I **support** this measure.



June 28, 2020

Representative Sylvia Luke, Chair  
Representative Ty Cullen, Vice Chair  
House Committee on Finance  
Thirtieth Legislature  
Regular Session, 2020

**RE: Senate Bill 1427, SD 1, proposed HD1 – RELATING TO TRANSPORTATION**  
**Hearing date: June 29, 2020 at 2 p.m.**

Aloha Chair Luke, Vice Chair Cullen and Members of the House Committee on Finance,

Thank you for the opportunity to submit testimony on behalf of Young Brothers, LLC ("YB") providing **COMMENTS** on Senate Bill 1427, SD1, proposed HD 1 – Relating to Transportation. This proposed HD1 would make a number of changes to the existing regulatory framework and funds available to intrastate water carriers including, among other things, providing the State of Hawaii Department of Transportation ("DOT") expanded authority over the use of the harbor special fund, as well as temporarily providing the DOT with certain regulatory oversight authority over water carriers engaging in the transportation of property. Specifically, the proposed HD1 would, among other things (1) authorize the Public Utilities Commission ("PUC") to waive or exempt a water carrier from any or all the provisions of the Hawaii Water Carrier Act or Hawaii Revised Statutes ("HRS") Chapter 271G if the waiver or exemption is in the public interest; (2) authorize the use of moneys in the Harbor Special Fund under HRS Chapter 266 by DOT for, among other things, loans provided to certain water carriers engaged in the transportation of property to address the impacts of the coronavirus 2019 disease pandemic and offset certain costs incurred by the water carriers; (3) authorize the DOT to provide loans to water carriers who meet certain conditions; and (4) temporarily transfer certain aspects of the PUC's ratemaking authority to DOT for water carriers engaged in the transportation of property for a specific period of time. YB **supports** the intent of this measure, in concept. However, upon review, YB offers the following comments and/or recommendations:

1. **Grant of Waiver/Exemption**

Section 1 of this proposed measure provides a new section in HRS Chapter 271G to allow the PUC to grant waivers or exemptions to water carriers under certain conditions and requirements. YB generally supports Section 1 of this proposed measure and suggests that DOT also be granted authority to grant such waiver or exemption, to the extent necessary, for the period of time reflected in Sections 2, 3, and 4 of this measure. For clarification purposes, however, and consistent with other similar waiver or exemption provisions in HRS Chapter 269 (i.e., HRS Sections 269-16.9 and 269-31(b)), YB recommends that the term "waiver" or "exemption" should be reflected as follows:



"§271G- Waivers. (a) Notwithstanding any provision of this chapter to the contrary, the commission, upon its own motion or upon the application of a water carrier or the consumer advocate and upon notice and hearing, may waive or exempt the water carrier from any or all of the provisions of this chapter, upon a determination that the waiver or exemption is in the public interest. In determining whether a waiver or exemption is in the public interest, the commission shall consider whether the waiver or exemption will promote safe, adequate, economical, and efficient service among carriers; encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices; and promote the development, coordination, and preservation of a sound transportation system by water.

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

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

(1) The conditions prompting the granting of the waiver or exemption [~~ex-waiver~~ waiver] no longer apply;

(2) The waiver or exemption [~~ex-waiver~~ waiver] is no longer in the public interest; or

(3) The water carrier has failed to comply with one or more of the conditions of the waiver or exemption or applicable statutory or regulatory requirements." (additions underlined; deletions in brackets)

## **2. Use of Moneys in Harbor Special Fund/Temporary Transfer of the PUC's Rate Authority to DOT until December 31, 2021**

Sections 2 and 3 of this proposed measure, among other things, (1) authorize DOT to use the harbor special fund established under HRS Section 266-19 to provide loans in the amount of \$3 million per month to water carriers to address the impacts of the coronavirus disease 2019 pandemic and offset costs incurred by the water carriers as a result of providing transportation services to ports within the State; provided that the aggregate amount of all loans provided pursuant to this section shall not exceed \$20,000,000 in any twelve-month period and provided further that the department of transportation shall only provide loans to a water carrier that, between the effective date of this Act and December 30, 2020, has received a combined total of \$10,000,000 in funding from one or more of the counties; (2) authorize DOT to enter into a contract by direct negotiation with an applicable water carrier relating to these loans; (3) require DOT (notwithstanding any order by the PUC) to include in any such contract provisions requiring that, between July 1, 2020, and December 31, 2021 the water carrier (a) maintains the same number of port calls in effect as of January 1, 2020; (b) continues to transport less than container load shipments to or from the islands of Lanai and Molokai; and (c) negotiates in good faith with agriculture or livestock entities or businesses to set standards for the interisland shipment of livestock; and (4) require that any funds provided by DOT to any water carrier shall not be used for the following purposes: (a) as payment in any form or nature to any parent

