
A BILL FOR AN ACT

RELATING TO CARGO 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 two new sections to be appropriately
4 designated and to read as follows:

5 "§271G- Appointment of receiver for water carrier. (a)

6 Whenever the commission finds that a regulated water carrier is
7 failing or that there is an imminent threat of the utility
8 failing to provide adequate and reasonable service to its
9 customers, and that, as a result, there exists a serious and
10 imminent threat to health, safety, and welfare, the commission
11 may appoint a receiver to take any temporary action necessary to
12 ensure continued service or to bring the service up to
13 appropriate regulatory standards. The commission may also
14 appoint a receiver to take any temporary action necessary to
15 ensure continued service if, after notice and hearing, the
16 commission finds that any water carrier regulated under this
17 chapter consistently fails to provide adequate and reasonable



1 service. In carrying out its responsibilities, the receiver and
2 any additional outside legal counsel, consultants, or staff the
3 commission or receiver may deem necessary under the
4 circumstances shall have the authority to gain access to all of
5 the water carrier's assets and records and to manage those
6 assets in a manner that will restore or maintain an acceptable
7 level of service to customers. The receiver shall be authorized
8 to expend existing water carrier revenues for labor and
9 materials and to commit additional resources as are essential to
10 providing an acceptable level of service. These expenditures
11 shall be funded in accordance with generally accepted ratemaking
12 practices. Any costs incurred by the commission, its staff, or
13 the appointed receiver under this section shall be the
14 responsibility of the water carrier in receivership or its
15 ratepayers. Control of and responsibility for the water carrier
16 shall remain with the receiver until the water carrier can be
17 returned to the original owners, transferred to new owners, or
18 liquidated as the commission determines to be in the public
19 interest.

20 (b) If the commission determines that the water carrier's
21 action or inaction that caused it to be placed under the control



1 and responsibility of a receiver under this section was due to
2 intentional misappropriation or wrongful diversion of the assets
3 or income of the water carrier or to other wilful misconduct by
4 any director, officer, or manager of the utility, the commission
5 may require that director, officer, or manager to make
6 restitution to the utility.

7 §271G- Waivers. (a) Notwithstanding any provision of
8 this chapter to the contrary, the commission, upon its own
9 motion or upon the application of a water carrier or the
10 consumer advocate, and upon notice and hearing, may exempt the
11 water carrier from any or all of the provisions of this chapter,
12 upon a determination that the exemption is in the public
13 interest. In determining whether an exemption is in the public
14 interest, the commission shall consider whether the exemption
15 will promote safe, adequate, economical, and efficient service
16 among carriers; encourage the establishment and maintenance of
17 reasonable rates and charges for transportation and related
18 accessorial service without unjust discrimination, undue
19 preference or advantage, or unfair or destructive competitive
20 practices; and promote the development, coordination, and
21 preservation of a sound transportation system by water.



1 (b) The commission may condition or limit any exemption as
2 the commission deems necessary in the public interest. The
3 commission may provide a trial period for any exemption and may
4 terminate the exemption or continue it for such period and under
5 such conditions and limitations as the commission deems
6 appropriate.

7 (c) Upon the petition of the water carrier or the consumer
8 advocate, or upon its own motion, the commission may rescind any
9 exemption or waiver granted under this section if, after notice
10 and hearing, it finds that:

11 (1) The conditions prompting the granting of the exemption
12 or waiver no longer apply;

13 (2) The exemption or waiver is no longer in the public
14 interest; or

15 (3) The water carrier has failed to comply with one or
16 more of the conditions of the exemption or applicable
17 statutory or regulatory requirements."

18 SECTION 2. Section 271G-10, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§271G-10 Applications for certificates of public**
21 **convenience and necessity.** (a) Except as otherwise provided in



1 this section and in sections 271G-6 and 271G-12, no water
2 carrier shall engage in operations between points within the
3 State unless the carrier holds a certificate of public
4 convenience and necessity issued by the public utilities
5 commission authorizing the operation; provided that no new
6 application shall be required for any common carrier by water
7 that is the holder of a certificate of public convenience and
8 necessity issued by the public utilities commission.

