

JAN 27 2021

A BILL FOR AN ACT

RELATING TO WATER CARRIERS.

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

1 PART I

2 SECTION 1. Chapter 271G, Hawaii Revised Statutes, is
3 amended by adding eleven new sections to be appropriately
4 designated and to read as follows:

5 **"§271G-A Maritime commission; appointment; qualifications.**

6 (a) There is established a maritime commission within the
7 department of commerce and consumer affairs for administrative
8 purposes only. The maritime commission shall consist of three
9 members, to be called commissioners, and who shall be appointed
10 in the manner prescribed in section 26-34, except as provided in
11 this section. The department of commerce and consumer affairs
12 shall not direct or exert authority over the day-to-day
13 operations or functions of the commission.

14 (b) All members shall be appointed for terms of six years
15 each, except that the terms of the members first appointed shall
16 be for two, four, and six years, respectively, as designated by
17 the governor at the time of their appointment. No member shall



S.B. NO. 1348

1 serve more than twelve consecutive years. The governor shall
2 designate one member to be the chairperson of the commission.

3 (c) In appointing commissioners, the governor shall select
4 persons who have had experience in maritime transportation or
5 similar fields. No person owning any stock or bonds of any
6 water carrier corporation, or having any interest in, or
7 deriving any remuneration from, any water carrier shall be
8 appointed a commissioner; provided that retirees of water
9 carriers receiving retirement benefits, including but not
10 limited to deferred compensation payments or medical coverage,
11 may be appointed as a commissioner.

12 (d) The chairperson of the commission shall be paid a
13 salary set at _____ per cent of the salary of the director
14 of human resources development, and each of the other
15 commissioners shall be paid a salary equal to _____ per
16 cent of the chairperson's salary. The commissioners shall be
17 exempt from chapters 76 and 89 but shall be members of the state
18 employees' retirement system and shall be eligible to receive
19 the benefits of any state or federal employee benefit program
20 generally applicable to officers and employees of the State,
21 including those under chapter 87A.



S.B. NO. 1348

1 (e) Notwithstanding section 26-35(a)(5) to the contrary,
2 the commission's operational expenditures, such as the purchase
3 of supplies, equipment, furniture, dues and subscriptions,
4 travel, consultant services, and staff training, shall be
5 determined by the chairperson and the executive officer
6 appointed and employed pursuant to section 271G-B; provided that
7 such expenditures shall be subject to all applicable procurement
8 laws and procedures.

9 (f) Notwithstanding section 26-35(a)(6) to the contrary,
10 the utilization, allocation, renovation, or other use of space
11 or spaces to be occupied by the commission shall be determined
12 by the chairperson and the executive officer appointed and
13 employed pursuant to section 271G-B.

14 (g) Determinations made under subsection (e) or (f) by the
15 chairperson or the executive officer, may be reviewed by the
16 director of commerce and consumer affairs for completeness and
17 for compliance and conformance with applicable administrative
18 processes and procedures of the department of commerce and
19 consumer affairs.

20 **§271G-B Employment of assistants.** (a) The chairperson of
21 the commission shall appoint, employ, and dismiss, at pleasure,



1 an executive officer who shall be responsible for managing the
2 operations of the commission. The responsibilities of the
3 executive officer shall include management and recruitment of
4 personnel, budget planning and implementation, strategic
5 planning and implementation, procurement and contract
6 administration, and implementation of administrative programs
7 and projects. The executive officer shall be exempt from
8 chapter 76.

9 (b) The chairperson of the commission may appoint and
10 employ professional staff and other assistants for the
11 commission as the chairperson finds necessary for the
12 performance of the commission's functions and define their
13 powers and duties. Notwithstanding section 26-35(a)(4) to the
14 contrary and subject to applicable personnel laws, the
15 employment, appointment, applicable salary schedules, promotion,
16 transfer, demotion, discharge, and job descriptions of all
17 officers and employees of or under the jurisdiction of the
18 commission shall be determined by the chairperson and may be
19 delegated to the executive officer appointed and employed
20 pursuant to subsection (a); provided that determinations
21 concerning personnel matters made by the chairperson or the



1 executive officer, as delegated by the chairperson, may be
2 reviewed by the director of commerce and consumer affairs for
3 completeness and for compliance and conformance with applicable
4 administrative processes and procedures of the department of
5 commerce and consumer affairs. The chairperson may appoint and,
6 at pleasure, dismiss a chief administrator and attorneys as may
7 be necessary, and who shall be exempt from chapter 76. The
8 chairperson may also appoint other staff, including a fiscal
9 officer and a personnel officer, with or without regard to
10 chapter 76.

11 (c) Notwithstanding section 91-13, the commission may
12 consult with its assistants appointed under authority of this
13 section in any contested case or agency hearing concerning any
14 issue of facts. Neither the commission nor any of its
15 assistants shall in such proceeding consult with any other
16 person or party except upon notice and an opportunity for all
17 parties to participate, save to the extent required for the
18 disposition of ex parte matters authorized by law.

19 **§271G-C Examinations and investigations.** (a) The
20 commission and each commissioner shall have power to examine the



S.B. NO. 1348

- 1 affairs of all water carriers subject to this chapter,
2 including:
- 3 (1) The condition of each water carrier;
 - 4 (2) The manner in which the water carrier is operated with
5 reference to the accommodation of the public;
 - 6 (3) The wages of the water carrier's employees;
 - 7 (4) The fares and rates charged by the water carrier;
 - 8 (5) The value of water carrier's physical property;
 - 9 (6) Stocks and bonds issued by the water carrier and the
10 disposition of the proceeds thereof;
 - 11 (7) The amount and disposition of the water carrier's
12 income and all its financial transactions;
 - 13 (8) The water carrier's executed contracts with other
14 persons, companies, or corporations; and
 - 15 (9) The water carrier's compliance with all applicable
16 state and federal laws and with the provisions of its
17 franchise, charter, and articles of association, if
18 any.
- 19 (b) Any investigation may be made by the commission on its
20 own motion, and shall be made when requested by the water
21 carrier to be investigated, or by any person upon a sworn



1 written complaint to the commission, setting forth any prima
2 facie cause of complaint. A majority of the commission shall
3 constitute a quorum.

4 (c) Whenever an investigation is undertaken by the
5 commission, reasonable notice in writing of the investigation
6 and of the subject or subjects to be investigated shall be given
7 to the water carrier or the person concerned, and when based
8 upon complaints made to the commission as prescribed in
9 subsection (b), a copy of the complaint, and a notice in writing
10 of the date and place fixed by the commission for beginning the
11 investigation, shall be served upon the water carrier or the
12 person concerned, or other respondent and the complainant not
13 less than two weeks before the date designated for the hearing.

14 (d) Each water carrier or other person subject to
15 investigation by the commission, shall at all times, upon
16 request, furnish to the commission all information that the
17 commission may require pursuant to this section. Each water
18 carrier shall permit the examination of its books, records,
19 contracts, maps, and other documents by the commission or any
20 person authorized by the commission in writing to make the
21 examination, and shall furnish the commission with a complete



1 inventory of the water carrier's property on a form as
2 prescribed by the commission.

