

STAND. COM. REP. NO.

539

Honolulu, Hawaii

FEB 16 2007

RE: S.B. No. 1276
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committees on Transportation and International Affairs and Energy and Environment, to which was referred S.B. No. 1276 entitled:

"A BILL FOR AN ACT RELATING TO THE ENVIRONMENT,"

beg leave to report as follows:

The purpose of this measure is to add construction of infrastructure improvements of harbor facilities to the triggers for an environmental assessment, and to clarify that the definition of "environmental impact statements" includes traffic congestion effects as a factor to consider in a proposed action.

This measure also requires the preparation of an environmental impact statement for the Hawai'i Superferry, and requires the Department of Transportation to cease further construction of improvements at Kahului Harbor and the Hawai'i Superferry to refrain from commencing operations, until a final environmental impact statement is accepted. This measure makes an appropriation to the Department of Transportation to prepare an environmental impact statement.

In an effort to bring this hearing to the people who would be affected the most, your Committees held additional hearings on Kaua'i at the Kaua'i County Council Chambers on February 10, and again on February 10 on Maui at Baldwin High School.



On O'ahu, your Committees received testimony in support of this measure from the Pacific Whale Foundation; Tropic Orchid Farm, Inc.; one Maui Councilmember (offered county council resolution in support), one Kaua'i Councilmember, one Hawai'i County Councilmember, and ninety-one individuals. Testimony in opposition was received from the Department of Transportation, State Attorney General, Hawai'i Superferry, Maui Chamber of Commerce, Expeditions, Paradise Television, Maui County Farm Bureau, and Kaua'i Chamber of Commerce. There were faxes and emails from approximately 160 individuals in support and approximately 444 were in opposition.

On Kaua'i, your Committees received a petition of at least 6,000 names in support; 116 people testified of whom 113 were in support and 2 were in opposition, and one made comments. There was a county resolution offered by the Kaua'i County Council.

On Maui, your Committees heard from 105 testifiers, of whom 102 were in support, one in opposition, and two made comments. There was a petition with at least one thousand names in support.

Your Committees find that state commercial harbor improvements that require the expenditure of large amounts of governmental funds should comply with the environmental review process. Your Committees are concerned that new maritime activities that require substantial harbor improvements, such as the Hawai'i Superferry, could have serious effects on vehicular traffic, transport of non-native species between islands, introduction of invasive plant and animal species, increased collisions with whales, and increased warehousing at the harbors, among other issues, all of which have economic and environmental consequences that come within the scope of issues to be reviewed under the environmental impact statement law.

Your Committees believe that consideration of effects of traffic congestion and infrastructure that could result from harbor improvements is necessary in order to protect Hawai'i's fragile ecosystem and delicate environment.

In addition to environmental concerns, your Committees have serious reservations about harbor and traffic congestion. Harbors on O'ahu, Maui, and Kaua'i are so congested that viability of Hawai'i's shipping industry is threatened unless harbor improvements and expansion are immediately undertaken. Hawai'i



Superferry adds to the congestion. It is very conceivable that traffic congestion surrounding the harbors would worsen once the Hawai'i Superferry begins transporting vehicles for drive on and drive off service, with its 282 small car capacity and likely other types of larger vehicles and trucks.

Your Committees are concerned that decisions to excuse new maritime activities from obtaining an environmental assessment or an environmental impact statement fail to conform to environmental laws that were enacted to ensure that environmental concerns are given appropriate considerations in decision making along with economic and technical considerations. Your Committees believe that State and federal officials should have been more vigilant in the interests of protecting the environment while seeking to enhance the economy of the State.

Your Committees recognize the legal reservations about this measure as opined by the Attorney General. Nonetheless, your Committees believe that safeguarding the vital interests of its people is paramount. Such vital interests include a healthy environment as free as possible from irreparable damage from such things as offshore pollution and invasive species. Mitigating traffic congestion is also of vital interest. Your Committees find that this measure is consistent with the purpose of chapter 343, Hawaii Revised Statutes, relating to environmental impact statements. Section 343-1, Hawaii Revised Statutes, states, in pertinent part, "[t]he quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment ...the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole."

Your Committees note that if required to conduct an environmental impact statement process, the Hawai'i Superferry would be delayed from starting up its operations, but would not be banned forever from operations. If the Hawai'i Superferry has completed most of the required elements for an environmental assessment or impact statement, or both, as it so testified, this measure would merely formalize what has already occurred.

Your Committees have amended this measure by:

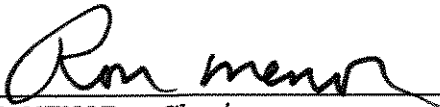


- (1) Deleting the statutory amendments and the purpose section;
- (2) Inserting a new purpose section to more appropriately reflect the measure's intent;
- (3) Inserting provisions to:
 - (A) Require the preparation of an environmental impact statement pursuant to chapter 343, Hawaii Revised Statutes, for the expenditure of public funds for improvements being made to commercial harbors in the State to accommodate the operations of the Hawai'i Superferry;
 - (B) Require that the Department of Transportation implement any mitigating measures that may be recommended in the environmental impact statement and, to the extent necessary, amend its agreement with the Hawai'i Superferry to require that the Hawai'i Superferry implement any recommended mitigative measure in its operations; and
 - (C) Allow the Department of Transportation to assess the Hawai'i Superferry for all reasonable costs for the preparation of the environmental impact statement; and
- (4) Deleting the appropriation.

As affirmed by the records of votes of the members of your Committees on Transportation and International Affairs and Energy and Environment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1276, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1276, S.D. 1, and be referred to the Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committees on Transportation
and International Affairs and
Energy and Environment,



RON MENOR, Chair



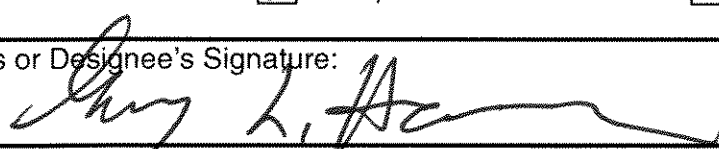
J. KALANI ENGLISH, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
 Committee on Energy and Environment
 ENE

7A

Bill / Resolution No.:* SB 1276	Committee Referral: TIA/ENE, WAM	Date: 2/14/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
MENOR, Ron (C)	✓			
HOOSER, Gary L. (VC)	✓			
IHARA, Jr., Les				✓
KOKUBUN, Russell S.				✓
TRIMBLE, Gordon	✓			
TOTAL	3			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes