A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

PART I

SECTION 1. (a) The Hawaii supreme court has determined that chapter 343, Hawaii Revised Statutes, requires that an environmental assessment be performed with respect to certain improvements at Kahului harbor intended for and to be used by a large capacity ferry vessel company to provide inter-island ferry service between the islands of Oahu, Maui, Kauai, and Hawaii, using harbor facilities on each island, and that the environmental assessment must take into account secondary effects of the Kahului harbor improvements.

The legislature finds that the existing circumstances, specifically the construction and completion of harbor improvements and the subsequent operation of a large capacity ferry vessel company for a limited period of time, present a unique situation. Seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court approximately two years earlier. Such an occurrence
is not explicitly contemplated in chapter 343, Hawaii Revised
Statutes, and is not consistent with the intent of the
legislature. As such, the policy that applies under law should
be amended and clarified.

The legislature further finds that the operation of a large
capacity ferry vessel company, specifically, using a new class
of large capacity ferry vessels capable of transporting large
numbers of people, motor vehicles, and cargo with ease, is in
the public interest in that it provides a real and innovative
alternative to existing modes of transporting people, motor
vehicles, and cargo between the islands of the state. With its
ability to transport large quantities of cargo between islands
in a very short period of time, agricultural produce would
suffer less heat damage in transit, resulting in higher quality
produce and fresh food products at a lower cost for all
residents of the state. By encouraging the growing of products
on the islands of Kauai, Maui, and Hawaii for the Oahu market,
the operations of a large capacity ferry vessel company would
foster diversified agriculture, helping the State of Hawaii to
meet one of its constitutional mandates. Further, in times of
natural or other disasters, a large capacity ferry vessel
company could provide the means to rapidly deploy disaster relief personnel, equipment, and supplies.

The legislature also finds that it is clearly in the public interest that a large capacity ferry vessel service should commence as soon as possible, and that harbor improvements continue to be constructed and be allowed to be used, while any environmental studies, including any environmental assessments or environmental impact statements, are conducted.

The legislature also finds that it would be desirable and appropriate for the department of transportation to prepare or contract to prepare an environmental impact statement regarding commercial harbor improvements undertaken to accommodate a large capacity ferry vessel company and its operations, even if such an environmental impact statement may not yet be legally required. Such an environmental impact statement should include secondary impacts of such commercial harbor improvements, including impacts of a large capacity ferry vessel company and its operations.

The legislature further finds that it would be appropriate for:

(1) An oversight task force to study the State's actions regarding the establishment of the operations of any
large capacity ferry vessel company as a whole, and
the impact of any existing or proposed large capacity
ferry vessel operations, and to report its findings to
the legislature and governor; and

(2) The auditor to conduct a performance audit on, among
other things, how the State conducted its proceedings
and determined that harbor improvements related to the
operation of a certain large capacity ferry vessel
company should receive an exemption from the need to
conduct either an environmental assessment or
environmental impact statement under chapter 343,
Hawaii Revised Statutes, including why secondary
impacts were not considered.

(b) This Act adopts a new policy, and further clarifies
and amends existing law, with respect to this new type of inter-
island ferry service to provide that, during the period in which
any required environmental review and studies, including
environmental assessments or environmental impact statements,
are prepared, and also following their completion:

(1) A large capacity ferry vessel company and large
capacity ferry vessels may operate subject to the
employment of measures to mitigate significant
environmental effects;

(2) Agreements with respect to the operations of a large
capacity ferry vessel company, including a large
capacity ferry vessel company operating agreement,
entered into between the State and a large capacity
ferry vessel company, may be enforced as written or as
executed or re-executed; and

(3) Related harbor improvements may be constructed and
used by the State, by a large capacity ferry vessel
company, and by others,

notwithstanding the fact that the non-preparation or non-
completion of environmental assessments or environmental impact
statements, the lack of acceptance of an environmental impact
statement, or the lack of a finding of no significant impact,
would otherwise have barred, delayed, been a condition precedent
to, or interfered with paragraphs (1) through (3).