3 §271G-D Report accidents. Every water carrier shall
4 report to the commission all accidents caused by or occurring in
5 connection with its operations and service.

6 §271G-E Power to compel attendance; subpoena. (a) In all
7 investigations made by the commission, and in all proceedings
8 before the commission, the commission by a majority vote shall
9 have the same powers respecting administering oaths, compelling
10 the attendance of witnesses and the production of documentary
11 evidence, examining witnesses, and punishing for contempt, as
12 are possessed by circuit courts.

13 (b) In the case of disobedience by any person to any order
14 of the commission; any subpoena issued by it or the
15 commissioner; or the refusal of any witness to testify to any
16 matter regarding which the witness may be questioned lawfully,
17 any circuit court, on application by the commission, shall
18 compel obedience as in case of disobedience of the requirements
19 of a subpoena issued from a circuit court or a refusal to
20 testify therein.



1 (c) No person shall be excused from testifying or from
2 producing any book, waybill, document, paper, or account in any
3 investigation or inquiry by a hearing before the commission or
4 any commissioner, when ordered to do so, upon the ground that
5 the testimony or evidence, book, waybill, document, paper, or
6 account required of the person may tend to incriminate the
7 person or subject the person to penalty or forfeiture; but no
8 person shall be prosecuted for any crime, punished for any
9 crime, or subjected to any criminal penalty or criminal
10 forfeiture for or on account of any act, transaction, matter, or
11 thing concerning which the person shall under oath have
12 testified or produced documentary evidence. Nothing in this
13 subsection shall be construed as in any manner giving to any
14 water carrier or any person immunity of any kind. The
15 commission shall consult with the county attorney or prosecutor
16 or attorney general before ordering testimony or evidence in
17 accordance with this subsection that may jeopardize criminal
18 prosecution.

19 (d) The fees and traveling expenses of witnesses shall be
20 the same as allowed witnesses in the circuit courts and shall be



1 paid by the State out of any appropriation available for the
2 expenses of the commission.

3 (e) All meetings and hearings of the commission shall be
4 public.

5 **§271G-F Enforcement.** (a) If the commission is of the
6 opinion that:

7 (1) Any water carrier or any person is violating or
8 neglecting to comply with any provision of this
9 chapter or of any rule, regulation, order, or other
10 requirement of the commission, or of any provisions of
11 the water carrier's franchise, charter, or articles of
12 association, if any;

13 (2) Any changes, additions, extensions, or repairs are
14 desirable in the water carrier's plant or service to
15 meet the reasonable convenience or necessity of the
16 public or ensure greater safety or security; or

17 (3) Any rates, fares, classifications, charges, or rules
18 are unreasonable or unreasonably discriminatory,
19 the commission shall inform the inform the water carrier or the
20 person in writing and may institute proceedings before the



1 commission as necessary to require the water carrier or the
2 person to correct any deficiency.

3 The commission may examine any of the matters referred to
4 it pursuant to section 271G-C, notwithstanding that the same may
5 be within the jurisdiction of any court or other body; provided
6 that this section shall not be construed as in any manner
7 limiting or otherwise affecting the jurisdiction of any such
8 court or other body.

9 **§271G-G Contested cases.** (a) Chapter 91 shall apply to
10 every contested case arising under this chapter except where
11 chapter 91 conflicts with this chapter, in which case this
12 chapter shall apply. Any other law to the contrary
13 notwithstanding, including chapter 91, any contested case under
14 this chapter shall be appealed from a final decision and order
15 or a preliminary ruling that is of the nature defined by section
16 91-14(a) upon the record directly to the supreme court for final
17 decision. Only a person aggrieved in a contested case
18 proceeding provided for in this chapter may appeal from the
19 final decision and order or preliminary ruling. For the
20 purposes of this section, the term "person aggrieved" includes



1 an agency that is a party to a contested case proceeding before
2 that agency or another agency.

3 (b) The court shall give priority to contested case
4 appeals of significant statewide importance over all other civil
5 or administrative appeals or matters and shall decide these
6 appeals as expeditiously as possible.

7 **§271G-H Perjury.** Any person who wilfully and knowingly
8 makes under oath any false statement in connection with any
9 investigation by or proceeding before the commission shall be
10 guilty of perjury and, upon conviction, shall be subject to the
11 penalty prescribed by law for the offense.

12 **§271G-I Finances; water carrier fee.** (a) Sections 607-5
13 to 607-9 shall apply to the commission and each commissioner, as
14 well as to the supreme court and circuit courts, and all costs
15 and fees paid or collected pursuant to this section shall be
16 deposited with the director of finance to the credit of the
17 maritime commission special fund.

18 (b) Each water carrier subject to investigation by the
19 commission shall pay to the commission in each of the months of
20 July and December of each year, a fee equal to one-fourth of one
21 per cent of the gross income from the water carrier's business



1 during the preceding year, or the sum of \$30, whichever is
2 greater. This fee shall be deposited with the director of
3 finance to the credit of the maritime commission special fund.

4 (c) Each water carrier paying a fee under subsection (b)
5 may impose a surcharge to recover the amount paid in excess of
6 one-eighth of one per cent of the gross income. The surcharge
7 imposed shall not be subject to the notice, hearing, and
8 approval requirements of this chapter; provided that the
9 surcharge may be imposed by the water carrier only after thirty
10 days' notice to the commission. Unless ordered by the
11 commission, the surcharge shall be imposed only until the
12 conclusion of the water carrier's next rate case; provided that
13 the surcharge shall be subject to refund with interest at the
14 water carrier's authorized rate of return on rate base if the
15 water carrier collects more money from the surcharge than
16 actually paid due to the increase in the fee to one-fourth of
17 one per cent.

18 **§271G-J Maritime commission special fund.** (a) There is
19 established in the state treasury a maritime commission special
20 fund to be administered by the maritime commission. The
21 proceeds of the fund shall be used by the commission for all



1 expenses incurred in the administration of this chapter and for
2 costs incurred by the department of commerce and consumer
3 affairs to fulfill the department's limited oversight and
4 administrative support functions; provided that the expenditures
5 of the commission shall be in accordance with legislative
6 appropriations.

7 (b) All moneys appropriated to, received, and collected by
8 the commission that are not otherwise pledged, obligated, or
9 required by law to be placed in any other special fund or
10 expended for any other purpose shall be deposited into the
11 maritime commission special fund.

12 (c) The commission shall submit an annual report to the
13 governor and legislature each January detailing all funds
14 received and all moneys disbursed out of the fund.

15 **§271G-K Preferential water carrier service rates for**
16 **agricultural activities.** The maritime commission may authorize
17 preferential water carrier service rates by tariff for
18 ratepayers that engage in agricultural activities. The
19 application process for obtaining preferential water carrier
20 service rates by tariff may be established by the maritime
21 commission."



