

A Bill for an Act Relating to Water Carriers.

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

SECTION 1. The legislature finds that the State's water cargo transportation industry is critical to the economic health of its island communities. In recognition of the significance of a healthy, efficient, and accessible water transportation system, the legislature passed the Hawaii Water Carrier Act, codified as chapter 271G, Hawaii Revised Statutes, to subject water carriers to the regulatory oversight of the public utilities commission.

The regulatory framework created by chapter 271G, Hawaii Revised Statutes, includes a requirement that a water carrier apply for and receive a certificate of public convenience and necessity from the public utilities commission before engaging in operations within the State. Issuance of a certificate of public convenience and necessity requires findings that the applicant is willing and able to properly perform the proposed service and conform to the applicable laws and rules, and that the proposed service is currently required for the convenience and necessity of the public or that it will be in the future.

Experience has shown that efficient, reliable, frequent, and universal water carrier service depends on economies of scale and scope, as well as the substantial investment of capital and other resources. A successful regulatory regime must take into account and accommodate these realities. In reviewing applications to offer new services within the existing regulatory environment, the public utilities commission must ensure that the entry of new services and service providers does not erode the underpinnings of the regulatory framework or threaten future investment in service and infrastructure in a manner that risks the loss of existing services. To this end, a mere recitation of the purported benefits of market competition is not, without specific supporting facts on the record, sufficient to support a finding of present or future public convenience and necessity.

The legislature finds that applications for entry into the regulated water carrier market require in-depth analysis of specific issues of public convenience and necessity to ensure that successful applications serve the public interest and protect communities from the risk of harm.

Accordingly, the purpose of this Act is to clarify the legislative intent that underlies the existing requirement for a finding of present or future public convenience and necessity for the issuance of a certificate of public convenience and necessity.

SECTION 2. Chapter 271G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§271G- Notice of hearing required.** (a) Whenever the commission conducts a public hearing on an application for a certificate pursuant to section 271G-10, the commission shall provide reasonable notice in writing to the applicant for a certificate and to the public on each island that will be affected by the proposed service of the fact of the public hearing and the matter to be considered. Notice pursuant to this section shall be provided at least thirty days before the date fixed by the commission for the public hearing.

(b) Notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and the proposed effective date. Notice under this section shall be effective upon compliance with subsection (c); provided that the commission shall retain and make available for public

inspection copies of all notices and related documents issued pursuant to this section.

(c) Any public hearing held pursuant to section 271G-10(c) shall be a noticed public hearing or hearings on the island or islands to which the water carrier proposes to provide services or which will be affected by the proposed service. Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks on each island in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service. The first notice shall be given not less than twenty-one days before the public hearing and the last notice shall be given not more than two days before the public hearing."

SECTION 3. Section 271G-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§271G-10] Applications for certificates of public convenience and necessity.** (a) Except as otherwise provided in this section and in sections 271G-6 and 271G-12, no water carrier shall engage in operations between points within the State~~;~~ unless ~~[such]~~ the carrier holds a certificate of public convenience and necessity issued by the public utilities commission authorizing ~~[such]~~ the operation~~;~~; provided that no new application shall be required for any common carrier by water ~~[who]~~ that is the holder of a certificate of public convenience and necessity issued by the public utilities commission.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, ~~[and shall]~~ be presented in ~~[such]~~ a form ~~[and]~~, contain ~~[such]~~ the information, and be accompanied by proof of service upon interested parties as the commission shall, by ~~[regulation,]~~ rule, require.

(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures under section 271G-

~~[(e) A certificate shall be issued]~~ (d) The commission shall issue a certificate to any qualified applicant [therefor], authorizing the whole or any part of the operations [covered by] proposed in the application [if it is found that the] only if the commission finds that:

- (1) The applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements~~;~~ and rules~~;~~ and regulations] of the commission [thereunder, and that the]; and
- (2) The proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity~~;~~ otherwise the application shall be denied].

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

- (1) Existing water carrier services are inadequate to presently service the public or meet demonstrated and quantifiable future demands for service;
- (2) The proposed service is designed for and necessary to meet demonstrated and quantifiable unmet public needs for present water carrier service or demonstrated and quantifiable future demands for service;

- (3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G-, including demonstrated and quantifiable benefits with respect to reliability, affordability, and security of the service line;
- (4) The specific, identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including:
  - (A) Economies of scale and scope of current water carriers;
  - (B) Future capital costs of existing water carriers;
  - (C) Ability of existing water carriers to make necessary capital and resource investments;
  - (D) The financial health, stability, and revenue stream of existing water carriers; and
  - (E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and
- (5) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each ground for objection articulated by the consumer advocate.

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

[(d)] (f) Any water carrier transporting passengers under [any-such] a certificate issued pursuant to this chapter may occasionally deviate from the route over which it is authorized to operate under the certificate [under-such] pursuant to the rules [and regulations as the] of the commission [may prescribe].

(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation; provided that an emergency situation shall mean a state-declared emergency including disaster relief pursuant to chapter 127 or a civil defense emergency pursuant to chapter 128. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state-declared emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted under this subsection beyond the expiration of the state-declared emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter.

(h) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted under this subsection shall include a short description of the document to which the link refers, shall be active within twenty-four hours of the filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act shall take effect on July 1, 2011.  
(Approved July 11, 2011.)

**Note**

1. Edited pursuant to HRS §23G-16.5.