9 (b) Applications for certificates shall be made in writing
10 to the commission, be verified under oath, be presented in a
11 form, contain the information, and be accompanied by proof of
12 service upon interested parties as the commission shall, by
13 rule, require.

14 (c) The commission shall not approve an application for a
15 certificate or otherwise grant authorization pursuant to an
16 application to operate as a water carrier under this chapter
17 until the commission has given notice and held public hearings
18 conducted in accordance with the procedures under section
19 271G-23.5.

20 (d) The commission shall issue a certificate to any
21 qualified applicant, authorizing the whole or any part of the



1 operations proposed in the application only if the commission
2 finds that:

3 (1) The applicant is fit, willing, and able [~~properly~~] to
4 properly perform the service proposed and to conform
5 to this chapter and the requirements and rules of the
6 commission; and

7 (2) The proposed service, to the extent to be authorized
8 by the certificate, is or will be required by the
9 present or future public convenience and necessity.

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

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

18 ~~(2) The proposed service is designed for and necessary to
19 meet demonstrated and quantifiable unmet public needs
20 for present water carrier service or demonstrated and
21 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 271C-23.5, including~~
- 5 ~~demonstrated and quantifiable benefits with respect to~~
- 6 ~~reliability, affordability, and security of the~~
- 7 ~~service line;~~

- 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 ~~(f)]~~ (e) Any water carrier transporting passengers under a
15 certificate issued pursuant to this chapter may occasionally
16 deviate from the route over which it is authorized to operate
17 under the certificate pursuant to the rules of the commission.

18 ~~[(g) The commission shall not issue any certificate that~~
19 ~~is designated as interim or temporary or that otherwise does not~~
20 ~~conform to the requirements of this chapter except in response~~
21 ~~to an emergency situation, provided that an emergency situation~~



1 ~~shall mean a state of emergency or local state of emergency~~
2 ~~pursuant to chapter 127A. Any certificate issued pursuant to~~
3 ~~this subsection shall expire upon the expiration of the state of~~
4 ~~emergency or local state of emergency or an earlier date~~
5 ~~determined by the commission in response to prevailing~~
6 ~~conditions. An extension of a certificate granted under this~~
7 ~~subsection beyond the expiration of the state of emergency or~~
8 ~~local state of emergency or date determined by the commission~~
9 ~~shall be granted only subject to the notice, hearing, and~~
10 ~~findings requirements of this chapter.~~

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



1 SECTION 3. Section 271G-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+] §271G-12 [±]~~ **Temporary authority.** To enable the
4 provision of service for which there is an immediate and urgent
5 need to a point or points or within ~~[a territory]~~ the State
6 having no carrier service capable of meeting the need, the
7 public utilities commission ~~[may]~~, in its discretion and without
8 hearings or other proceedings, may grant temporary authority for
9 such service by a water carrier. The temporary authority,
10 unless suspended or revoked for good cause, shall be valid for
11 such time as the commission shall specify, but for no more than
12 a period of one hundred ~~[twenty]~~ eighty days ~~[for any one~~
13 ~~immediate and urgent need.]~~ unless a longer period is determined
14 to be necessary and appropriate in the discretion of the public
15 utilities commission for good cause. The water carrier shall
16 apply for a certificate of public convenience and necessity
17 within the specified period in order to provide service beyond
18 the specified period."

19 PART II

20 SECTION 4. The legislature finds that the covid-19
21 pandemic is causing a significant decrease in interisland cargo



1 volumes that has put financial stress on all forms of
2 interisland transportation of goods and property. The
3 legislature finds that for counties with populations of less
4 than five hundred thousand people, interisland cargo
5 transportation is a "life-line" for the residents and business
6 in those counties. The legislature further finds that an
7 interisland tug and barge service is essential to the State's
8 economic recovery from the covid-19 pandemic's deleterious
9 statewide economic effects. The legislature finds that is in
10 the best interest of the State to provide financial assistance
11 to any interisland water carrier of property holding a
12 Certificate of Public Convenience and Necessity (CPCN) pursuant
13 to Chapter 271G, Hawaii Revised Statutes, that has suffered
14 significant financial harm due to the economic effects of the
15 covid-19 pandemic.