company of the water carrier or affiliate of any parent company of the water carrier; (b) as profits for the water carrier, any parent company of the water carrier, or any affiliate of any parent company of the water carrier; (c) as repayment of any loan, bond, or other form of indebtedness of any parent company of the water carrier or affiliate of any parent company of the water carrier; (d) as payment for any capital expenditure made by the parent company of the water carrier for assets held by the water carrier; or (e) as payment for executive bonuses; advertising or marketing (except customer and employee communications); club or membership dues; charitable or political contributions; business travel; seminars, conferences, or conventions; entertainment expenses; or any other non-operating expenses.

Section 4 of this proposed measure also grants DOT any authority granted to the PUC pursuant to HRS Chapters 269 and 271G (to the extent applicable), to establish and revise the rates, fares, and charges charged by a water carrier engaging in the transportation of property; provided that: (a) this section shall not affect the authority of the PUC to render any decision regarding a water carrier that is pending as of the effective date of this Act; (b) the DOT may base any ratemaking decisions on annual freight rate adjustment recommendations; and (c) any authority transferred to the DOT pursuant to this section shall revert back to the PUC on December 31, 2021.

Section 6, among other things, repeals Section 2 on December 31, 2021 and provides that HRS Section 266-19 be reenacted in the form in which it read on the day prior to the effective date of this Act.

YB generally supports the intent of Sections 2, 3, 4, and 6 of this proposed measure, but offers the following comments and recommendations:

- Any loans issued by DOT to a water carrier under these sections must be based on the understanding that the water carrier have compensatory rates established by PUC and/or DOT to allow such carrier to be financially healthy, continue to be a going concern, and able to earn its authorized return, including meeting its applicable debt service obligations.
- Assuming a return to operational levels in effect as of January 1, 2020, for the period of July 1, 2020 to December 31, 2020, YB anticipates a loss of approximately \$15 million. As such, YB respectfully recommends that Section 3 be amended, in relevant part, as follows:

"provided further that the department of transportation shall only provide loans to a water carrier that, between the effective date of this Act and December 30, 2020, has received a combined total of no less than \$15[0],000,000 in funding from one or more of the counties."  
(additions underlined; deletions in brackets)

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"(d) Notwithstanding any order by the public utilities commission, the department of transportation shall include in any contract entered into pursuant to subsection (c), provisions requiring that, between the

effective date of the contract [~~July 1, 2020~~], and December 31, 2021,  
the water carrier:

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

YB also notes that it is also willing to work closely with and collaborate with the various counties in the State of Hawaii in seeking the funding required in Section 3. However, the timeliness of receiving such funding will be critical to ensuring that YB is financially healthy and be able to earn its authorized return, including meeting its debt service obligations for any necessary loans pending any rate decision (e.g., emergency/temporary rate relief, annual freight rate adjustment) by the PUC and/or DOT.

- Relating to Section 3, YB also recommends the following amendments:

"The department of transportation shall include in any contract entered into pursuant to subsection (c) provisions designed to carry out the Legislature's intent that no funds provided by the department of transportation to any water carrier pursuant to this Act shall be used for the following purposes:

(1) As payment in any form or nature to any parent company of the water carrier or affiliate of any parent company of the water carrier, except for tug assist, lease, or charter payments to an affiliate company of the water carrier receiving such funds, provided, however, the tug assist, lease or charter must be at or below market rates;

(2) As profits for the water carrier, any parent company of the water carrier, or any affiliate of any parent company of the water carrier;

(3) As repayment of any loan, bond, or other form of indebtedness of any parent company of the water carrier or affiliate of any parent company of the water carrier;

(4) As payment for any capital expenditure made by the parent company of the water carrier for assets held by the water carrier; or

(5) As payment for executive bonuses; any advertising or marketing except customer and employee communications; club or membership dues; charitable or political contributions; non-essential business travel; seminars, conferences, or conventions; entertainment expenses; or any other non-operating expenses." (additions underlined)