(c) This Act further clarifies and amends existing law to
provide that:

(1) Due to the unique nature and critical importance of
the inter-island ferry service industry to the people
of our state, the construction and use of harbor
improvements to facilitate this new type of inter-island ferry service is to be governed by this Act, and not by chapter 343, Hawaii Revised Statutes; and

(2) Such construction and use shall continue, while any environmental review and studies, including environmental assessments or environmental impact statements, are prepared and following their completion, notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with such construction and use.

(d) The purpose of this Act is to facilitate the establishment of inter-island ferry service and, at the same time, protect Hawaii's fragile environment by clarifying that neither the preparation of an environmental assessment, nor a finding of no significant impact, nor acceptance of an environmental impact statement shall be a condition precedent to, or otherwise be required prior to:

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(1) The operation of a large capacity ferry vessel company pursuant to any certificate of public convenience and necessity approved by the public utilities commission;

(2) The operation of a large capacity ferry vessel company and large capacity ferry vessel between any port or harbor in Hawaii pursuant to any written operating agreement;

(3) The construction, use, or operation of any improvements at Kahului harbor and any other harbor in the state relating to the operation of a large capacity ferry vessel company or large capacity ferry vessel; or

(4) The appropriation or expenditure of any funds, the use of state lands, the issuance of any permits, or the entering into of any agreements; or

The otherwise taking of any other necessary or appropriate actions for the purpose of facilitating any matter covered by paragraphs (1) to (4), notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise
have barred, delayed, been a condition precedent to, or
interfered with the same;

provided that upon commencement of inter-island ferry service,
the large capacity ferry vessel company shall comply with the
conditions and protocols set by the governor by executive order.

(e) The purpose of this Act is also to amend all relevant
existing laws to provide that, while any environmental review
and studies, including environmental assessments or
environmental impact statements, are prepared and following
their completion:

(1) A large capacity ferry vessel company and large
capacity ferry vessels may operate;

(2) Agreements with respect to such operation, including
the operating agreements, entered into between the
State and a large capacity ferry vessel company may be
enforced, executed, or re-executed; and

(3) Related harbor improvements may be constructed and
used by the State, by a large capacity ferry vessel
company, and by others.
PART II

SECTION 2. As used in this Act, unless the context otherwise requires:

"Large capacity ferry vessel" means any inter-island ferry vessel that transports, is designed to transport, or is intended to transport per voyage at least five hundred passengers, two hundred motor vehicles, and cargo between the islands of the state.

"Large capacity ferry vessel company" means any company that owns or operates a large capacity ferry vessel.

"State entity" means any state or county department, board, commission, and any other agency of the state or county.

"State marine waters" means all waters of the state, including the water column, water surface, and state submerged lands, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary, and including state harbors where appropriate, notwithstanding the depth of the harbor.

SECTION 3. Notwithstanding chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes, or their state or county
implementing rules or ordinances, including but not limited to provisions relating to special management area permits, certificates of public convenience and necessity, common carriers by water, environmental assessments, and environmental impact statements, and further notwithstanding that environmental assessments and environmental impact statements have not been prepared or completed, or have been completed and an environmental impact statement is not accepted, is found unacceptable, or a finding of no significant impact has not been made:

(1) A large capacity ferry vessel company shall have the right to operate and the right to utilize Kahului harbor improvements and other improvements and facilities on any island, pursuant to and subject to any and all agreements and contracts with state entities, relating to the operation of a large capacity ferry vessel and the use of state harbor facilities;

(2) All state harbor improvements, projects, and facilities available for or to be utilized by the large capacity ferry vessel company may be completed
and utilized for any purpose agreed to and authorized
by appropriate state entities;

(3) A large capacity ferry vessel company and the
appropriate state entities may proceed pursuant to and
subject to all executed tariffs, agreements, and
contracts between the company and the state entities,
whether the tariffs, agreements, and contracts may
have previously been found to be in violation of
chapter 343, Hawaii Revised Statutes, or any other
law;

(4) The operation of large capacity ferry vessels between
the islands of Oahu, Maui, Kauai, and Hawaii,
including the use of harbor facilities on each island
and improvements at Kahului harbor, is declared to be
a required public convenience and necessity;

(5) A certificate of public convenience and necessity
issued to a large capacity ferry vessel company shall
not be revoked or modified on the basis that
environmental assessments or environmental impact
statements have not been prepared or completed; and

(6) The construction, use, or operation of any facilities
or improvements authorized by any agreement between a
large capacity ferry vessel company and a state
department, board, commission, or agency shall not be
subject to or require any county permits or approvals,
notwithstanding the fact that the non-preparation or non-
completion of environmental assessments or environmental impact
statements, the lack of acceptance of an environmental impact
statement, or the lack of a finding of no significant impact,
would otherwise have barred, delayed, been a condition precedent
to, or interfered with the same.

SECTION 4. (a) As a condition precedent to the rights
conferred by section 3 of this Act, the governor shall impose,
by means of an executive order, and without regard to chapter
91, Hawaii Revised Statutes, or any other provision of law,
conditions and protocols on a large capacity ferry vessel
company's inter-island operations to mitigate significant
environmental effects that the governor determines, in the
governor's judgment, are likely to be caused by such inter-
island operations.

In making such determinations, the governor shall consider
the effects such operations may have on:

(1) Ocean life and marine animals and plants, including a

whale avoidance policy and procedures;
(2) Water resources and quality;
(3) Harbor infrastructure;
(4) Vehicular traffic;
(5) Public safety and security;
(6) Controlling the spread of invasive species;
(7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
(8) Economic consequences and impact; and
(9) Any other natural resource or community concern the governor deems appropriate.

The governor shall also consider establishing conditions and protocols such as requiring department of agriculture inspectors and department of land and natural resources conservation and resources enforcement personnel on each inter-island voyage conducted by a large capacity ferry vessel company, as the governor deems necessary and appropriate. The governor shall notify the legislature of any conditions or protocols established, including the entities consulted, within ten days of establishing the condition or protocol.

(b) Any large capacity ferry vessel company authorized to operate pursuant to this Act shall agree to abide by any conditions or protocols established by the governor pursuant to
this Act as a condition precedent to commencing its operations
authorized under this Act, in a form satisfactory to the
attorney general.

(c) The legislature reserves the sole right to:

(1) Review the adequacy of any conditions or protocols
imposed by the governor under this Act; and

(2) Impose, by law, any other conditions or protocols it
deems necessary and appropriate to further protect the
state's environment or communities, or both, in
addition to any conditions or protocols imposed by the
governor under this Act.

SECTION 5. Any large capacity ferry vessel operating in
state marine waters pursuant to section 3 shall comply with all
laws of general applicability, except as otherwise provided in
this Act. The environmental review process for state actions in
connection with a large capacity ferry vessel company shall be
governed by this Act, and not by chapter 343, Hawaii Revised
Statutes.

PART III

SECTION 6. Nothing in this part shall be deemed or
construed to impose a condition precedent to any activity
authorized under parts I, II, or IV of this Act.
SECTION 7. As used in this part, unless the context otherwise requires:

"Acceptance" means a formal determination of acceptability that the document required to be filed pursuant to this part, fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with this part.

"Action" means any program or project that is proposed or completed by the department and covered by this part.

"Addendum" means an attachment to a draft environmental impact statement, prepared at the discretion of the department, and distinct from a supplemental statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental impact statement already filed with the office.

"Agency" means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.
"Approval" means a discretionary consent required from an agency. Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

"Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Department" means the department of transportation.

"Effects" or "impacts" as used in this part are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative.
Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by an action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

"Environmental impact" means an effect of any kind, whether immediate or delayed, on any component of the environment.

"Environmental impact statement" or "statement" means an informational document prepared in compliance with this part and which discloses the environmental effects of an action, effects of an action on the economic welfare, social welfare, and cultural practices of the community and state, effects of the economic activities arising out of the action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished
from the final statement which is the document that has
incorporated the public's comments and the responses to those
comments. The final statement is the document that shall be
evaluated for acceptability by the office.

"Office" means the office of environmental quality control.

"Person" includes any individual, partnership, firm,
association, trust, estate, private corporation, or other legal
entity other than an agency.

