
A BILL FOR AN ACT

RELATING TO WATER CARRIERS.

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

1 SECTION 1. The legislature finds that the State's water
2 cargo transportation industry is critical to the economic health
3 of its island communities. In recognition of the significance
4 of a healthy, efficient, and accessible water transportation
5 system, the legislature passed the Hawaii water carrier act,
6 codified as chapter 271G, Hawaii Revised Statutes, to subject
7 water carriers to the regulatory oversight of the public
8 utilities commission. The regulatory framework created by
9 chapter 271G, Hawaii Revised Statutes, includes a requirement
10 that a water carrier apply for and receive a certificate of
11 public convenience and necessity from the public utilities
12 commission before engaging in operations within the State.
13 Issuance of a certificate of public convenience and necessity
14 requires findings that the applicant is willing and able to
15 properly perform the proposed service and conform to the
16 applicable laws and rules and that the proposed service is
17 currently required for the convenience and necessity of the
18 public or that it will be in the future.



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

16 The legislature finds that applications for entry into the
17 regulated water carrier market require in-depth analysis of
18 specific issues of public convenience and necessity to ensure
19 that successful applications do, in fact, serve the public
20 interest and protect communities from the risk of harm.
21 Accordingly, the purpose of this Act is to clarify the
22 legislative intent that underlies the existing requirement for a



1 finding of present or future public convenience and necessity
2 for the issuance of a certificate of public convenience and
3 necessity.

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

7 "§271G- Notice of hearing required. (a) Whenever the
8 commission conducts a public hearing on an application for a
9 certificate pursuant to section 271G-10, the commission shall
10 provide reasonable notice in writing to the applicant for a
11 certificate and to the public on each island that will be
12 affected by the proposed service of the fact of the public
13 hearing and the matter to be considered. Notice pursuant to
14 this section shall be provided at least thirty days before the
15 date fixed by the commission for the public hearing.

16 (b) Notice provided pursuant to this section shall plainly
17 state the proposed operations, routes, and services of the
18 applicant and their proposed effective date. Notice under this
19 section shall be effective upon compliance with subsection (c);
20 provided that the commission shall retain and make available for
21 public inspection copies of all notices and related documents
22 issued pursuant to this section.



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

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

15 "[+]§271G-10[+] **Applications for certificates of public**
16 **convenience and necessity.** (a) Except as otherwise provided in
17 this section and in sections 271G-6 and 271G-12, no water
18 carrier shall engage in operations between points within the
19 State[7] unless [such] the carrier holds a certificate of public
20 convenience and necessity issued by the public utilities
21 commission authorizing [such] the operation[7]; provided that no
22 new application shall be required for any common carrier by



1 water who is the holder of a certificate of public convenience
2 and necessity issued by the public utilities commission.

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

9 (c) The commission shall not approve an application for a
10 certificate or otherwise grant authorization pursuant to an
11 application to operate as a water carrier under this chapter
12 until the commission has given notice and held public hearings
13 conducted in accordance with the procedures outlined in section
14 271G- .

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

20 (1) The applicant is fit, willing, and able properly to
21 perform the service proposed and to conform to this



1 chapter and the requirements, rules, and regulations
2 of the commission [~~thereunder,~~]; and [~~that the~~]

3 (2) The proposed service, to the extent to be authorized
4 by the certificate, is or will be required by the
5 present or future public convenience and necessity[~~+~~
6 ~~otherwise the application shall be denied].~~

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

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

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

19 (3) The proposed service will provide demonstrated and
20 quantifiable benefits to the general public, business
21 community, and the economy of all islands that are
22 entitled to notice under section 271G- , including



1 demonstrated and quantifiable benefits with respect to
2 reliability, affordability, and security of the
3 service line;

4 (4) The specific, identified benefits of the proposed
5 service outweigh its detrimental impact to the
6 public's interest in maintaining services, including
7 but not limited to:

8 (A) Economies of scale and scope of current water
9 carriers;

10 (B) Future capital costs of existing water carriers;

11 (C) Ability of existing water carriers to make
12 necessary capital and resource investments;

13 (D) The financial health, stability, and revenue
14 stream of existing water carriers; and

15 (E) The likelihood that existing levels of service
16 will be maintained after the enactment of the
17 proposed service; and

18 (5) If the commission's finding of public convenience and
19 necessity differs from the recommendation of the
20 consumer advocate, specific findings to address each
21 grounds for objection articulated by the consumer
22 advocate.



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

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

15 (g) The commission shall not issue any certificate that is
16 designated as interim or temporary or that otherwise does not
17 conform to the requirements of this chapter except in response
18 to an emergency situation; provided that an emergency situation
19 shall mean a state-declared emergency including disaster relief
20 pursuant to chapter 127 or a civil defense emergency pursuant to
21 chapter 128. Any certificate issued pursuant to this subsection
22 shall expire upon the expiration of the state-declared emergency



1 or an earlier date determined by the commission in response to
2 prevailing conditions. An extension of a certificate granted
3 pursuant to this subsection beyond the expiration of the state
4 declared emergency or date determined by the commission shall be
5 granted only subject to the notice, hearing, and findings
6 requirements of this chapter.

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

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2011.

21



Report Title:

Public Utilities Commission; Water Carriers

Description:

Requires public hearings subject to specified notice requirements before PUC approval of a water carrier's certificate of public convenience and necessity (CPCN); specifies required findings for a CPCN; requires posting of documents on PUC's website. (SD2)

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