1 SECTION 2. Section 269-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "public utility" to read
3 as follows:

4 ""Public utility":

5 (1) Includes every person who may own, control, operate,
6 or manage as owner, lessee, trustee, receiver, or
7 otherwise, whether under a franchise, charter,
8 license, articles of association, or otherwise, any
9 plant or equipment, or any part thereof, directly or
10 indirectly for public use for the transportation of
11 passengers or freight; for the conveyance or
12 transmission of telecommunications messages; for the
13 furnishing of facilities for the transmission of
14 intelligence by electricity within the State or
15 between points within the State by land, water, or
16 air; for the production, conveyance, transmission,
17 delivery, or furnishing of light, power, heat, cold,
18 water, gas, or oil; for the storage or warehousing of
19 goods; or for the disposal of sewage; provided that
20 the term shall include:



S.B. NO. 1348

- 1 (A) An owner or operator of a private sewer company
2 or sewer facility; and
- 3 (B) A telecommunications carrier or
4 telecommunications common carrier; and
- 5 (2) Shall not include:
- 6 (A) An owner or operator of an aerial transportation
7 enterprise;
- 8 (B) An owner or operator of a taxicab as defined in
9 this section;
- 10 (C) Common carriers that transport only freight on
11 the public highways, unless operating within
12 localities, along routes, or between points that
13 the public utilities commission finds to be
14 inadequately serviced without regulation under
15 this chapter;
- 16 (D) Persons engaged in the business of warehousing or
17 storage unless the commission finds that
18 regulation is necessary in the public interest;
- 19 (E) A carrier by water to the extent that the carrier
20 enters into private contracts for towage,
21 salvage, hauling, or carriage between points



S.B. NO. 1348

1 within the State; provided that the towing,
2 salvage, hauling, or carriage is not pursuant to
3 either an established schedule or an undertaking
4 to perform carriage services on behalf of the
5 public generally;

6 (F) A carrier by water, substantially engaged in
7 interstate or foreign commerce, that transports
8 passengers on luxury cruises between points
9 within the State or on luxury round-trip cruises
10 returning to the point of departure;

11 (G) Any water carrier regulated under chapter 271G;

12 [~~(G)~~] (H) Any user, owner, or operator of the Hawaii
13 electric system as defined under section 269-141;

14 [~~(H)~~] (I) A telecommunications provider only to the
15 extent determined by the public utilities
16 commission pursuant to section 269-16.9;

17 [~~(I)~~] (J) Any person who controls, operates, or manages
18 plants or facilities developed pursuant to
19 chapter 167 for conveying, distributing, and
20 transmitting water for irrigation and other
21 purposes for public use and purpose;



S.B. NO. 1348

1 [~~(J)~~] (K) Any person who owns, controls, operates, or
2 manages plants or facilities for the reclamation
3 of wastewater; provided that:

4 (i) The services of the facility are provided
5 pursuant to a service contract between the
6 person and a state or county agency and at
7 least ten per cent of the wastewater
8 processed is used directly by the state or
9 county agency that entered into the service
10 contract;

11 (ii) The primary function of the facility is the
12 processing of secondary treated wastewater
13 that has been produced by a municipal
14 wastewater treatment facility owned by a
15 state or county agency;

16 (iii) The facility does not make sales of water to
17 residential customers;

18 (iv) The facility may distribute and sell
19 recycled or reclaimed water to entities not
20 covered by a state or county service
21 contract; provided that, in the absence of



1 regulatory oversight and direct competition,
2 the distribution and sale of recycled or
3 reclaimed water shall be voluntary and its
4 pricing fair and reasonable. For purposes
5 of this subparagraph, "recycled water" and
6 "reclaimed water" means treated wastewater
7 that by design is intended or used for a
8 beneficial purpose; and

9 (v) The facility is not engaged, either directly
10 or indirectly, in the processing of food
11 wastes;

12 [~~(K)~~] (L) Any person who owns, controls, operates, or
13 manages any seawater air conditioning district
14 cooling project; provided that at least fifty per
15 cent of the energy required for the seawater air
16 conditioning district cooling system is provided
17 by a renewable energy resource, such as cold,
18 deep seawater;

19 [~~(L)~~] (M) Any person who owns, controls, operates, or
20 manages plants or facilities primarily used to



1 charge or discharge a vehicle battery that
2 provides power for vehicle propulsion;
3 ~~(M)~~ (N) Any person who:
4 (i) Owns, controls, operates, or manages a
5 renewable energy system that is located on a
6 customer's property; and
7 (ii) Provides, sells, or transmits the power
8 generated from that renewable energy system
9 to an electric utility or to the customer on
10 whose property the renewable energy system
11 is located; provided that, for purposes of
12 this subparagraph, a customer's property
13 shall include all contiguous property owned
14 or leased by the customer without regard to
15 interruptions in contiguity caused by
16 easements, public thoroughfares,
17 transportation rights-of-way, and utility
18 rights-of-way; and
19 ~~(N)~~ (O) Any person who owns, controls, operates, or
20 manages a renewable energy system that is located
21 on such person's property and provides, sells, or



S.B. NO. 1348

1 transmits the power generated from that renewable
2 energy system to an electric utility or to
3 lessees or tenants on the person's property where
4 the renewable energy system is located; provided
5 that:

6 (i) An interconnection, as defined in section
7 269-141, is maintained with an electric
8 public utility to preserve the lessees' or
9 tenants' ability to be served by an electric
10 utility;

11 (ii) Such person does not use an electric public
12 utility's transmission or distribution lines
13 to provide, sell, or transmit electricity to
14 lessees or tenants;

15 (iii) At the time that the lease agreement is
16 signed, the rate charged to the lessee or
17 tenant for the power generated by the
18 renewable energy system shall be no greater
19 than the effective rate charged per kilowatt
20 hour from the applicable electric utility



1 schedule filed with the public utilities
2 commission;

3 (iv) The rate schedule or formula shall be
4 established for the duration of the lease,
5 and the lease agreement entered into by the
6 lessee or tenant shall reflect such rate
7 schedule or formula;

8 (v) The lease agreement shall not abrogate any
9 terms or conditions of applicable tariffs
10 for termination of services for nonpayment
11 of electric utility services or rules
12 regarding health, safety, and welfare;

13 (vi) The lease agreement shall disclose: (1) the
14 rate schedule or formula for the duration of
15 the lease agreement; (2) that, at the time
16 that the lease agreement is signed, the rate
17 charged to the lessee or tenant for the
18 power generated by the renewable energy
19 system shall be no greater than the
20 effective rate charged per kilowatt hour
21 from the applicable electric utility



1 schedule filed with the public utilities
2 commission; (3) that the lease agreement
3 shall not abrogate any terms or conditions
4 of applicable tariffs for termination of
5 services for nonpayment of electric utility
6 services or rules regarding health, safety,
7 and welfare; and (4) whether the lease is
8 contingent upon the purchase of electricity
9 from the renewable energy system; provided
10 further that any disputes concerning the
11 requirements of this provision shall be
12 resolved pursuant to the provisions of the
13 lease agreement or chapter 521, if
14 applicable; and

15 (vii) Nothing in this section shall be construed
16 to permit wheeling.