"Primary impact" or "primary effect" or "direct impact" or
"direct effect" means effects which are caused by the action and
occur at the same time and place.

"Secondary impact" or "secondary effect" or "indirect
impact" or "indirect effect" means effects which are caused by
the action and are later in time or farther removed in distance,
but are still reasonably foreseeable. Indirect effects may
include growth inducing effects and other effects related to
induced changes in the pattern of land use, population density
or growth rate, and related effects on air, water, and other
natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum
of effects on the quality of the environment, including actions
that irrevocably commit a natural resource, curtail the range of
beneficial uses of the environment, are contrary to the State's
environmental policies or long-term environmental goals and
guidelines as established by law, or adversely affect the
economic welfare, social welfare, or cultural practices of the
community and state.

SECTION 8. The department of transportation shall prepare
or contract to prepare an environmental impact statement for the
improvements made or to be made to commercial harbors throughout
the state that require the expenditure of public funds to
accommodate the use thereof by a large capacity ferry vessel
company and the secondary effects of those operations on the
state's environment, including the operation of the large
capacity ferry vessel company.

SECTION 9. (a) The environmental impact statement
required to be prepared under this part by the department shall
comply with and be in conformity with the provisions of this
part.

(b) The environmental impact statement process shall
involve at a minimum:

(1) Identifying environmental concerns;

(2) Obtaining various relevant data;

(3) Conducting necessary studies;
(4) Receiving public and agency input;

(5) Evaluating alternatives; and

(6) Proposing measures for avoiding, minimizing, rectifying, or reducing adverse impacts.

An environmental impact statement is meaningless without the conscientious application of the environmental impact statement process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the action, but shall discuss adverse effects and available alternatives, so that decision-makers will be enlightened to any environmental consequences of the action. In preparing the environmental impact statement, the department shall submit it for review and comments, and revise it, taking into account all critiques and responses.

(c) In developing the statement, preparers shall make every effort to convey the required information succinctly in a form easily understood both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, length, or detail of the statement. Data and analyses in the statement shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or
simply referenced. Statements shall indicate at appropriate
points in the text any underlying studies, reports, and other
information obtained and considered in preparing the statement,
including cost-benefit analyses and reports required under other
legal authorities. Care shall be taken to concentrate on
important issues and to ensure that the statement remains an
essentially self-contained document, capable of being understood
by the reader without the need for undue cross-reference.

(d) The environmental impact statement shall contain an
explanation of the environmental consequences of the action.
The contents shall fully declare the environmental implications
of the action and shall discuss all relevant and feasible
consequences of the action. In order that the public can be
fully informed and that the department can make a sound decision
based upon the full range of responsible opinions on
environmental effects, the statement shall include responsible
opposing views, if any, on significant environmental issues
raised by the action.

(e) In the preparation of a draft statement, the
department shall consult all appropriate agencies and other
citizen groups, and concerned individuals. To this end, the
department shall endeavor to develop a fully acceptable
environmental impact statement prior to the time the statement
is filed with the office, through a full and complete
consultation process, and shall not rely solely upon the review
process to expose environmental concerns.

(f) Any substantive comments received by the department
pursuant to this part shall be responded to in writing and as
appropriate, incorporated into the draft environmental impact
statement by the department prior its filing with the office.

Letters submitted which contain no comments on the project but
only serve to acknowledge receipt of the document do not require
a written response. Acknowledgement of receipt of these items
shall be included in the final statement.

SECTION 10. (a) The draft environmental impact statement,
at a minimum, shall contain:

(1) A summary sheet which concisely discusses the
following:

(A) Brief description of the action;

(B) Significant beneficial and adverse impacts,
   including cumulative impacts and secondary
   impacts;

(C) Proposed mitigation measures;

(D) Alternatives considered;
(E) Unresolved issues; and

(F) Compatibility with land use plans and policies, and a listing of permits or approvals;

(2) A table of contents;

(3) A separate and distinct section that includes a statement of purpose and need for the action;

(4) A project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(A) A detailed map, preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable, and a related regional map;

(B) Statement of objectives;

(C) General description of the action's technical, economic, social, and environmental characteristics;

