H .B. NO. 3160

A BILL FOR AN ACT

RELATING TO CRUISE SHIPS.

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

SECTION 1. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . AIR POLLUTION FROM COMMERCIAL PASSENGER VESSELS**

§342B-A Definitions. As used in this part:

"Commercial passenger vessel" means a vessel that carries passengers for hire. The term does not include a vessel:

(1) Authorized to carry fewer than fifty passengers;

(2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or

(3) Operated by the United States or a foreign government.

"Large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for two hundred fifty or more passengers for hire, determined with

reference to the number of lower berths and based on an average of two persons per cabin.

"Marine waters of the State" means those waters between the shoreline of the State of Hawaii and any point three nautical miles from the shoreline of the State.

"Passengers for hire" means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

"Small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for two hundred forty-nine or fewer passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

"Vessel" means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion.

"Voyage" means a vessel trip to or from one or more ports of call in the state with the majority of the passengers for hire completing the entire vessel trip. A vessel trip involving stops at more than one port of call is considered a single

voyage so long as the majority of passengers for hire complete the entire trip.

§342B-B Prohibited air pollution. (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.

(b) Except as provided under section 342B-F, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:

(1) When the ship is maneuvering to or from the dock or anchor;

(2) In the event of a navigational or safety concern on the ship; or

(3) In the event of an equipment failure; provided that the cruise line shall, upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period.

§342B-C Information-gathering requirements. (a) Except as provided under section 342B-J, the owner or operator of a

commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the period of operation in the marine waters of the State, detailing the dates, times, and locations, and the opacity of air emissions.

(b) Except as provided under section 342B-J, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may monitor the opacity of air emissions.

(c) The owner or operator of a commercial passenger vessel shall pay for all monitoring under subsection (a) and (b).

(d) If the owner or operator of a commercial passenger vessel, when complying with another state or federal law that requires substantially equivalent information gathering, has gathered the type of information required under subsection (a) and (b), the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

§342B-D Recordkeeping requirements. An owner or operator subject to section 342B-C shall record the information required

to be gathered under that section and shall maintain the records for three years after the date the information was gathered.

§342B-E Reporting requirements. (a) An owner or operator of a commercial passenger vessel who becomes aware of an air emission in violation of section 342B-B shall immediately report that air emission to the department. The report shall not be deemed to be privileged information.

(b) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the administrator of the United States Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test the opacity of air emissions and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the opacity of air emissions is tested, shall submit to the department a copy of the records.

(c) Upon request of the department, the information required under this section shall be submitted electronically.

(d) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

(e) The requirements of this section are subject to alternative terms and conditions established under section 342B-J.

§342B-F Memorandum of understanding; recognition program. (a) Nothing contained in this part shall prevent the State from:

(1) Entering into voluntary agreements with any owners or operators of commercial passenger vessels, or their representatives, for the purpose of controlling pollution outside the marine waters of the State; or

(2) Adopting pollution controls more stringent than those contained in this part.

(b) The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law.

§342B-G Exemption for vessels in innocent passage. This part does not apply to a commercial passenger vessel that operates in the marine waters of the State solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the State, regardless of whether the vessel is a United States or foreign-

flag vessel, would constitute innocent passage under the United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

§342B-H Activities of the department. The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the State:

(1) Direct monitoring of the opacity of air emissions from those vessels;

(2) Monitoring and studying of direct or indirect environmental effects of those vessels; and

(3) Researching ways to reduce effects of those vessels on marine waters and other coastal resources.

§342B-I Fine schedules for illegal air pollution. (a) Any person who fails to comply with any requirement of this part shall be subject to the fines established by the department pursuant to subsection (b).

(b) The department shall by rule under chapter 91, establish fines for the failure to comply with any requirement of this part.