- Relating to Section 4, YB recommends the following amendments:

"Notwithstanding any law to the contrary, and to the extent applicable, any authority granted to the public utilities commission pursuant to chapters 269 and 271G, Hawaii Revised Statutes, and chapters 16-601 and 16-605, Hawaii Administrative Rules, to establish and revise the rates, fares, and charges charged by a water carrier engaging in the transportation of property is hereby transferred to the department of transportation; provided that:

Representative Sylvia Luke, Chair  
House Committee on Finance  
June 28, 2020  
Page | 5

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

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

(3) Any authority transferred to the department of transportation pursuant to this section shall revert back to the public utilities commission on December 31, 2022[±]." (additions underlined; deletions in brackets)

- To further clarify Section 6 and consistent with the proposed amendments to Section 4 above, YB recommends the following amendments:

This Act shall take effect upon its approval; provided that section 2 shall be repealed on December 31, 2022[±], and section 266-19, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act on December 31, 2022[±]. (additions underlined; deletions in brackets)

Regarding the proposed amendments to Sections 4 and 6 from December 31, 2021 to December 31, 2022, YB believes that the additional time would be helpful and necessary to, among other things, assess and determine whether the temporary transfer is appropriate and in the public interest.

Mahalo Chair, Vice Chair and members of the House Finance Committee, for your consideration of YB's comments and proposed amendments/recommendations.

Sincerely,

Jay Ana  
President

Testimony of Ku'uhaku Park  
On Behalf of Matson  
Support of SB1427 HD1 PROPOSED  
Before the Committee on Finance  
June 29, 2020

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee,

Matson supports SB1427, HD1 PROPOSED, Relating to Transportation. This proposed measure will assist our State's only regulated water carrier, Young Brothers.

Shipping has been long recognized as a lifeline for Hawaii. Our islands depend on consistent, reliable shipping service. Young Brothers is the only company that meets the requirements to possess a certificate of public convenience and necessity from the Public Utilities Commission. This is required to move cargo originating in Hawaii to another port in Hawaii. While Matson does not move intrastate cargo, we do rely on Young Brothers to assist us with our overflow cargo originating on the mainland destined for the neighbor islands. Ensuring the survival of our State's only water carrier is vital to our economy and to Matson.

Thank you for your efforts to assist our local maritime industry and for considering this testimony in support.



**MOLOKAI CHAMBER OF COMMERCE**

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June 29, 2020

HOUSE OF REPRESENTATIVES  
THE THIRTIETH LEGISLATURE  
REGULAR SESSION OF 2020

COMMITTEE ON FINANCE

Monday, June 29, 2020 @ 2:00 p.m.  
Conference Room 329  
State Capitol, 415 South Beretania Street

**COMMENTS ONLY - SB 1427, SD1, HD1, RELATING TO TRANSPORTATION.**

Aloha Honorable Chair Luke, Vice Chair Cullen and Committee Members:

As a representative organization of the neighbor-island of Molokai with dozens of members who employ hundreds of our neighbors, friends and families, we are respectfully submitting COMMENTS ONLY on SB 1427, SD1, HD1.

The island of Molokai is reliant on Young Brothers as our transportation lifeline for virtually all of the groceries, goods and materials our residents and businesses require to survive. We understand that there are higher costs for YB to service Molokai and our neighbor island of Lanai, as they are mandated by the PUC to serve our communities even if it is unprofitable.

We generally support the majority of the provisions contained in this proposed measure and its general intent to provide loans to YB as long as it meets the stated criteria.

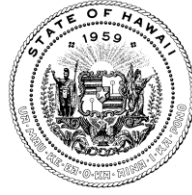
We do however have concerns about "Temporarily transfers to the Department of Transportation the Public Utilities Commission's ratemaking authority for water carriers engaged in the transportation of property." as stated in the measure's description. The language in this bill is vague, ambiguous and unclear regarding this provision.

To transfer the PUC's ratemaking authority to the DOT has the potential to be troublesome as it would circumvent due process and prevent the ability for the communities which Young Brothers serves to participate in the ratemaking process. If rate increases are going to affect our most vulnerable communities then we should have the ability to be heard as a valuable participant in the process.

Thank you for the opportunity to submit our comments and please let us know if there's anything we can do to be helpful.