(D) Use of public funds or lands for the action;

(E) Phasing and timing of action;

(F) Summary technical data, diagrams, and other information necessary to permit an evaluation of
potential environmental impact by commenting
agencies and the public; and
(G) Historic perspective;
(5) A separate and distinct section of alternatives which
could attain the objectives of the action, regardless
of cost, in sufficient detail to explain why they were
rejected. The section shall include a rigorous
exploration and objective evaluation of the
environmental impacts of all such alternative actions.
Particular attention shall be given to alternatives
that might enhance environmental quality or avoid,
reduce, or minimize some or all of the adverse
environmental effects, costs, and risks. Examples of
alternatives include:
(A) The alternative of no action;
(B) Alternatives requiring actions of a significantly
different nature which would provide similar
benefits with different environmental impacts;
(C) Alternatives related to different designs or
details of the actions which would present
different environmental impacts;
(D) The alternative of postponing action pending further study; and

(E) Alternative locations for the proposed project, as appropriate.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the action and each reasonable alternative, including, if relevant, those alternatives not within the existing authority of the department;

(6) A description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site, including natural or human-made resources of historic, archaeological, or aesthetic significance; specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions.
The department shall also identify, if appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the action and its alternatives. The sources of data used to identify, qualify, or evaluate any and all environmental consequences shall be expressly noted;

(7) A statement of the relationship of the action to land use plans, policies, and controls for the affected area. Discussion of how the action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the department has reconciled its action with the plan, policy, or control, and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation. The draft statement shall also contain a list of necessary approvals which were obtained from governmental agencies, boards, or
commissions or other similar groups having
jurisdiction;

(8) A statement of the probable impact of the action on
the environment, and impacts of the natural or human
environment on the project, which shall include
consideration of all phases of the action and
consideration of all consequences on the environment;
direct and indirect effects shall be included. The
interrelationships and cumulative environmental
impacts of the action and other related projects shall
be discussed in the draft statement. Secondary
effects shall be thoroughly discussed to fully
describe the probable impact of the action on the
environment. The population and growth impacts of an
action shall be estimated if expected to be
significant, and an evaluation made of the effects of
any possible change in population patterns or growth
upon the resource base, including but not limited to
land use, water, and public services, of the area in
question. Also, if the action constitutes a direct or
indirect source of pollution as determined by any
governmental agency, necessary data shall be
incorporated into the statement. The significance of
the impacts shall be discussed in terms of paragraphs
(9), (10), (11), and (12);

(9) A separate and distinct section describing the
relationship between local short-term uses of
humanity's environment and the maintenance and
enhancement of long-term productivity. The extent to
which the action involves trade-offs among short-term
and long-term gains and losses shall be discussed.
The discussion shall include the extent to which the
action forecloses future options, narrows the range of
beneficial uses of the environment, or poses long-term
risks to health or safety. In this context, short-
term and long-term do not necessarily refer to any
fixed time periods, but shall be viewed in terms of
the environmentally significant consequences of the
action;

(10) A separate and distinct section that describes all
irreversible and irretrievable commitments of
resources that would be involved in the action should
it be implemented. Identification of unavoidable
impacts and the extent to which the action makes use
of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. "Resources" shall not be interpreted to mean only the labor and materials devoted to an action, but to include the natural and cultural resources committed to loss or destruction by the action;

(11) All probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as those found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, Hawaii Revised Statutes, shall be included, including those effects discussed in other actions of this paragraph which are adverse and
unavoidable under the action. Also, the rationale for proceeding with an action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft statement shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the action that would avoid some or all of the adverse environmental effects; (12) Mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provisions for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from
among several alternatives, the measures shall be discussed and reasons given for the choice made.

Included, where possible and appropriate, should be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken;

(13) A separate and distinct section that summarizes unresolved issues and containing a discussion of how such issues will be resolved;

(14) A separate and distinct section that contains a list identifying all governmental agencies, other organizations, and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed; and

(15) A separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted...
and had no comment shall be included in the draft statement.

(b) The final environmental impact statement shall consist of:

(1) The draft statement revised to incorporate substantive comments received during the consultation and review processes;

(2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;

(3) A list of persons, organizations, and public agencies commenting on the draft statement; and

(4) The responses of the department to each substantive question, comment, or recommendation received in the review and consultation processes. The text of the final statement shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft statement.

SECTION 11. (a) The department shall file the original (signed) draft environmental impact statement with the office, along with a minimum number of copies determined by the office.
(b) The department shall file the original (signed) final statement with the office, along with a minimum number of copies determined by the office.

(c) An environmental impact statement may be filed at any time at the office by the department.

The office shall inform the public of the availability of any statements or addendum documents for review and comments, and the acceptance or non-acceptance of statements through the periodic bulletin used by the office. The bulletin shall be made available to any person upon request.

All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates; the type of document prepared; the names, addresses, and contact persons as applicable, of the office, department, and the consultant; and a brief narrative summary of the action which provides sufficient detail to convey the full impact of the action to the public.
The office may provide recommendations to the department regarding any applicable administrative content requirements set forth in this part.

(d) The department shall sign and date the original copy of the draft or final environmental impact statement and shall indicate that the statement and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge, fully addresses document content requirements as set forth in this part.

(e) All statements and other related documents shall be made available for inspection by the public during established office hours.

(f) The office shall be responsible for the publication of the notice of availability of the environmental impact statement in its periodic bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, to be developed cooperatively between the department and the office; provided that the office shall be responsible
for determining the final list. To the extent possible, the
department shall make copies of the statement available to
individuals requesting the statement. The department shall
directly distribute the required copies to those on the
distribution list after the office has verified with the
department the accuracy of the distribution list. For final
statements, the department shall give the commentor an option of
requesting a copy of the final statement or portions thereof.

(g) The draft and final statements shall be prepared by
the department and submitted to the office. The draft statement
shall be made available for public review and comment through
the office for a period of forty-five days. The office shall
inform the public of the availability of the draft statement for
public review and comment pursuant to this part. The department
shall respond in writing to comments received during the review
and prepare a final statement.

(h) Review of the environmental impact statement shall
serve to provide the public and other agencies an opportunity to
discover the extent to which the department has examined
environmental concerns and available alternatives. Public
review shall not substitute for open discussion with interested
persons and agencies, concerning the environmental impacts of
the action.

(i) The period for public review and for submitting
written comments shall commence as of the date notice of
availability of the draft statement is initially issued in the
periodic bulletin and shall continue for a period of forty-five
days. Written comments to the office, with a copy of the
comments to the department, shall be received or postmarked to
the office within the forty-five day period. Any comments
outside of the forty-five day comment period need not be
considered or responded to.

(j) The department shall respond in writing to the
comments received or postmarked during the forty-five day review
period and incorporate the comments and responses in the final
statement. The response to comments shall include:

(1) Point-by-point discussion of the validity,
    significance, and relevance of comments; and

(2) Discussion as to how each comment was evaluated and
    considered in planning the action.

The response shall endeavor to resolve conflicts,
inconsistencies, or concerns. Response letters reproduced in
the text of the final statement shall indicate verbatim changes
that have been made to the text of the draft statement. The
response shall describe the disposition of significant
environmental issues raised (e.g., revisions to the proposed
project to mitigate anticipated impacts or objections, etc.).
In particular, the issues raised when the department's position
is at variance with recommendations and objections raised in the
comments shall be addressed in detail, giving reasons why
specific comments and suggestions were not accepted, and factors
of overriding importance warranting an override of the
suggestions.

(k) Any addendum document to a draft environmental impact
statement shall reference the original draft environmental
impact statement it attaches to and comply with all applicable
filing, public review, and comment requirements set forth in
this part.

SECTION 12. (a) The final authority to accept a final
statement required under this part shall rest with the office,
or the office's authorized representative. The department may
request the office to make a preliminary review regarding the
acceptability or non-acceptability of the environmental impact
statement. The office, when requested by the department, may
review and make a recommendation as to the acceptability of the final statement.

(b) The office shall take prompt measures to determine the acceptability or non-acceptability of the department's statement.

