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JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, April 5, 2023
10:15 a.m.
Conference Room 229

On the following measure:
H.B. 369, H.D. 1, RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Keohokalole and Members of the Committee:

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

The purpose of this bill is to exempt a public utility and water carrier from obtaining the required Public Utilities Commission (Commission) authorization when disposing of a fully depreciated asset or property with a zero net book value.

While the Department appreciates efforts for administrative efficiency, which may be the intent of this bill, the Department believes that the bill as written is contrary to the consumers' interests. If enacted, consumers may face higher than necessary rates and/or transactions could occur that are not in consumers' interests.

For instance, the proposed amendment would allow utilities and water carriers to dispose or transfer property or assets that may still serve the public interest and still has value. There are many instances where an asset may be fully depreciated but can still

be used by the regulated utility or water carrier. For example, the taxable depreciable life of an auto or truck is five years but the actual useful life of a vehicle is generally longer than five years. Allowing a regulated entity to dispose of such assets when its net book value is zero could mean that the regulated entity could then purchase a new vehicle even though it was not yet necessary to purchase a new vehicle. Such a practice would result in higher rates. Another example of how the proposed measure is contrary to consumers' interests is when the regulated entity may sell an asset that has a net book value of zero. As noted above, there may still be useful life in the asset and has market value greater than zero even though the net book value is zero. If the asset is sold at a profit without Commission approval and the gain on sale is not reflected as an offset to the regulated entity's costs, the profit on the asset – which has been paid for by consumers through Commission approved rates - will not accrue to the consumers' interests. A common issue related to this type of transaction is when a regulated entity transfers such an asset to an unregulated affiliate company at no cost even though the asset is still useful and allows the unregulated affiliate to be subsidized by regulated customers. Thus, while it might be assumed that allowing the proposed measure does not have an impact on consumers' interest, it would be incorrect to make such an assumption.

While the Department would prefer that the measure be held, if the Committee is inclined to pass this measure, the Department respectfully requests that an amendment to the proposed language include the addition of "and is no longer used or useful" to address the Department's concerns. So, the proposed 269-19 (a)(2), on page 1, lines 15-16, would read "The public utility is disposing a fully depreciated asset or property with a zero net book value and is no longer used or useful." and the proposed 271-G14 (b), on page 2, lines 17-19, would read, "...unless the water carrier is disposing a fully depreciated asset or property with a zero net book value and is no longer used or useful." This would prevent the regulated entity from disposing of assets or property that could still be used to serve customers or denying customers the possible benefit of any gain on sale from the disposition of an asset or property that has the net book value of zero. The

Testimony of DCCA
H.B. 369, H.D. 1
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Department notes that this requested amendment is consistent with the amendment made to the Senate version of this bill S.B. 476, S.D. 1.

Thank you for the opportunity to testify on this bill.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**HB 369, HD1
Relating to the Public Utilities Commission**

Wednesday, April 5, 2023
10:15 am

State Capitol, Conference Room 229 & Videoconference

James Abraham
Associate General Counsel, Legal Department
Hawaiian Electric

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is James Abraham and I am testifying on behalf of Hawaiian Electric **in support** of HB 369, HD1 and requests a suggested amendment.

This bill will allow public utilities to streamline the process of selling, donating, or otherwise disposing of property that is fully depreciated or has a zero net book value. Although these types of assets have fulfilled their usefulness with the utility, the utility may nevertheless be able to recover some value for the benefit of its customers or the community. However, current law requires utilities to go through the administrative process before the Public Utilities Commission (PUC) to obtain approval for each asset or property it seeks to dispose of or donate. As these assets often have minimal remaining value, the benefit of going through a PUC proceeding may be outweighed by the burden of the time and resources required. This bill will allow utilities to efficiently transfer, donate, or dispose of these assets and decrease the workload for the PUC and Division of Consumer Advocacy, which currently must spend resources reviewing these generally routine and non-controversial transactions.