17 If the application of this chapter is ordered by the
18 commission in any case provided in paragraph (2) (C) [~~7~~] or (D),
19 [~~(H), and (I),~~] the business of any public utility that presents
20 evidence of bona fide operation on the date of the commencement
21 of the proceedings resulting in the order shall be presumed to



1 be necessary to the public convenience and necessity, but any
2 certificate issued under this proviso shall nevertheless be
3 subject to terms and conditions as the public utilities
4 commission may prescribe, as provided in [~~sections~~] section 269-
5 16.9 [~~and 269-20~~]."

6 SECTION 3. Section 269-33, Hawaii Revised Statutes, is
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) There is established in the state treasury a public
9 utilities commission special fund to be administered by the
10 public utilities commission. The proceeds of the fund shall be
11 used by the public utilities commission and the division of
12 consumer advocacy of the department of commerce and consumer
13 affairs for all expenses incurred in the administration of
14 chapters 269, 271, [~~271G,~~] 269E, and 486J, and for costs
15 incurred by the department of commerce and consumer affairs to
16 fulfill the department's limited oversight and administrative
17 support functions; provided that the expenditures of the public
18 utilities commission shall be in accordance with legislative
19 appropriations. On a quarterly basis, an amount not exceeding
20 thirty per cent of the proceeds remaining in the fund after the
21 deduction for central service expenses, pursuant to section 36-



1 27, shall be allocated by the public utilities commission to the
2 division of consumer advocacy and deposited in the compliance
3 resolution fund established pursuant to section 26-9(o);
4 provided that all moneys allocated by the public utilities
5 commission from the fund to the division of consumer advocacy
6 shall be in accordance with legislative appropriations.

7 (b) All moneys appropriated to, received, and collected by
8 the public utilities commission that are not otherwise pledged,
9 obligated, or required by law to be placed in any other special
10 fund or expended for any other purpose shall be deposited into
11 the public utilities commission special fund including, but not
12 limited to, all moneys received and collected by the public
13 utilities commission pursuant to sections 92-21, 269-28, 269-30,
14 271-27, 271-36, [~~271G-19,~~] 269E-6, 269E-14, and 607-5."

15 SECTION 4. Section 271G-5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§271G-5 Definitions.** As used in this chapter:

18 "Certificate" means a certificate of public convenience and
19 necessity issued under this chapter to common carriers by water.

20 [~~1~~] "Chapter" means this Water Carrier Law.



1 ~~[-2]~~ "Commission" means the ~~[public utilities]~~ maritime
2 commission.

3 "Enforcement officer" means any person employed and
4 authorized by the commission to investigate any matter on behalf
5 of the commission.

6 ~~[-3]~~ "Person" or "persons" means any individual, firm,
7 copartnership, corporation, company, association, or joint stock
8 association; and includes any trustee, receiver, assignee, or
9 personal representative thereof.

10 ~~[-4] "Certificate" means a certificate of public~~
11 ~~convenience and necessity issued under this chapter to~~
12 ~~common carriers by water.]~~

13 "Rates" includes rates, fares, tolls, rentals, and charges
14 of whatever kind and nature unless the context indicates
15 otherwise.

16 "Related companies" means companies or persons that
17 directly, or indirectly through one or more intermediaries,
18 control, or are controlled by, or are under common control with,
19 the water carrier. The term "control", in reference to a
20 relationship between any person or persons and another person or



1 persons, includes actual as well as legal control, and indirect
2 as well as direct control.

3 [~~5~~] "Transportation of persons" includes every service
4 in connection with or incidental to the safety, comfort, or
5 convenience of persons transported and the receipt, carriage,
6 and delivery of these persons and their baggage.

7 [~~6~~] "Transportation of property" includes every service
8 in connection with or incidental to the transportation of
9 property, including in particular its receipt, and delivery,
10 carriage, preservation, and all incidental services affecting
11 these activities.

12 "Vessel" means any watercraft or other artificial
13 contrivance of whatever description which is used, or capable of
14 being used, or intended to be used, as a means of transportation
15 by water.

16 [~~7~~] "Water carrier" or "common carrier by water" means
17 any person who holds oneself out to the general public as
18 engaging in the transportation by water of passengers or
19 property for compensation within the State or between points
20 within the State.



S.B. NO. 1348

1 ~~[(8) "Vessel" means any watercraft or other artificial~~
2 ~~contrivance of whatever description which is used, or~~
3 ~~capable of being used, or intended to be used, as a~~
4 ~~means of transportation by water.~~

5 ~~(9) "Rates" includes rates, fares, tolls, rentals, and~~
6 ~~charges of whatever kind and nature unless the context~~
7 ~~indicates otherwise.~~

8 ~~(10) "Related companies" means companies or persons that~~
9 ~~directly, or indirectly through one or more~~
10 ~~intermediaries, control, or are controlled by, or are~~
11 ~~under common control with, the water carrier. The~~
12 ~~term "control", in reference to a relationship between~~
13 ~~any person or persons and another person or persons,~~
14 ~~includes actual as well as legal control, and indirect~~
15 ~~as well as direct control.~~

16 ~~(11) "Enforcement officer" means any person employed and~~
17 ~~authorized by the commission to investigate any matter on behalf~~
18 ~~of the commission.] "~~

19 SECTION 5. Section 271G-6, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§271G-6 Exemptions, generally. Notwithstanding any other
2 provisions of this chapter, its contents shall not apply to:

3 (1) Persons transporting their own property where the
4 transportation is in furtherance of a primary business
5 purpose or enterprise of that person except where the
6 transportation is undertaken by a water carrier to
7 evade the regulatory purposes of this chapter;

8 (2) Nonprofit agricultural cooperative associations to the
9 extent that they engage in the transportation of their
10 own property or the property of their members;

11 (3) Persons engaged in the transportation over water of
12 passengers or property for compensation, other than
13 transportation referred to in the definition of "water
14 carrier" or "common carrier by water" in section 271G-
15 5 under continuing contracts with one person or a
16 limited number of persons for the furnishing of
17 transportation services:

18 (A) Through the assignment of vessels for a
19 continuing period of time to the exclusive use of
20 each person served; or



S.B. NO. 1348

- 1 (B) Designed to meet the distinct need of each
2 individual customer;
- 3 (4) Persons transporting their own property or employees
4 where the transportation is in furtherance of a
5 business or enterprise of fishing or taking of fish
6 for profit or gain as a means of livelihood; [~~e~~]
- 7 (5) Persons engaged in the business of transporting
8 persons for sightseeing and other recreational
9 activities[~~r~~];
- 10 (6) A carrier by water to the extent that the carrier
11 enters into private contracts for towage, salvage,
12 hauling, or carriage between points within the State;
13 provided that the towing, salvage, hauling, or
14 carriage is not pursuant to either an established
15 schedule or an undertaking to perform carriage
16 services on behalf of the public generally; or
- 17 (7) A carrier by water, substantially engaged in
18 interstate or foreign commerce, that transports
19 passengers on luxury cruises between points within the
20 State or on luxury round-trip cruises returning to the
21 point of departure."