(c) Acceptability of a statement shall be evaluated on the basis of whether the statement, in its completed form, represents an informational instrument which fulfills the definition of an environmental impact statement and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(d) A statement shall be deemed to be an acceptable document by the office only if all of the following criteria are satisfied:

(1) The procedures for consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this part;

(2) The content requirements described in this part have been satisfied; and
(3) Comments submitted during the review process have received responses satisfactory to the office, and have been incorporated in the statement.

(e) Upon acceptance or non-acceptance of the environmental impact statement, a notice of the determination shall be filed by the office with the department. For any non-accepted statement, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin.

(f) A non-accepted statement shall be revised by the department to address the concerns of the office. The revision shall take the form of a revised draft environmental impact statement document which shall fully address the inadequacies of the non-accepted statement and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by this part for an environmental impact statement submitted for acceptance. In addition, the revised draft statement shall be evaluated for acceptability on the basis of whether it
satisfactorily addresses the findings and reasons for non-
acceptance.

(g) The department may withdraw an environmental impact
statement by sending a letter to the office informing the office
of the department's withdrawal. Subsequent resubmittal of the
statement shall meet all requirements for filing, distribution,
publishation, review, acceptance, and notification as a new
statement.

PART IV

SECTION 13. (a) There is established in the department of
transportation a temporary Hawaii inter-island ferry oversight
task force. The department of transportation shall be
responsible for administering the work of the temporary Hawaii
inter-island ferry oversight task force, providing a
facilitator, and submitting reports to the legislature and
governor. The goal of the temporary Hawaii inter-island ferry
oversight task force shall be to study the State's actions
regarding the establishment of the operations of any large
capacity ferry vessel company as a whole and to examine the
impact, if any, of the operations of any existing or proposed
large capacity ferry vessel company on:
(1) Ocean life and marine animals and plants, including
but not limited to an existing or proposed inter-
island ferry operations' whale avoidance policy and
procedures;
(2) Water resources and quality;
(3) Harbor infrastructure;
(4) Vehicular traffic;
(5) Public safety and security;
(6) The potential to spread invasive species;
(7) Cultural resources, including hunting, fishing, and
native Hawaiian resources;
(8) Economic consequences and impact; and
(9) Any other natural resource or community concern.
(b) The members of the temporary Hawaii inter-island ferry
oversight task force, totaling thirteen members, shall include
the following:
(1) The director of transportation, or the director's
designee;
(2) The director of business, economic development, and
tourism, or the director's designee;
(3) The chairperson of the board of land and natural
resources, or the chairperson's designee;
(4) The attorney general, or the attorney general's
designee;

(5) The president of a large capacity ferry vessel
compny, or the president's designee;

(6) One representative from each of the four major
counties, including at least one representative from
the environmental community, one representative who is
active or knowledgeable in native Hawaiian cultural
practices, and one representative from the general
business community; provided that each such
representative shall be appointed by the speaker of
the house of representatives; and

(7) One representative from each of the four major
counties, including at least one representative from
the environmental community, one representative who is
active or knowledgeable in native Hawaiian cultural
practices, and one representative from the general
business community; provided that each such
representative shall be appointed by the president of
the senate.

(c) Members of the temporary Hawaii inter-island ferry
oversight task force shall serve without compensation but shall
be reimbursed for expenses, including travel expenses, necessary
for the performance of their duties. All expenses, including
travel expenses, shall be paid by the department of
transportation.

(d) The temporary Hawaii inter-island ferry oversight task
force shall submit monthly status reports of its findings and
recommendations to the legislature and governor at the end of
each month commencing with December 31, 2007. The temporary
Hawaii inter-island ferry oversight task force shall include, in
its monthly status reports, at a minimum:

(1) A listing and description of the mitigation measures
established to deter or minimize any adverse
environmental impact of the large capacity ferry
vessel company and its operations; and

(2) A review of the mitigation measures implemented and
the efficacy of those mitigation measures on deterring
or minimizing any adverse environmental impact caused
by the operation of the large capacity ferry vessel
company and its vessels.

