

SB 989



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 989, RELATING TO TRANSPORTATION.

BEFORE THE:

SENATE COMMITTEES ON ENERGY AND ENVIRONMENT
AND ON TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL AFFAIRS

DATE: Thursday, February 12, 2009 TIME: 2:50 PM

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lisa Ginoza, First Deputy Attorney General
or Allan S. Chock, Deputy Attorney General

Chairs Gabbard and English and Members of the Committees:

The Department of the Attorney General supports this measure.

This bill would extend by one year the date on which Act 2 of the Second Special Session of 2007 would sunset.

During the Second Special Session of 2007 when Act 2 was passed, it was anticipated that there could be a need for the Legislature to revisit the requirements under the Act, after the Legislature had had an opportunity to thoroughly review the report of the Oversight Task Force created by the Act, and the Act 2 Final Environmental Impact Statement (Act 2 FEIS) prepared by the Department of Transportation.

Currently, the Act 2 draft environmental impact statement has been distributed to the public. The process is currently in the 45-day comment period provided by the Act. The comment period ends on February 23, 2009. Thereafter, responses to the written comments will be made and revisions to the draft, if any, will be incorporated into the Act 2 FEIS.

The present schedule that the Department of Transportation Harbors Division and its consultant have set anticipates that the Act 2 FEIS, with all comments and responses thereto, will be distributed around May 22, 2009. It is further anticipated that acceptance by the Office of Environmental Quality Control will occur between May 25, 2009, and June

19, 2009, followed by the publication of the notice of the Act 2 FEIS by June 30, 2009.

This schedule is dependent upon the number of comments received, and may be delayed if a very large number of comments is received that require responses. It is clear that, under this schedule, the Legislature will be unable to fully review the Act 2 FEIS and the public comments and responses and then be able to consider any further action during this legislative session. Based on the task force report and on the Act 2 FEIS, the Legislature may want to consider other conditions or requirements. However, the Legislature would not be able to act accordingly, unless the repeal date is extended.

A one-year extension of the repeal date would give the Legislature an opportunity to revisit issues in the next legislative session.

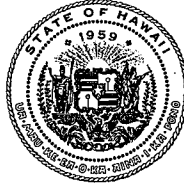
The Legislature may also decide to consider the effect of the repeal of the Act.

Section 18, second paragraph (1), of the Act provides that "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 repeals of this Act;"

Notwithstanding the foregoing explicit language of the Act, and while we do not agree with such a point, opponents to the Act argue that upon the repeal of the Act, the requirements of chapter 343, Hawaii Revised Statutes, would have to be met before any high-speed or high-capacity ferry operations could operate.

The Legislature should have the opportunity to look at the possibility of other legislation to ensure that the Act 2 FEIS will have complied with all statutory requirements imposed by the Legislature.

The Attorney General respectfully requests the passage of this measure.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 12, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 989

COMMITTEE ON ENERGY AND ENVIRONMENT

COMMITTEE ON TRANSPORTATION,
INTERNATIONAL & INTERGOVERNMENTAL AFFAIRS

The Department of Transportation (DOT) **supports** this Administration Bill, which amends Section 18 of Act 2, Second Special Session Laws of Hawaii 2007, by changing the repeal date in paragraph (1) from "2009" to "2010."

The intent of Act 2, in large part, was to enable a large capacity ferry vessel to operate under certain conditions while an Environmental Impact Statement (EIS) was prepared in accordance with Act 2. DOT competitively selected Belt Collins, Hawaii, Ltd. to prepare the Act 2 EIS on behalf of DOT and the draft EIS was published on January 8, 2009 with written comments due on or before February 23, 2009. Following receipt of the written comments, DOT will process and respond to the written comments in accordance with Act 2 and a final Act 2 EIS will be prepared and submitted to the Office of Environmental Quality Control (OEQC), the Act 2 designated final accepting authority.

While DOT anticipates the final Act 2 EIS will be submitted to OEQC, processed and accepted on or before the forty-fifth day, excluding Saturdays, Sunday, and holidays, following adjournment sine die of the regular session of 2009, DOT supports a one year extension of the repeal date to 2010.

First, in the unlikely event the final Act 2 EIS were to be non-accepted by OEQC with further revisions required by DOT, a repeal date of 2010 would give DOT ample time to incorporate OEQC comments and submit a revised final Act 2 EIS to OEQC before Act 2 was repealed.

Second, Act 2, Part II, Section 4(a) sets forth certain conditions to the operation of the large capacity ferry vessel. These conditions benefit the public; and the public is well-served by the extension of these conditions until 2010.

Third, Act 2, Part IV, Section 13 established a temporary Hawaii inter-island ferry oversight task force (OTF), which met for 13 months and submitted its final report dated December 29, 2008 to the Legislature at the end of December 2008. On page 25 of its Final Report, paragraph c., the OTF wrote:

In order to ensure that there is a comprehensive public comment period and the Act 2 EIS is completed, the OTF recommends that the repeal date of Act 2 be repealed.

Extending the Act 2 repeal date from 2009 to 2010 is consistent with the recommendations of the OTF that public comments and the response thereto be "comprehensive" and that the Act 2 EIS be completed before Act 2 is repealed.

In summary, as set forth above, there are many reasons why the extension of the Act 2 repeal date from 2009 to 2010 makes sense. In essence, the goal is to remain consistent with the intent of Act 2, while ensuring that a comprehensive EIS document is prepared, submitted and ultimately accepted by OEQC.

Accordingly, we ask for your favorable consideration of this Administration Bill.