Sincerely,

Robert Stephenson, President & CEO



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Finance  
Monday, June 29, 2020  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
S.B. 1427, S.D. 1, PROPOSED H.D. 1, RELATING TO TRANSPORTATION**

**WRITTEN TESTIMONY ONLY**

Chair Luke and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purposes of this bill are to: (1) authorize the Public Utilities Commission (Commission) to exempt a water carrier from any or all the provisions of the Hawaii Water Carrier Act (Hawaii Revised Statutes (HRS) chapter 271G) if the exemption is in the public interest; (2) authorize the use of moneys in the Harbor Special Fund for loans to certain water carriers to address the impacts of the COVID-19 pandemic and offset certain costs incurred by the water carriers; (3) authorize the Department of Transportation (DOT) to provide loans to water carriers – not to exceed \$20 million – to offset impacts of COVID-19 and other costs, but only if certain conditions are met;

and (4) temporarily transfer the Commission's ratemaking authority for water carriers engaged in the transportation of property to the DOT.

The Department defers to the DOT and Commission regarding the impact this bill, if approved, may have on each respective agency.

As the Legislature is aware, the ongoing COVID-19 pandemic has significantly impacted Hawaii's economy and has caused significant hardships for all residents, especially those who are now unemployed. The pandemic has also exacerbated issues that were affecting Young Brothers LLC (YB) and, combined with the decision by Saltchuk Resources (YB's parent company) to terminate its financial support of YB, the Department is very concerned about YB's financial condition and the potential damage to Hawaii's communities, especially neighbor island communities, that depend on YB's cargo service. YB's inability to provide services, such as transporting personal protective equipment needed to combat the pandemic, fresh produce, and other goods among the islands, would have serious consequences. The smaller islands, such as Molokai and Lanai, and businesses and residents who rely on less than container load (LCL) service do not have other readily available and/or affordable alternatives. The Department is also concerned aware that YB has been seeking federal Coronavirus Aid, Relief, and Economic Security (CARES) Act monies, but it would be prudent to also develop a portfolio of different tools and measures to address this situation. It is imperative to the entire state, but especially to the neighbor islands, to ensure the continued availability of affordable cargo carrier services within Hawaii.

The Department supports granting the Commission greater flexibility to deal with the current situation. Sections 2 and 3 of this bill enable the DOT to loan monies to water carriers, provided certain conditions are met. However, regardless of whether debt proceeds are from a government entity or private institution loan, regulated entities may not use those debt proceeds to cover operating expenses (see HRS §§269-17 and 271G-17.5). This restriction is necessary to avoid situations where a regulated entity might create a dangerous cycle of relying upon debt proceeds to cover operating expenses, instead of pursuing other measures such as restructuring itself so that its operating expenses are less than its revenues. In the current situation, however, it may



be necessary for YB to obtain debt proceeds to cover its operating expenses in the short-term, until other measures can be implemented to make YB a going concern again. Thus, if the Commission is not granted the flexibility to temporarily grant an exemption on the use of debt proceeds, the inability to seek debt financing to address YB's current cash flow needs would effectively remove a tool from the Commission's hands and could negate the intent of sections 2 and 3 of this bill. Furthermore, given the apparent urgency of the situation, other existing regulatory restrictions might prevent the Commission from taking timely actions to ensure the continuous service to Hawaii's businesses and residents that rely on regulated water carrier cargo transport services. Thus, allowing the Commission the regulatory flexibility to address issues that may arise in this very dynamic situation is in the public interest.

Regarding section 3 of the bill, the Department notes that, if approved, the DOT would enter into a contract with a water carrier and establish certain conditions that must be included in the contract. The Department appreciates that conditions have been identified regarding the level of services that will be contracted, as well as prohibiting the use of the debt proceeds for certain purposes (e.g., to pay bonuses, entertainment, or profits for its affiliates). However, the Department is concerned that the conditions may not adequately protect the consumers and businesses in Hawaii that rely on the shipment of goods between the islands. For instance, while there is a requirement that LCL service is maintained for Lanai and Molokai, the bill is silent on the continuation of LCL services for Oahu, Maui, Hawaii, and Kauai. If LCL services are not maintained for all islands, the Department is concerned about the potential impacts on residents and businesses that rely on LCL services and how the possible termination of such services will adversely affect residents and businesses that are already struggling due to the COVID-19 pandemic.

In addition, there is only one certificated water carrier that provides regulated transportation of goods between the islands; thus, it is a virtual monopolist. While the bill includes a provision that the water carrier negotiates in good faith with agriculture and livestock entities or businesses to set standards for the interisland shipment of livestock, the Department is concerned that absent oversight, there is insufficient market

influence that would reasonably balance the interests of the shippers and the monopolist. In fact, prior to the COVID-19 pandemic, many customers and organizations filed numerous complaints with the Commission related to changes that the water carrier was seeking to impose without Commission approval. Those complaints can be reviewed in the Docket No. 2019-0117 record. It was only after the Commission sought to investigate the concerns raised by consumers that further outreach between the water carrier and interested stakeholders occurred. Without sufficient oversight, the Department is concerned that customers on all islands will have insufficient recourse to protect their interests.

In section 4 of the bill, ratemaking authority would transfer from the Commission to the DOT. It appears that the transfer would occur as of the effective date of the bill, but such authority will transfer back to the Commission after December 31, 2021. The Department is concerned this provision might result in unintended consequences. Based on the understanding that the DOT does not currently have any administrative rules that establish the procedures and guidelines of setting water carrier tariffs and rates that it can charge customers, including notice and hearing for consumers that may be affected by possible rate increases, the Department is concerned that by the time such administrative rules are in place, the ability for the DOT to take action before December 31, 2021, may be limited.

Furthermore, the Department is concerned with the potential confusion and duplication of resources that may be expended by the Commission and DOT during the period from July 1, 2020, through December 31, 2021, since it appears that the DOT will have ratemaking authority, but the Commission's authority to render decisions regarding affected water carriers will still be in place. This could easily have adverse impacts on the water carrier if it is required to appear and respond to both the Commission and the DOT throughout this period. The Department is also concerned with the potential impacts on customers if insufficient coordination occurs where, for instance, both the Commission and the DOT grant increases, resulting in customers paying far more than they should.

In addition, the Department is concerned with the possibility that the tariffs and rates that businesses and residents might be required to pay for water carrier services will be based upon annual freight rate adjustment recommendations. The Department does not note who would be making the recommendations and is unable to determine what might comprise the annual freight rate adjustment; however, if it is similar to the annual freight rate adjustment that the Commission once allowed, the Department is concerned with the potential impact on consumers.

For context, the Commission has implemented certain regulatory programs to provide the regulated water carrier with regulatory flexibility that would allow the water carrier to gradually re-balance its rates so that the rates for LCL service would better match the cost of providing that service. This flexibility was granted in a zone of reasonableness program, as well as an annual freight rate adjustment program. After the water carrier used both programs to raise rates for all customers as well as file general rate increases to further increase rates, the Commission terminated both regulatory flexibility programs since they were not being used for their intended purposes.

Consistent with HRS section 271G-16(e), which provides that the Commission should exercise its power to “prescribe just and reasonable rates, fares, and charges,” to consider the “effect of rates upon the movement of traffic by the carrier,” and “to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with furnishing of the service” (emphasis added), the Commission has been investigating whether the water carrier has been seeking to reasonably control its costs that might be reasonably expected from “honest, economical, and efficient management” in past rate proceedings as well as the current rate proceeding. The Legislature should be made aware that even though cargo volume has been relatively flat over the last few years, the total expenses for the water carrier has been steadily increasing. Granting rate increases without examining whether underlying costs and investments are reasonably incurred would not be in the public interest.

Because of the virtual monopoly, no competition exists to exert influence on the water carrier to ensure it is managing its costs. That function falls upon the regulator. Simply allowing rate increases pursuant to annual freight rate adjustments, without ensuring reasonable efforts to control costs to deliver affordable services to Hawaii's businesses and residents, is concerning. Given the current economic condition and the need to help businesses and residents recover from the economic effects of the COVID-19 pandemic, customers need adequate protection to ensure they pay only reasonable rates.

Thank you for the opportunity to testify on this bill.



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 329  
MONDAY, JUNE 29, 2020 AT 2:00 P.M.**

To The Honorable Sylvia Luke, Chair;  
The Honorable Ty J.K. Cullen, Vice Chair; and  
Members of the Committee on Finance,

**TESTIMONY IN SUPPORT OF SB 1427 PROPOSED HD1  
RELATING TO TRANSPORTATION**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce with approximately 650 businesses. I am writing share our support of SB 1427 proposed HD1.