(e) The temporary Hawaii inter-island ferry oversight task
force shall submit a final report of its findings and
recommendations to the legislature and governor no later than
twenty days prior to the convening of the regular session of
2009 and shall cease to exist upon the submission of the final
report.

SECTION 14. (a) The auditor shall conduct a performance
audit on the state administration's actions in exempting certain
harbor improvements to facilitate large capacity ferry vessels
from the requirements of conducting an environmental assessment
or environmental impact statement under chapter 343, Hawaii
Revised Statutes. The audit shall also include the state
administration's actions in not considering potential secondary
environmental impacts of the harbor improvements prior to
granting the exemption from these requirements. The governor
and any other state officer deemed appropriate by the auditor
are requested to provide all documents and information deemed
relevant by the auditor in the conduct of the performance audit
and otherwise fully cooperate with the auditor's requests made
pursuant to this section.

(b) The auditor shall submit the performance audit to the
legislature no later than March 1, 2008. If the performance
audit is not completed by March 1, 2008, the auditor shall
submit a preliminary report by that date and a final report as
soon as possible thereafter, but no later than April 20, 2008.
SECTION 15. Any previously made appropriation or
previously authorized expenditure of funds for any inter-island
ferry operations of a large capacity ferry vessel company, or
for improvements or operating expenses to accommodate its
provision of inter-island ferry service, shall be approved and
authorized to the extent they are needed to effectuate the
provisions of this Act.

Any state lands previously authorized to be used to
facilitate or support the operation of a large capacity ferry
vessel, shall be authorized to be used to effectuate the
provisions of this Act.

Any state harbor improvement or state or county facilities
previously made or made available to facilitate or support the
operation of a large capacity ferry vessel may be used by any
large capacity ferry vessel company or any other person to
effectuate the provisions of this Act.

Any certificate of public convenience and necessity
previously issued to a large capacity ferry vessel company may
be used to effectuate the provisions of this Act.

Any tariffs issued for the purpose of facilitating the
provision of service by a large capacity ferry vessel may be
used to effectuate the provisions of this Act.
Any agreements between the department of transportation or
the state and a large capacity ferry vessel company previously
entered into for the purpose of facilitating the provision of
service by a large capacity ferry vessel may be used to
effectuate the provisions of this Act.

SECTION 16. Every large capacity ferry vessel company that
operates pursuant to the right to operate conferred by this Act,
by such operation, releases and waives any and all claims for
damages or other judicial relief it or any of its agents,
successors, and assigns might otherwise have or assert against
the State of Hawaii, its agencies, and its officers and
employees, in both their official and individual capacities,
that have or may have been caused by or are related in any way
to:

(1) The need, requirement, preparation, non-preparation,
acceptance, or lack of acceptance of or for any
environmental assessments or environmental impact
statements; or

(2) Any judicial action regarding the establishment and
operation of the large capacity ferry vessel in the
state,
and such large capacity ferry vessel company by such operation accepts the obligation to, and thus shall indemnify and defend the State of Hawaii, its agencies, and its officers and employees, in both their official and individual capacities, from such claims brought by, through, or under the large capacity ferry vessel company, or any of its agents, successors, and assigns.

SECTION 17. 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 18. This Act shall take effect upon its approval; provided that this Act shall be repealed on the earlier of:

(1) The forty-fifth day, excluding Saturdays, Sundays, and holidays, following adjournment sine die of the regular session of 2009; or

(2) Upon acceptance of the final environmental impact statement as provided in this Act;

and provided further that:
(1) The final environmental impact statement by the department of transportation that is accepted by the office of environmental quality control under this Act shall be and remain effective for all purposes under the laws of this state, notwithstanding the repeal of this Act; and

(2) Section 16 of this Act shall not be repealed when this Act is repealed.

INTRODUCED BY: Calvin Ky. Day
Kris Cudworth

HB HMS 2007-5038
Report Title:
Environmental Law; Transportation; Ferry Operations

Description:
Requires the Department of Transportation to perform an environmental impact statement (EIS) for certain improvements made to commercial harbors. Permits operation of large capacity ferry vessel company prior to completion of EIS upon meeting certain minimum conditions. Establishes a temporary Hawaii Inter-island Ferry Oversight Task Force.