1 SECTION 6. Section 271G-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§271G-7 General duties and powers of the commission.** The
4 general duties and powers of the commission shall be:

5 (1) To regulate water carriers, and to that end the
6 commission shall have and utilize the investigative
7 powers set forth in [~~section 269-7~~] section 271G-C as
8 well as all of the other duties and powers
9 specifically enumerated in this chapter, and water
10 carriers shall be subject to the duties set forth in
11 [~~sections 269-8 and 269-9 as well as all of the duties~~
12 ~~specifically enumerated herein.~~] this chapter;

13 (2) To establish such just and reasonable classifications
14 of water carriers as the special nature of the
15 services performed by the carriers shall require, and
16 such just and reasonable rules, regulations, and
17 requirements, consistent with this chapter, to be
18 observed by the carriers so classified or grouped, as
19 the commission deems necessary or desirable in the
20 public interest. Such classifications, rules,
21 regulations, and requirements shall be adopted and



S.B. NO. 1348

1 promulgated pursuant to the provisions of chapter 91
2 and shall have the force and effect of law~~[=]~~;

3 (3) Upon complaint in writing to the commission by any
4 person or body politic, or upon its own initiative
5 without complaint, the commission may investigate
6 whether any water carrier has failed to comply with
7 any provision of this chapter, or with any rule or
8 order adopted or issued hereunder~~[=]~~; and

9 (4) The commission may investigate any person acting in
10 the capacity of or engaging in the business of a water
11 carrier within the State, without having a certificate
12 of public convenience and necessity or other authority
13 previously obtained under and in compliance with this
14 chapter or the rules promulgated under this chapter."

15 SECTION 7. Section 271G-7.5, Hawaii Revised Statutes, is
16 amended by amending subsections (a), (b), and (c) to read as
17 follows:

18 "(a) No later than July 1, 2011, the [~~public utilities~~]
19 commission shall accept from any person who submits a document
20 to the commission the original and one electronic copy of each
21 application, complaint, pleading, brief, or other document



1 required to be filed with the commission pursuant to this
2 chapter [~~and the consumer advocate shall accept service of one~~
3 ~~paper copy and one electronic copy of each application,~~
4 ~~complaint, pleading, brief, or other document filed with the~~
5 ~~commission)].~~

6 (b) The commission shall adopt rules pursuant to chapter
7 91 to effectuate the purposes of this section. Until the final
8 adoption by the commission of rules governing the electronic
9 filing of documents with the commission, the following
10 requirements shall apply to all documents submitted to the
11 commission pursuant to this section; provided that additional
12 requirements with regard to document format may be established
13 by the commission through written guidelines:

14 (1) Unless otherwise required by this chapter or the rules
15 or guidelines of the commission, each person who
16 submits or files an application, complaint, pleading,
17 brief, or other document shall submit to or file with
18 the commission an original and one electronic copy of
19 each document [~~and shall serve one paper copy and one~~
20 ~~electronic copy of each document on the consumer~~
21 ~~advocate];~~



- 1 (2) All paper documents submitted to or filed with the
2 commission shall be printed on one side of the page
3 only and, if practicable, in portrait orientation;
- 4 (3) Original paper documents submitted to or filed with
5 the commission shall not be stapled but shall be
6 clipped together or placed in a clearly marked three-
7 ring binder, as appropriate;
- 8 (4) All paper documents filed or submitted to the
9 commission shall include appropriately labeled
10 separator pages in addition to tabbed dividers, as
11 applicable;
- 12 (5) All confidential documents filed under confidential
13 seal shall be clearly designated in accordance with
14 the requirements of any applicable protective order,
15 and the sealed envelope in which the confidential
16 documents are enclosed shall clearly indicate the
17 appropriate docket number and subject;
- 18 (6) Electronic documents shall be submitted on a clearly
19 marked compact disk and shall be in portable document
20 format saved in separate files corresponding to the
21 original paper document submission; provided that



1 electronic documents submitted under confidential seal
2 shall be submitted on a separate compact disk, clearly
3 marked as confidential and indicating the appropriate
4 docket number and subject; and

5 (7) Electronic documents shall be named using the filing
6 party's name, docket number, date of filing, and name
7 of document as part of the document title.

8 Upon final adoption of rules pursuant to chapter 91, the
9 rules of the commission governing submission or filing of
10 electronic documents shall supersede the provisions of this
11 subsection.

12 (c) No later than July 1, 2013, the [~~public utilities~~]
13 commission shall accept any application, complaint, pleading,
14 brief, or other document required to be filed with the
15 commission pursuant to this chapter as either a paper document
16 or an electronic document."

17 SECTION 8. Section 271G-10, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) Except as otherwise provided in this section and in
21 sections 271G-6 and 271G-12, no water carrier shall engage in



1 operations between points within the State unless the carrier
2 holds a certificate of public convenience and necessity issued
3 by the [~~public utilities~~] commission authorizing the operation;
4 provided that no new application shall be required for any
5 common carrier by water that is the holder of a certificate of
6 public convenience and necessity issued by the [~~public~~
7 ~~utilities~~] commission."

8 2. By amending subsection (e) to read:

9 "(e) The commission shall not make a finding of public
10 convenience and necessity or issue an authorization, whether
11 interim, permanent, or otherwise, to operate as a water carrier
12 without the following specific findings supported by evidence in
13 the record:

14 (1) Existing water carrier services are inadequate to
15 presently service the public or meet demonstrated and
16 quantifiable future demands for service;

17 (2) The proposed service is designed for and necessary to
18 meet demonstrated and quantifiable unmet public needs
19 for present water carrier service or demonstrated and
20 quantifiable future demands for service;



- 1 (3) The proposed service will provide demonstrated and
2 quantifiable benefits to the general public, business
3 community, and the economy of all islands that are
4 entitled to notice under section 271G-23.5, including
5 demonstrated and quantifiable benefits with respect to
6 reliability, affordability, and security of the
7 service line; and
- 8 (4) The specific, identified benefits of the proposed
9 service outweigh its detrimental impact to the
10 public's interest in maintaining services, including:
- 11 (A) Economies of scale and scope of current water
12 carriers;
- 13 (B) Future capital costs of existing water carriers;
- 14 (C) Ability of existing water carriers to make
15 necessary capital and resource investments;
- 16 (D) The financial health, stability, and revenue
17 stream of existing water carriers; and
- 18 (E) The likelihood that existing levels of service
19 will be maintained after the enactment of the
20 proposed service[~~and~~



1 ~~(5) If the commission's finding of public convenience and~~
2 ~~necessity differs from the recommendation of the~~
3 ~~consumer advocate, specific findings to address each~~
4 ~~ground for objection articulated by the consumer~~
5 ~~advocate].~~

6 The commission shall not make a finding of public convenience
7 and necessity nor issue a certificate if the evidence in the
8 record indicates that the issuance of the certificate would
9 diminish an existing water carrier's ability to realize its
10 allowed rate of return or if the certificate would allow an
11 applicant to serve only high-margin or high-profit ports or
12 lines of service that are currently served by an existing
13 carrier."

