

A Bill for an Act Relating to Inter-Island Transportation System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 271G-17, Hawaii Revised Statutes, is amended to read:

“**Sec. 271G-17 Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a) of this section; provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a) of this section. The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation, or practice. From the date of ordering a hearing to investigate the

lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings."

SECTION 2. Section 271G-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any water carrier, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, filed tariff or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100, nor more than \$5,000 for each offense, and, in the case of a continuing violation, not to exceed \$5,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing reasonably describing the violation and advising that the penalty is due."

SECTION 3. Section 271G-14, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 271G-14 Transfer of certificates of public convenience and necessity, and carrier property. (a) For the purpose of the administration and application of subsections (a) and (b), the term "carrier" includes any water carrier subject to this chapter, or any carrier subject to the act of any other state or any act of the Congress of the United States under which interstate or foreign commerce by land, sea, or air, is regulated.

(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, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same is void.

(c) No water carrier shall purchase or acquire, take or hold, any part of the capital stock of any other water carrier organized or existing under or by virtue of the laws of the State, without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of any of the provisions of this section is void and of no effect, and no transfer shall be made on the books of any water carrier. Nothing herein shall prevent the holding of stock heretofore lawfully acquired.

(d) Whenever a transaction is proposed under subsection (b) or (c) of this section, the water carrier or water carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon the application with or without first holding a public hearing; provided, that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more water carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more water carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred twenty days or for such additional period as the determination of an application may require, of the operation of the water carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to such water carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.”

SECTION 4. Section 271G-23, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 271G-23 Hearings. (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any water carrier, including any rule, regulation, rate, or charge, heretofore

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established or fixed by or for any water carrier, in violation or claimed to be in violation, of any law or of any order or rule of the commission.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.