Maui County depends on water carrier services and particularly Young Brothers' routes. These services are essential to each community in our tri-island county and we need to ensure they continue. However, everyone is hurting as a result of COVID-19 and we must look at balancing spending for other emergency systems and support.

We appreciate that this bill proposes using funding from the State Harbor Special Fund to provide loans to water carriers to address the impacts of COVID-19, so funding from the CARES Act and other sources can go to critical areas. We also support the conditions of the loan that funding cannot go to the parent company, be used for repayment of debt, bonuses, etc. and that a certain level of services must be maintained as a part of the loan agreement. We feel this will help to keep companies accountable and does not just provide a bailout. Because of these specific conditions, we support this bill.

While we feel this proposed bill is a way to solve the current problem, we must also create a sustainable plan moving forward and create other options, so we are not reliant upon one company in the future.

Mahalo for your consideration of our testimony.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

**LATE**

**SB-1427-SD-1**

Submitted on: 6/29/2020 10:34:57 AM

Testimony for FIN on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicole K Galase	Hawaii Cattlemen's Council	Support	No

Comments:



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Finance  
Monday, June 29, 2020 at 2:00 P.M.  
Conference Room 329, State Capitol**

**LATE**

**RE: SB 1427 SD1 PROPOSED HD1, RELATING TO TRANSPORTATION**

Chair Luke, Vice Chair Cullen, and Members of the Committee:

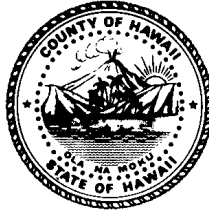
The Chamber of Commerce Hawaii ("The Chamber") **would like to provide the following comments on** SB 1427 SD1, Proposed HD1, which authorizes the Public Utilities Commission to exempt a water carrier from any or all of the provisions of the Hawaii Water Carrier Act if the exemption is in the public interest. This bill would also authorize 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 carrier.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber acknowledges that inter-island shipping is an absolutely critical service for our neighbor island communities, including small businesses. Our neighbor island businesses depend on these shipping services in order to deliver essential goods across the state. This bill would help to ensure that these services remain in place.

Thank you for the opportunity to testify on this bill.

County of Hawai'i  
Council District 9 -  
North and South Kohala



Phone: (808) 961-8564  
(808) 887-2069

Email: [tim.richards@hawaiiicounty.gov](mailto:tim.richards@hawaiiicounty.gov)

**Chair:** Committee on Agriculture,  
Water, Energy, and Environmental  
Management

**Vice Chair:** Committee on Finance

**HERBERT M. "TIM" RICHARDS, III**  
**HAWAI'I COUNTY COUNCIL - DISTRICT 9**  
25 Aupuni Street, Ste. 1402, Hilo, Hawai'i 96720

**LATE**

June 29, 2020

House Committee on Finance  
Honorable Representative Sylvia Luke, Chair  
Honorable Representative Ty J.K. Cullen, Vice Chair  
**Submission via online testimony**

**RE: Opposition of SB 1427, SD1, Proposed HD1**  
Hearing Date/Time: June 29, 2020 at 2:00 p.m.

Dear Representatives:

As the Chair of the Committee on Agriculture, Water, Energy, and Environmental Management and Vice-Chair of the Committee on Finance for the Hawai'i County Council, I thank you for the opportunity to testify on Bill 1427 SD1, Proposed HD1. I applaud the legislature for seeking solutions to our inter-island transportation, but I have to oppose this Bill as written.

As our County and as the State of Hawai'i struggle to start its recovery from the COVID-19 impacts, we must work diligently on our economy. A large portion of the State of Hawai'i's economy, and thus our island economy revolves around and is dependent on inter-island transportation and shipping. 90% of our food supply and essentially all of our durable goods, construction supplies, and consumables are imported into our state. Our state and counties do not enjoy the benefit of the national highway system like most of the continental United States do. Our "highway" is our intrastate shipping lanes; designated in 2018 as the Daniel K. Akaka Marine Highway, the first-ever for Hawai'i. This designation opens potential federal resources to help move cargo through the state's harbors. Without a robust, convenient, and affordable transportation entity, our economy will falter.