Hawaiian Electric has been in discussion with the PUC on appropriate language that will achieve this bill's intent upon enactment. Hawaiian Electric respectfully

requests the Committee amend the language contained in subsection (a) of this bill starting on page 1, line 14 to read (revisions to HB 369, HD1 **highlighted** and **bolded**):

(1) The sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation is done in accordance with subsection (b); **[ex]**

(2) The public utility is disposing a fully depreciated asset or property with a zero net book value **to an unaffiliated entity, and the disposal results in a zero or net reduction to the public utility's rate base[-]; or**

(3) The public utility is donating a fully depreciated asset or property with a zero net book value to a charitable or nonprofit organization.

Accordingly, Hawaiian Electric supports HB 369, HD1 with the suggested amendment. Thank you for this opportunity to testify.

TESTIMONY OF
LEODOLOFF R. ASUNCION, JR.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

April 5, 2023
10:15 a.m.

Chair Keahokalole, Vice Chair Fukunaga, and Members of the Committee

MEASURE: H.B. No. 369, HD1

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION.

DESCRIPTION: Exempts a public utility and water carrier from obtaining the required public utilities commission authorization when disposing of a fully depreciated asset or property with a zero net book value. Effective 6/30/3000. (HD1)

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission appreciates the intent of this measure to promote efficiency by exempting a public utility from the required Commission authorization when disposing of a fully depreciated asset or property with a zero net book value.

The Commission notes that when a public utility disposes of any asset or property, the public utility may potentially realize a gain if it were to sell that asset or property to another entity. In such a situation, the Commission would ordinarily determine how much of that potential gain, if any, must be shared with customers..

However, the Commission, believes that the existing language could be streamlined to improve regulatory efficiency for its utilities. The Commission has collaborated with stakeholders to identify certain amendments to the current statutory language that both achieves this regulatory efficiency while retaining the Commission’s ability to review the sale of used and useful utility property.

The Commission offers the following amendments to Sections 1 and 2 of this bill to clarify in what cases a public utility or water carrier does not need to request Commission approval for the disposal or donation of a fully depreciated asset or property.

SECTION 1. Section 269-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do, unless:

(1) The sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation is done in accordance with subsection (b); or

(2) The public utility is disposing a fully depreciated asset or property with a zero net book value to an unaffiliated entity, and the disposal results in a zero or net reduction to the public utility's rate base; or

(3) The public utility is donating a fully depreciated asset or property with zero net book value to a charitable or nonprofit organization."

SECTION 2. Section 271G-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, unless the water carrier is either disposing a fully depreciated asset or property with a zero net book value to an unaffiliated entity, and the disposal results in a zero or net reduction to the water carrier's rate base, or the water carrier is donating a fully depreciated asset or property with zero net book value to a charitable or nonprofit organization. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or

consolidation that requires authorization from the public utilities commission under this subsection and is made other than in accordance with an order of the commission authorizing the same shall be void."

Thank you for the opportunity to testify on this measure.



To: The Honorable Chair Jarrett Keohokalole, the Honorable Vice Chair Carol Fukunaga, and Members of the Committee on Commerce and Consumer Protection

From: Climate Protectors Hawai'i (by Ted Bohlen)

Re: **Hearing HB369 HD1 RELATING TO THE PUBLIC UTILITIES COMMISSION**

Hearing: Wednesday April 5, 2023, 10:15 a.m., room 229

Aloha Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and Members of the Committee on Commerce and Consumer Protection

The Climate Protectors Hawai'i seeks to educate and engage the local community in climate change action, to help Hawai'i show the world the way back to a safe and stable climate.

The Climate Protectors Hawai'i respectfully OPPOSES SB369 HD1!

In my legal career, I worked as an Assistant Attorney General and Consumer Advocate in Hawai'i and another state for over 13 years. Based on my experience, **allowing utilities to sell assets that are fully depreciated or have a zero book value for accounting purposes, without authorization by the Public Utilities Commission (PUC), is very unfair to consumers, who have supported the asset in rates throughout its service life. Consumers, who have paid for the asset, should benefit from any potential windfall gained from the sale of a fully depreciated or zero net book value asset that still has value,** especially if it is transferred to a non-utility affiliate. The PUC and Consumer Advocate should participate in

deciding how much of the windfall should go to consumers, as they ordinarily do today.