§342B-J Alternative terms and conditions of vessel discharges. (a) The department may establish alternative terms

and conditions of vessel air pollution applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel air pollution under sections 342B-B, 342B-C, 342B-D, and 342B-E or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel air pollution must require compliance with the standard terms and conditions of vessel air pollution under sections 342B-B, 342B-C, 342B-D, and 342B-E. The department, on a case-by-case basis, may set alternative terms and conditions of vessel air pollution if:

(1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel air pollution under sections 342B-B, 342B-C, 342B-D, and 342B-E, but demonstrates to the department's reasonable

satisfaction that additional time is needed to make the necessary changes; or

(3) An experimental technology or method for pollution control of air pollution is being used or is proposed as one of the alternative terms and conditions of vessel air pollution, and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

(b) Alternative terms and conditions of vessel air pollution approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342B-B, 342B-C, and 342B-D for the time period that the department determines to be appropriate."

SECTION 2. Section 342D-104, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsection (a) to read as follows:

"(a) Except as provided under section 342D-111, the owner or operator of a commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the

period of operation in the marine waters of the State, detailing the dates, times, and locations, and the volumes or flow-rates of any discharge of sewage or other wastewater into the marine waters of the State[~~, or the opacity of air emissions~~]."

(2) By amending subsection (c) to read as follows:

"(c) Except as provided under section 342D-111, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may collect additional samples of the vessel's treated sewage that are being discharged into the marine waters of the State[~~, or monitor the opacity of air emissions~~]."

SECTION 3. Section 342D-106, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage [~~or opacity of air emissions~~] and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the sewage [~~or opacity of air emissions~~] is tested, shall submit to the department a copy of the records."

SECTION 4. Section 342D-109, Hawaii Revised Statutes, is amended to read as follows:

"[§342D-109] **Activities of the department.** The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the State:

(1) Direct in-water monitoring of discharges or releases of sewage [~~and direct monitoring of the opacity of air emissions~~] from those vessels;

(2) Monitoring and studying of direct or indirect environmental effects of those vessels; and

(3) Researching ways to reduce effects of those vessels on marine waters and other coastal resources."

SECTION 5. Section 342D-111, Hawaii Revised Statutes, is amended to read as follows:

"[§342D-111] **Alternative terms and conditions of vessel discharges.** (a) The department may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under sections 342D-102, [~~342D-103,~~] 342D-104, and 342D-106 or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and

conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under sections 342D-102, [~~342D-103,~~] 342D-104, and 342D-106. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if:

(1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under sections 342D-102, [~~342D-103,~~] 342D-104, and 342D-106 but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

(3) An experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges, and the department determines that the

experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

(b) Alternative terms and conditions of vessel discharges approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342D-102, [~~342D-103,~~] and 342D-104 for the time period that the department determines to be appropriate."

SECTION 6. Section 342D-103, Hawaii Revised Statutes, is repealed.

["~~[§342D-103] Prohibited air emissions. (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.~~

~~(b) Except as provided under section 342D-106, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:~~

~~(1) When the ship is maneuvering to or from the dock or anchor;~~

~~(2) In the event of a navigational or safety concern on the ship; or~~

~~(3) In the event of an equipment failure; provided that the cruise line shall upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period.~~"]

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, that can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

SECTION 9. In codifying the new sections added to chapter 342B, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of and references to those new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2008.

INTRODUCED BY: _____

BY REQUEST

JAN 22 2008

H.B. NO. 3160

Report Title:
Cruise Ships

Description:
Transfers the cruise ship air emission provisions from HRS, chapter 342D, Water Pollution, to HRS, chapter 342B, Air Pollution Control.

HB 3160

JUSTIFICATION SHEET

DEPARTMENT:	Health
TITLE:	A BILL FOR AN ACT RELATING TO CRUISE SHIPS.
PURPOSE:	To transfer and amend, as deemed appropriate, the cruise ship air emission provisions from Hawaii Revised Statutes (HRS) chapter 342D, Water Pollution, to HRS, Chapter 342B, Air Pollution Control.
MEANS:	Add a new part to chapter 342B, HRS; amend sections 342D-104(a) and (c), 342D-106(e), 342D-109 and 342D-111,HRS; and repeal sections 342D-103 and 342D-110, HRS.
JUSTIFICATION:	Currently, the air emission provisions for cruise ships are contained in HRS, chapter 342D, Water Pollution. This bill would delete the subject provisions from chapter 342D and incorporate them and any supporting provisions into chapter 342B, Air Pollution Control. It is difficult and cumbersome for the Clean Air Branch to enforce the air emission provisions while they are located in the water pollution statutes.
GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2008.