My concerns of Bill SB 1427, SD1, Proposed HD1 are on several levels. Coming from an advocate for agriculture, transportation is our lifeline. Being able to get our commodities from the farm and ranch to the market is paramount. COVID-19 demonstrated our vulnerability of not being more food self-reliant within our own state. I have always been a proponent of agriculture

*Hawai'i County is an Equal Opportunity Provider and Employer*



House Committee on Finance  
Honorable Representative Sylvia Luke, Chair  
Honorable Representative Ty J.K. Cullen, Vice Chair  
June 29, 2020  
Page 2

becoming an important corner stone of our counties and state's economy; however this is not possible without reliable transportation.

Though this Bill offers some support, it does not articulate on several matters:

1. Less than container loads or "LCL"; many of our agriculture producers cannot ship a full container thus must rely on LCL. This Bill only addresses this for Moloka'i and Lana'i.
2. Frequency of service; current interisland shipping has 12 round trips scheduled throughout the islands weekly. Reduction of this severely impacts the potential success of agriculture as agricultural commodities are time sensitive. Any reduction poses marketing problems. This Bill does not address this.
3. Gate times for retrieving cargo and placing on the dock are again a critical portion of the fabric of transportation. Farmers and ranchers trying to hit small windows of time make transportation difficult. This also is not addressed in this bill.
4. Financing; under this Bill, the structure relies on counties coming up with \$10 million to trigger the ability for State of Hawai'i Department of Transportation to loan further funds. As a County Council Member that has struggled with our budget this year due to the COVID-19 impacts and severe restrictions on appropriations from the state, finding any funds to support this would be extremely difficult.

We all need a long-term solution for our transportation and shipping needs. We are embarking on re-defining how we conduct business within our state. I believe that our inter-island transportation needs will be addressed best by realizing that our intrastate shipping is really a Marine Highway and seek funding with that structure in mind.

Please feel free to contact me should you need to discuss my position and knowledge of this matter further. Thank you for the opportunity to share the above critical points that address and provide opportunities for the future of the transportation industry in the State of Hawai'i.

Sincerely,

A handwritten signature in black ink, appearing to read "Herb M. Richards III", with a stylized flourish at the end.

HERBERT M. "TIM" RICHARDS, III  
Hawai'i County Council, District 9

HMR:dbk  
xc: Aaron S.Y. Chung, Chair Hawai'i County Council

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**LATE**

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE

June 29, 2020  
2:00 P.M.  
CONFERENCE ROOM 329

SENATE BILL NO. 1427 SD1, Proposed HD1  
RELATING TO TRASPORTATION

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1427 SD1, Proposed HD1. This bill 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, and authorizes the Department of Transportation to provide loans to water carriers who meet certain conditions. It also temporarily transfers to the Department of Transportation (DOT) the Public Utilities Commission's (PUC) ratemaking authority for water carriers engaged in the transportation of property. The Department of Agriculture offers comments on this measure.

The Department agrees that continuing cargo carrier service to all island ports is very important, and especially to agricultural producers on the island of Hawaii, Maui, and Molokai who depend on YB to ship their moderately to highly perishable agricultural products and livestock. Failure to consider the agricultural customers needs will result in undue animal welfare issues and degrading of perishable fresh produce during this time of emergency where food supply is essential to public health and welfare.

The Department has written letters to the Public Utilities Commission expressing our concerns about YBs proposed general rate increase of 34 percent and tariff changes (letter dated January 7, 2020), YBs emergency changes to its barge schedule



that adversely affects Hilo and Kaunakakai service (letter dated May 5, 2020), and the PUC's commencing an emergency investigative proceeding regarding YBs financial condition (letter dated June 18, 2020). The Department notes that an increase in interisland shipping rates and/or reduction of services to certain ports will have a negative impact on local agricultural producers, especially for those on the neighbor-islands. The Department notes that the proposed HD1 establishes a contractual condition for loans issued by the Department of Transportation that requires transport of less-than-container load shipments from Lanai and Molokai and good-faith negotiation with agriculture or livestock entities or businesses to set standards for interisland shipment of livestock. We recommend the following amendment to expand the setting of standards to include all locally-grown agricultural products:

Page 6, lines 4-16

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

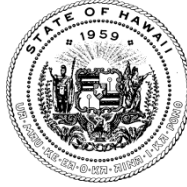
(1) Maintains the same number of port calls in effect as of January 1, 2020;

(2) Continues to transport less than container load shipments to or from the islands of Lanai and Molokai; and

(3) Negotiates in good faith with agriculture or livestock entities or businesses to set standards for the interisland shipment of locally-grown agricultural products including livestock."