14 SECTION 9. Section 269-20, Hawaii Revised Statutes, is
15 repealed.

16 ~~["§269-20 Certificates of public convenience and necessity~~
17 ~~for water carriers. (a) No person which holds itself out to~~
18 ~~the general public to engage in the transportation by water of~~
19 ~~passengers or property or any class or classes thereof for~~
20 ~~compensation, between points in the State of Hawaii, shall~~
21 ~~operate unless there is in force with respect to such carrier a~~



1 ~~certificate of public convenience and necessity issued by the~~
2 ~~commission authorizing such transportation; provided that this~~
3 ~~section shall not apply to any carrier by water to the extent~~
4 ~~that the carrier is excluded from the definition of a public~~
5 ~~utility under section [269-1(2)(E) and (F)].~~

6 ~~(b) Applications for certificates shall be made in writing~~
7 ~~under oath to the commission in such form as it requires.~~

8 ~~(c) A certificate shall be issued to any qualified~~
9 ~~applicant therefor, authorizing the whole or any part of the~~
10 ~~operations covered by the application, if it is found that the~~
11 ~~applicant is fit, willing, and able properly to perform the~~
12 ~~service proposed and to conform to the provisions of this~~
13 ~~chapter and the requirements, rules and regulations of the~~
14 ~~commission thereunder, and that the proposed service, to the~~
15 ~~extent authorized by the certificate, is or will be required by~~
16 ~~the present or future public convenience and necessity;~~
17 ~~otherwise such application shall be denied. Any certificate~~
18 ~~issued shall specify the service to be rendered and the routes~~
19 ~~and ports which the water carrier is to serve and there shall be~~
20 ~~attached to the exercise of the privileges granted by the~~
21 ~~certificate, at the time of issuance and from time to time~~



1 ~~thereafter, such reasonable conditions and limitations as the~~
2 ~~public convenience and necessity may require.~~

3 ~~(d) The commission may at any time suspend, change or~~
4 ~~revoke such certificate in the manner provided in section 271-~~
5 ~~19."]~~

6 SECTION 10. Section 269-26.6, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§269-26.6] Preferential water carrier service rates for~~
9 ~~agricultural activities. The public utilities commission may~~
10 ~~authorize preferential water carrier service rates by tariff for~~
11 ~~ratepayers that engage in agricultural activities. The~~
12 ~~application process for obtaining preferential water carrier~~
13 ~~service rates by tariff may be established by the public~~
14 ~~utilities commission."]~~

15 SECTION 11. Section 271G-3, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§271G-3 Administration; governing provisions of other~~
18 ~~acts. This chapter shall be administered by the public~~
19 ~~utilities commission of the State and the provisions of this~~
20 ~~chapter and of chapter 269, not inconsistent with this chapter,~~
21 ~~shall govern its administration; provided that sections 269-16~~



1 ~~to 269-28 shall not apply in any respect to the regulation of~~
2 ~~water carriers."]~~

3 SECTION 12. Sections 271G-8, 271G-9, 271G-12, 271G-13,
4 271G-14, 271G-15, 271G-17, 271G-17.5, 271G-18, 271G-20, 271G-22,
5 271G-23, 271G-24, 271G-25, and 286-271, Hawaii Revised Statutes,
6 are amended by substituting the phrase "maritime commission", or
7 similar term, wherever the phrase "public utilities commission",
8 or similar term, appears, as the context requires.

9 PART II

10 SECTION 13. Section 28-8.3, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) No department of the State other than the attorney
14 general may employ or retain any attorney, by contract or
15 otherwise, for the purpose of representing the State or the
16 department in any litigation, rendering legal counsel to the
17 department, or drafting legal documents for the department;
18 provided that the foregoing provision shall not apply to the
19 employment or retention of attorneys:



S.B. NO. 1348

- 1 (1) By the public utilities commission, the labor and
2 industrial relations appeals board, and the Hawaii
3 labor relations board;
- 4 (2) By any court or judicial or legislative office of the
5 State; provided that if the attorney general is
6 requested to provide representation to a court or
7 judicial office by the chief justice or the chief
8 justice's designee, or to a legislative office by the
9 speaker of the house of representatives and the
10 president of the senate jointly, and the attorney
11 general declines to provide such representation on the
12 grounds of conflict of interest, the attorney general
13 shall retain an attorney for the court, judicial, or
14 legislative office, subject to approval by the court,
15 judicial, or legislative office;
- 16 (3) By the legislative reference bureau;
- 17 (4) By any compilation commission that may be constituted
18 from time to time;
- 19 (5) By the real estate commission for any action involving
20 the real estate recovery fund;



- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the office of Hawaiian affairs;
- 4 (8) By the department of commerce and consumer affairs for
- 5 the enforcement of violations of chapters 480 and
- 6 485A;
- 7 (9) As grand jury counsel;
- 8 (10) By the Hawaii health systems corporation, or its
- 9 regional system boards, or any of their facilities;
- 10 (11) By the auditor;
- 11 (12) By the office of ombudsman;
- 12 (13) By the insurance division;
- 13 (14) By the University of Hawaii;
- 14 (15) By the Kahoolawe island reserve commission;
- 15 (16) By the division of consumer advocacy;
- 16 (17) By the office of elections;
- 17 (18) By the campaign spending commission;
- 18 (19) By the Hawaii tourism authority, as provided in
- 19 section 201B-2.5;
- 20 (20) By the division of financial institutions;
- 21 (21) By the office of information practices; [~~or~~]



S.B. NO. 1348

1 (22) By the maritime commission; or
2 [~~+22~~] (23) By a department, if the attorney general, for
3 reasons deemed by the attorney general to be good and
4 sufficient, declines to employ or retain an attorney
5 for a department; provided that the governor waives
6 the provision of this section."

7 2. By amending subsection (c) to read:

8 "(c) Every attorney employed by any department on a full-
9 time basis, except an attorney employed by the public utilities
10 commission, the labor and industrial relations appeals board,
11 the Hawaii labor relations board, the office of Hawaiian
12 affairs, the Hawaii health systems corporation or its regional
13 system boards, the department of commerce and consumer affairs
14 in prosecution of consumer complaints, insurance division, the
15 division of consumer advocacy, the University of Hawaii, the
16 Hawaii tourism authority as provided in section 201B-2.5, the
17 office of information practices, maritime commission, or as
18 grand jury counsel, shall be a deputy attorney general."

19 SECTION 14. Section 91-13.5, Hawaii Revised Statutes, is
20 amended by amending subsection (f) to read as follows:

21 "(f) This section shall not apply to:



- 1 (1) Any proceedings of the public utilities commission;
2 [~~or~~]
3 (2) Any proceedings of the maritime commission; or
4 [~~+~~2] (3) Any county or county agency that is exempted by
5 county ordinance from this section."