16 Accordingly, the purpose of this part is to:

17 (1) Authorize the department of transportation to provide
18 subsidies to cargo carriers to offset the costs
19 incurred by the cargo carriers as a result of
20 providing cargo carrier services to ports serving



1 counties within the State having a population of less
2 than five hundred thousand,

3 (2) Address the impacts of the covid-19 pandemic, and

4 (3) Ensure the continued operations of an interisland tug
5 and barge service to advance the State's economic
6 recovery from the covid-19 pandemic's statewide
7 economic effects.

8 The further purpose of this part is to ensure that any
9 funds the legislature appropriates as financial assistance to
10 any interisland water carrier of property holding a CPCN that
11 has suffered significant financial harm due to the economic
12 effects of the covid-19 pandemic are used by the water carrier
13 for operating expenses, not for payments to any parent company
14 or other affiliates of the same parent company, executive
15 bonuses, profits for the water carrier to which assistance is
16 being provided, or profits for any affiliated business of the
17 water carrier, and to require that certain operations continue
18 for ports serving counties within the State having a population
19 of less than five hundred thousand people.

20 SECTION 5. The department of transportation is authorized
21 to enter into a contract by direct negotiation with an



1 interisland water carrier of property holding a certificate of
2 public convenience and necessity ("certificate") as defined in
3 Chapter 271G, Hawaii Revised Statutes.

4 (1) Any funds provided by the State of Hawaii, whether as
5 a subsidy, forgivable loan, or loan, to any water
6 carrier of property holding a certificate pursuant to
7 chapter 271G, Hawaii Revised Statutes, shall include
8 in any negotiated contract, at a minimum, the
9 following conditions for the period from July 1, 2020
10 through June 30, 2021:

11 (A) Notwithstanding any order by the Public Utilities
12 Commission, the carrier shall maintain the same
13 number of port calls and gate hours in effect as
14 of January 1, 2020;

15 (B) Notwithstanding any order by the Public Utilities
16 Commission, the carrier shall continue to take
17 less than container load shipments; and

18 (C) Notwithstanding any order by the Public Utilities
19 Commission, the carrier shall negotiate in good
20 faith with livestock businesses to set standards
21 for the interisland shipment of livestock.



- 1 (2) Any funds provided by the State, whether as a subsidy,
2 forgivable loan, or loan, to any water carrier of
3 property holding a certificate pursuant to chapter
4 271G, Hawaii Revised Statutes, shall not be used for
5 the following purposes:
- 6 (A) As payment in any form or nature to any parent
7 company or other affiliate of the same parent
8 company as any water carrier of property holding
9 a certificate pursuant to chapter 271G, Hawaii
10 Revised Statutes;
- 11 (B) As profits for the water carrier receiving said
12 funds or any parent company or other affiliate of
13 the water carrier's parent company;
- 14 (C) As repayment of any loan, bond, or other form of
15 indebtedness of any parent company or other
16 affiliate of the water carrier's parent company;
- 17 (D) As payment for a capital expenditure made by the
18 parent company of the water carrier for assets
19 held by the water carrier; or
- 20 (E) As payment for executive bonuses; advertising and
21 marketing beyond customer and employee



1 communications; club dues and memberships
2 charitable or political contributions; business
3 travel; seminars, conferences, and conventions;
4 entertainment expenses; or any other non-
5 operating expenses.

6 Notwithstanding any other law to the contrary, it is expressly
7 provided that any funds provided by the State can be used to pay
8 for lease or charter payments to an affiliate company of the
9 water carrier receiving such funds; provided, however, the lease
10 or charter must be at or below market rates.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Public Utilities Commission; Department of Transportation;
Receiver; Cargo Carriers; Subsidies; Statutory Authority; Water
Carriers;

Description:

Authorizes the Public Utilities Commission to address any situation where the condition of a regulated water carrier of cargo may result in the disruption, reduction, or cessation of essential services. Amends the bases upon which the Public Utilities Commission may issue a certificate of public convenience and necessity to an applicant seeking authority to serve as a regulated water carrier. Authorizes the Department of Transportation to enter into contracts to provide subsidies to a regulated water carrier provided the carrier meets certain conditions. (SD1)

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