Since the PUC has the staff capacity, knowledge, familiarity with current issues and historical background on all aspects of ratemaking involving water carriers in the state, the Department defers to the PUC on other substantive provisions in this measure.

Thank you for the opportunity to submit testimony.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

**LATE**

June 29, 2020  
2:00 PM  
State Capitol, Room 329

**S.B. 1427 S.D. 1 Proposed H.D.1  
RELATING TO TRANSPORTATION**

House Committee on Finance

The Department of Transportation (DOT) provides **comments** to S.B. 1427 S.D.1 Proposed H.D.1. The Bill proposes to: (a) authorize the Public Utilities Commission to exempt a water carrier from the provisions of the Hawaii Water Carrier Act if an exemption is in the public interest; (b) authorize 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; (c) authorizes DOT to provide loans to water carriers who meet certain conditions; and (d) temporarily transfers to the DOT, the PUC's ratemaking authority for water carriers engaged in the transportation of property.

The DOT understands that inter-island cargo transportation is vital to the sustainability and survivability of neighbor island communities. The DOT further understands the need for flexibility to adjust regulatory requirements and directly engage a water carrier to ensure the safe and efficient interisland cargo transportation.

The DOT offers the following comments on the Bill with regards to DOT's capability in administering loans, and to establish rates, fares and charges. Additionally, the DOT would like to ask the Legislature to consider allowing the DOT to directly negotiate contracts with the water carriers to perform interisland cargo.

**Specific Comments:**  
**Reference Section 2**

- HRS 266-19 splits the authorized uses of the harbor special fund into clause (a) uses that do not require a coverage test and clause (b) uses that do require a coverage test. Adding this new authorization to clause (a) means that it won't be subject to a statutory coverage test but it may still be subject to the State's contractual coverage test under the Harbor Revenue Bonds Certificate. As such, we would propose adding the following sentence to the end of the new clause (a)(2): Any such subsidy will be subject in all respects to the provisions of the Certificate of the Director of Transportation Providing for the Issuance of State of

Hawaii Harbor System Revenue Bonds dated as of March 1, 1997, as the same may be amended from time to time.

Reference Section 3 (LOAN).

- HRS 266 does not provide for a loan process. Does the DOT Harbors Division (DOTH) need rules to issue loans? Can any proposed amendment of law be self-effecting to forgo the need for the adoption of rules?
- DOTD needs authority to require collateral/security for the term of loan?
- Interisland service costs are undoubtedly more than \$3,000,000/month and \$20,000,000/12-month period. Will DOTD be allowed to negotiate reduced service terms to within loan amounts, or is the water carrier required to subsidize the difference?
- Will there be any restrictions to allowing YB to receive and pay for services from its parent company?

Reference Section 4 (DELEGATED PUC AUTHORITY).

- What are the specific requirements for DOTD to establish rates? Does the DOTD comply with all the requirements of chapters 269 and 271G including contested case procedures? Does the rate setting involve the PUC and/or CA? Do the rates exclude loans from the DOTD? Is there public participation process in rate making?

CONTRACT FOR INTRA-ISLAND SERVICE (COUNTER PROPOSAL)

- As an alternative to the DOTD providing rate setting and/or providing loans, the DOTD requests allowance to direct negotiate a contract with a carrier for the interisland cargo transport services between Oahu and the neighbor islands; and a separate agreement for a cargo carrier or water service carrier to provide cargo transportation services within the County of Maui. Such contracts would allow a cargo carrier or water carrier to work within specified service guidelines in setting its shipping rates, collecting payment from its customers, and a process for seeking reimbursement from the DOT for non-compensatory routes.
- The interisland cargo service is in the benefit for the State of Hawaii and any contracted service should be funded by general funds.

ADDITIONAL PERSONNEL

- The DOTD requests that for the purpose of implementing the provision of this Bill, that the Legislature authorizes the Governor to establish positions pursuant to HRS §76-16(b)(12) or §76-16(d), and appropriate \$3,000,000 for the DOTD for FY 21 and FY 22 to issue loans, setting of rates, and/or negotiate contracts with a cargo carrier or water carrier for the transportation of property within the State.

Thank you for the opportunity to provide testimony.