6 SECTION 15. Section 92-21, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§92-21 Copies of records; other costs and fees.** Except
9 as otherwise provided by law, a copy of any government record,
10 including any map, plan, diagram, photograph, photostat, or
11 geographic information system digital data file, which is open
12 to the inspection of the public, shall be furnished to any
13 person applying for the same by the public officer having charge
14 or control thereof upon the payment of the reasonable cost of
15 reproducing such copy. Except as provided in section 91-2.5,
16 the cost of reproducing any government record, except geographic
17 information system digital data, shall not be less than 5 cents
18 per page, sheet, or fraction thereof. The cost of reproducing
19 geographic information system digital data shall be in
20 accordance with rules adopted by the agency having charge or
21 control of that data. Such reproduction cost shall include but



1 shall not be limited to labor cost for search and actual time
2 for reproducing, material cost, including electricity cost,
3 equipment cost, including rental cost, cost for certification,
4 and other related costs. All fees shall be paid in by the
5 public officer receiving or collecting the same to the state
6 director of finance, the county director of finance, or to the
7 agency or department by which the officer is employed, as
8 government realizations; provided that [~~fees~~]:

- 9 (1) Fees collected by the public utilities commission
10 pursuant to this section shall be deposited in the
11 public utilities commission special fund established
12 under section 269-33[-]; and
13 (2) Fees collected by the maritime commission pursuant to
14 this section shall be deposited in the maritime
15 commission special fund established under section
16 271G-J."

17 SECTION 16. Section 235-21, Hawaii Revised Statutes, is
18 amended by amending the definition of "public utility" to read
19 as follows:



1 ""Public utility" has the meaning given that term in
2 section 269-1. "Public utility" includes water carriers
3 regulated under chapter 271G."

4 SECTION 17. Section 238-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "use" to read as follows:

6 ""Use" (and any nounal, verbal, adjectival, adverbial, and
7 other equivalent form of the term) herein used interchangeably
8 means any use, whether the use is of such nature as to cause the
9 property, services, or contracting to be appreciably consumed or
10 not, or the keeping of the property or services for such use or
11 for sale, the exercise of any right or power over tangible or
12 intangible personal property incident to the ownership of that
13 property, and shall include control over tangible or intangible
14 property by a seller who is licensed or who should be licensed
15 under chapter 237, who directs the importation of the property
16 into the State for sale and delivery to a purchaser in the
17 State, liability and free on board (FOB)' to the contrary
18 notwithstanding, regardless of where title passes, but the term
19 "use" shall not include:

20 (1) Temporary use of property, not of a perishable or
21 quickly consumable nature, where the property is



S.B. NO. 1348

1 imported into the State for temporary use (not sale)
2 therein by the person importing the same and is not
3 intended to be, and is not, kept permanently in the
4 State. For example, without limiting the generality
5 of the foregoing language:

6 (A) In the case of a contractor importing permanent
7 equipment for the performance of a construction
8 contract, with intent to remove, and who does
9 remove, the equipment out of the State upon
10 completing the contract;

11 (B) In the case of moving picture films imported for
12 use in theaters in the State with intent or under
13 contract to transport the same out of the State
14 after completion of such use; and

15 (C) In the case of a transient visitor importing an
16 automobile or other belongings into the State to
17 be used by the transient visitor while therein
18 but which are to be used and are removed upon the
19 transient visitor's departure from the State;

20 (2) Use by the taxpayer of property acquired by the
21 taxpayer solely by way of gift;



S.B. NO. 1348

- 1 (3) Use which is limited to the receipt of articles and
2 the return thereof, to the person from whom acquired,
3 immediately or within a reasonable time either after
4 temporary trial or without trial;
- 5 (4) Use of goods imported into the State by the owner of a
6 vessel or vessels engaged in interstate or foreign
7 commerce and held for and used only as ship stores for
8 the vessels;
- 9 (5) The use or keeping for use of household goods,
10 personal effects, and private automobiles imported
11 into the State for nonbusiness use by a person who:
12 (A) Acquired them in another state, territory,
13 district, or country;
- 14 (B) At the time of the acquisition was a bona fide
15 resident of another state, territory, district,
16 or country;
- 17 (C) Acquired the property for use outside the State;
18 and
- 19 (D) Made actual and substantial use thereof outside
20 this State;



1 provided that as to an article acquired less than
2 three months prior to the time of its importation into
3 the State it shall be presumed, until and unless
4 clearly proved to the contrary, that it was acquired
5 for use in the State and that its use outside the
6 State was not actual and substantial;

7 (6) The leasing or renting of any aircraft or the keeping
8 of any aircraft solely for leasing or renting to
9 lessees or renters using the aircraft for commercial
10 transportation of passengers and goods or the
11 acquisition or importation of any such aircraft or
12 aircraft engines by any lessee or renter engaged in
13 interstate air transportation. For purposes of this
14 paragraph, "leasing" includes all forms of lease,
15 regardless of whether the lease is an operating lease
16 or financing lease. The definition of "interstate air
17 transportation" is the same as in 49 U.S.C. 40102;

18 (7) The use of oceangoing vehicles for passenger or
19 passenger and goods transportation from one point to
20 another within the State as a [~~public utility~~] water
21 carrier as defined in [~~chapter 269,~~] section 271G-5;



1 (8) The use of material, parts, or tools imported or
2 purchased by a person licensed under chapter 237 which
3 are used for aircraft service and maintenance, or the
4 construction of an aircraft service and maintenance
5 facility as those terms are defined in section 237-
6 24.9;

7 (9) The use of services or contracting imported for resale
8 where the contracting or services are for resale,
9 consumption, or use outside the State pursuant to
10 section 237-29.53(a); and

11 (10) The use of property, services, or contracting imported
12 by foreign diplomats and consular officials who are
13 holding cards issued or authorized by the United
14 States Department of State granting them an exemption
15 from state taxes.

16 With regard to purchases made and distributed under the
17 authority of chapter 421, a cooperative association shall be
18 deemed the user thereof."

19 SECTION 18. Section 339K-2, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "[~~f~~]**S339K-2**[~~f~~] **Compact administrator.** The compact
2 administrator, acting jointly with like officers of other party
3 states, may promulgate rules and regulations to carry out more
4 effectively the terms of the compact. The compact administrator
5 shall cooperate with all departments, agencies, and officers of
6 and in the government of this State and its subdivisions in
7 facilitating the present administration of the compact or of any
8 supplementary agreement or agreements entered into by this State
9 thereunder. The compact administrator shall adopt the practices
10 and may impose the fees authorized under article III of the
11 compact, except that state and county law enforcement agencies
12 [~~and~~], the public utilities commission and the maritime
13 commission shall retain their enforcement and inspection
14 authority relating to carriers."

15 SECTION 19. Section 445-233, Hawaii Revised Statutes, is
16 amended by amending subsection (h) to read as follows:

17 "(h) Public utilities, as defined in section 269-1, and
18 water carriers, as defined in section 271G-5, shall be exempt
19 from the requirements of subsections (b) and (c). When the
20 seller is a public utility[~~r~~] or water carrier, the scrap dealer
21 shall not be required to obtain the statement required by



1 subsection (a), and the scrap dealer shall not be prohibited by
2 subsection (d) from purchasing the copper from the public
3 utility[-] or water carrier."

4 SECTION 20. Section 481-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§481-1 Unlawful practices.** It shall be unlawful for any
7 person, firm, or corporation, doing business in the State and
8 engaged in the production, manufacture, distribution, or sale of
9 any commodity, or product, or service, or output of a service
10 trade, of general use or consumption, or the product or service
11 of any public utility[-] or water carrier, with the intent to
12 destroy the competition of any regular established dealer in the
13 commodity, product, or service, or to prevent the competition of
14 any person, firm, private corporation, or municipal or other
15 public corporation, who or which in good faith, intends and
16 attempts to become such dealer, to discriminate between
17 different sections, communities, or cities or portions thereof,
18 or between different locations in such sections, communities,
19 cities, or portions thereof in this State, by selling or
20 furnishing the commodity, product, or services at a lower rate
21 in one section, community, or city, or any portion thereof, or



1 in one location in such section, community, or city or any
2 portion thereof, than in another after making allowance for
3 difference, if any, in the grade or quality, quantity and in the
4 actual cost of transportation from the point of production, if a
5 raw product or a commodity, or from the point of manufacture if
6 a manufactured product or commodity, and in the overhead cost.

7 Motion picture films when delivered under a lease to motion
8 picture houses shall not be deemed to be a commodity or product
9 of general use, or consumption, under this part. This part
10 shall not be construed to prohibit the meeting in good faith of
11 the rates of a competitor as herein defined, selling the same
12 article or product, or service or output of a service trade in
13 the same locality or trade area, or to prevent a reasonable
14 classification of service by public utilities for the purpose of
15 establishing rates.

16 The inhibition hereof against locality discrimination
17 embraces any scheme of special rebates, collateral contracts, or
18 any device of any nature whereby such discrimination is, in
19 substance or fact, effected in violation of the spirit and
20 intent of this part."



1 SECTION 21. Section 481-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§481-11 Remedies cumulative.** The remedies prescribed in
4 this part are cumulative and in addition to the remedies
5 prescribed in chapter 269 for discriminations by public
6 utilities[-] and chapter 271G for discriminations by water
7 carriers. If any conflict arises between this part and chapter
8 269, the latter prevails. If any conflict arises between this
9 part and chapter 271G, the latter prevails."

10 SECTION 22. Section 523A-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "utility" to read as
12 follows:

13 ""Utility" has the same meaning as the term "public
14 utility" under section 269-1. "Utility" includes the term water
15 carriers under section 271G-5."

16 PART III

17 SECTION 23. **Transfer of functions.** The functions of the
18 public utilities commission described in chapter 271G, Hawaii
19 Revised Statutes, shall be transferred to the maritime
20 commission.



1 SECTION 24. **Transfer of officers and employees.** All
2 rights, powers, functions, and duties of the public utilities
3 commission under chapter 271G, Hawaii Revised Statutes, are
4 transferred to the maritime commission.

5 All employees who occupy civil service positions and whose
6 functions are transferred to the maritime commission by this Act
7 shall retain their civil service status, whether permanent or
8 temporary. Employees shall be transferred without loss of
9 salary, seniority (except as prescribed by applicable collective
10 bargaining agreements), retention points, prior service credit,
11 any vacation and sick leave credits previously earned, and other
12 rights, benefits, and privileges, in accordance with state
13 personnel laws and this Act; provided that the employees possess
14 the minimum qualifications and public employment requirements
15 for the class or position to which transferred or appointed, as
16 applicable; provided further that subsequent changes in status
17 may be made pursuant to applicable civil service and
18 compensation laws.

19 Any employee who, prior to this Act, is exempt from civil
20 service and is transferred as a consequence of this Act may
21 retain the employee's exempt status, but shall not be appointed



1 to a civil service position as a consequence of this Act. An
2 exempt employee who is transferred by this Act shall not suffer
3 any loss of prior service credit, vacation or sick leave credits
4 previously earned, or other employee benefits or privileges as a
5 consequence of this Act; provided that the employees possess
6 legal and public employment requirements for the position to
7 which transferred or appointed, as applicable; provided further
8 that subsequent changes in status may be made pursuant to
9 applicable employment and compensation laws. The chairperson of
10 the maritime commission may prescribe the duties and
11 qualifications of these employees and fix their salaries without
12 regard to chapter 76, Hawaii Revised Statutes.

13 SECTION 25. **Transfer of records, equipment, and other**
14 **personal property.** All appropriations, records, equipment,
15 machines, files, supplies, contracts, books, papers, documents,
16 maps, and other personal property heretofore made, used,
17 acquired, or held by the public utilities commission relating to
18 the functions transferred to the maritime commission shall be
19 transferred with the functions to which they relate.

20 SECTION 26. **Transfer of functions; continuity of rules,**
21 **policies, and other materials.** All rules, policies, procedures,



1 guidelines, and other material adopted or developed by the
2 public utilities commission to implement provisions of the
3 Hawaii Revised Statutes that are made applicable to the maritime
4 commission by this Act, shall remain in full force and effect
5 until amended or repealed by the maritime commission pursuant to
6 chapter 91, Hawaii Revised Statutes.

7 In the interim, every reference to the public utilities
8 commission or the chairperson of the public utilities commission
9 in those rules, policies, procedures, guidelines, and other
10 material is amended to refer to the maritime commission or the
11 chairperson of the maritime commission, as appropriate.

12 SECTION 27. **Transfer of functions; effect on deeds,**
13 **permits, and other documents.** All deeds, leases, contracts,
14 loans, agreements, permits, or other documents executed or
15 entered into by or on behalf of the public utilities commission,
16 which are made applicable to the maritime commission by this
17 Act, shall remain in full force and effect.

18 Effective on the same day that legislation transferring the
19 functions of the public utilities commission to the maritime
20 commission is approved, every reference to the public utilities
21 commission or the chairperson of the public utilities commission



1 therein shall be construed as a reference to the maritime
2 commission or the chairperson of the maritime commission, as
3 appropriate.

4 PART IV

5 SECTION 28. There is appropriated out of the general
6 revenues of the State the sum of \$ or so much thereof
7 as may be necessary for fiscal year 2022-2023 to be deposited
8 into the maritime commission special fund.

9 SECTION 29. There is appropriated out of the maritime
10 commission special fund the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2022-2023 for the
12 purposes of this Act.

13 The sum appropriated shall be expended by the maritime
14 commission for the purposes of this Act.

15 PART V

16 SECTION 30. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 31. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



S.B. NO. 1348

1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 32. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 33. This Act shall take effect on July 1, 2022.

8

INTRODUCED BY:

Mike Gabbard



S.B. NO. 1348

Report Title:

Water Carriers; Maritime Commission; Establishment; Public Utilities Commission; Transfer of Functions; Maritime Commission Special Fund; Appropriation

Description:

Establishes the maritime commission to oversee the regulation of water carriers in the State. Transfers the oversight of water carriers by the public utilities commission to the maritime commission and makes associated conforming amendments. Establishes the maritime commission special fund. Makes an appropriation. Effective 7/1/2022.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