The PUC and the department of the Consumer Advocate did not request or support this bill. The Consumer Advocate asked that the bill be held.

This bill is unnecessary.

Please hold or defer this anti-consumer bill!

Mahalo!

Climate Protectors Hawai'i (by Ted Bohlen)



WRITTEN TESTIMONY ONLY

April 5, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

RE: House Bill 369, H.D. 1 – RELATING TO THE PUBLIC UTILITIES COMMISSION
Hearing date: April 5, 2023, 10:15 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to submit testimony on behalf of Young Brothers, LLC (“YB”) offering **STRONG SUPPORT** for House Bill 369, H.D. 1 – Relating to the Public Utilities Commission.

YB is a common carrier by water, transporting property by tug and barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. YB is currently the only water common carrier authorized to transport property under Chapter 271G, Hawaii Revised Statutes (“HRS”) (i.e., the Hawaii Water Carrier Act), subject to the regulatory authority of the Public Utilities Commission of the State of Hawaii (“PUC”). Since 1900, customers across Hawaii have relied on YB’s frequent, regular, and universal sailings to serve as the bridge that connects all communities in this island-state.

This measure would, in part, amend Section 271G-14, HRS to exempt water carriers from obtaining PUC authorization when disposing of a fully depreciated asset or property with a zero net book value.

YB collaborated with the PUC to identify certain amendments to the current statutory language that both improves regulatory efficiency while retaining a reasonable level of authority for the PUC to review the disposal of water carrier property. These collaborative amendments, as they pertain to 271G-14, HRS, are reflected below:

SECTION 2. Section 271G-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor

shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, unless the water carrier is either disposing a fully depreciated asset or property with a zero net book value to an unaffiliated entity, and the disposal results in a zero or net reduction to the water carrier's rate base, or the water carrier is donating a fully depreciated asset or property with zero net book value to a charitable or nonprofit organization. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation that requires authorization from the public utilities commission under this subsection and is made other than in accordance with an order of the commission authorizing the same shall be void."

For the reasons stated above, YB offers **STRONG SUPPORT** for this measure. Thank you for your service to the State of Hawaii and for the opportunity to testify on this measure.

Sincerely,

Kris Nakagawa
Vice President, External and Legal Affairs

LATE

Testimony of Matson Navigation Company, Inc.
Support of HB369, HD1
Before the Committee on Commerce and Consumer Protection
April 5, 2023

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Matson Navigation Company, Inc. (Matson) supports HB369, HD1, which amends section 271G-14, Hawaii Revised Statutes, to exempt water carriers from obtaining authorization from the Public Utilities Commission when disposing of a fully depreciated asset or property with a zero net book value.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support safe, dependable, and efficient cargo transportation and logistics to timely service our residents and businesses who depend on these goods, vehicles, materials, and fuel on all major islands.

Matson supports the amendments offered in Young Brothers' testimony. We understand that Young Brothers and the Public Utilities Commission have collaborated on amendments to the current statutory language. These amendments will improve regulatory efficiency while retaining a reasonable level of authority for the Commission to review the disposal of water carrier property.

Thank you for considering our testimony.

Testimony of the Hawaii Harbor Users Group
Support of HB369, HD1
Before the Committee on Commerce and Consumer Protection
April 5, 2023

LATE

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users statewide. HHUG supports HB369, HD1, which amends section 271G-14, Hawaii Revised Statutes, to exempt water carriers from obtaining authorization from the Public Utilities Commission when disposing of a fully depreciated asset or property with a zero net book value.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support safe, dependable, and efficient cargo transportation and logistics to timely service our residents and businesses who depend on these goods, vehicles, materials, and fuel on all major islands.

HHUG supports the amendments offered by Young Brothers. We understand that Young Brothers and the Public Utilities Commission have collaborated on amendments to the current statutory language. These amendments will improve regulatory efficiency while retaining a reasonable level of authority for the Commission to review the disposal of water carrier property.

Thank you for considering our testimony.