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GOVERNOR



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IN REPLY REFER TO:

February 23, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2667, H.D.1, RELATING TO FERRIES.

COMMITTEE ON FINANCE

The Department of Transportation (DOT) offers the following comments on this bill, which will require the DOT to conduct a study on the feasibility of establishing a statewide ferry system and the Hawaii State Ferry System Authority, for the operation of a ferry system between the islands.

The State would benefit by having a diversity of transportation choices, including the benefits from the establishment of an inter-island ferry system. The Hawaii Superferry has proven that the technology can successfully transport people and goods between the islands of Maui and Oahu. The deployment of the two former Superferry vessels for relief efforts in Haiti by the Maritime Administration also demonstrates the benefits of having such vessels in the State in times of natural disasters and emergencies.

It is unlikely that a study of this magnitude can be completed prior to the convening of the 2011 legislature due to the wide range of issues to be covered. We recommend that a status report be submitted to the 2011 legislature on efforts undertaken by the DOT, with a final report to be submitted to the 2012 legislature. This will provide the DOT with sufficient time to address the requirements of the study. Further, the bill does not provide funding for the study. We anticipate that consultants with the requisite expertise will be required to assist the DOT in this effort.

We believe a feasibility study will yield useful information for decision-making so long as its implementation does not impact nor replace the priorities set forth in the Executive Supplemental Budget for Fiscal Year 2010-11.

Thank you for the opportunity to testify on this matter.

Testimony In Support of
HB2667 HD1 Relating to Ferries

By Al Lardizabal, Director
Government Relations
Hawaii Laborers' Union

To the
Finance Committee
Tuesday, February 23, 2010, 4:30 p.m.
State Capitol, Rm. 308

Representative Marcus Oshiro, Chairman and Members of the Committee:

The Hawaii Laborers' Union is in full support of HB2667 HD1 that provides a feasibility study for a Hawaii state ferry system and ferry system authority, including associated operational, management and economic elements.

Thank you for the opportunity to submit this supporting testimony.

WRITTEN TESTIMONY ONLY (SUBMITTING COMMENTS)

HOUSE COMMITTEE ON FINANCE

**THE HONORABLE MARCUS R. OSHIRO, CHAIR
THE HONORABLE MARILYN B. LEE, VICE CHAIR**

HOUSE BILL NO. 2667, HOUSE DRAFT 1, scheduled for hearing on February 23, 2010

**Testimony of Roy Catalani,
Vice President of Strategic Planning and Government Affairs,
Young Brothers, Limited**

Chair Oshiro, Vice Chair Lee, and Members of the House Finance Committee:

Thank you for the opportunity to testify on House Bill No. 2667, House Draft 1 (**HB 2667 HD1**).

Young Brothers, Limited (Young Brothers or YB) takes no position on HB 2667 HD1. We defer to the Legislature's judgment on the substance of this legislation. We, however, believe that there is language in the bill that needs to be corrected. While the House Transportation Committee, which heard the original bill on February 8, 2010:

understands and notes the concerns raised by Young Brothers as to the validity of some of the claims contained in the preamble of this measure with regard to interisland cargo transport, these issues can be further researched and language amended as the bill makes its way through the legislative process.

Stand. Com. Rep. No. 321-10, 25th Sess., at 2 (Haw. 2010).

We reiterate YB's concerns for the Finance Committee. First, the bill refers to "slow, time consuming interisland shipping and barge operations for the transportation of property between the islands." This reference reflects a common misunderstanding of the efficiency by which cargo via barge is delivered. As a result, we do not think it appropriate to memorialize this misunderstanding in legislation. Among other things, this misunderstanding may only serve to confuse or mislead other decision-makers, perhaps even in regulatory agencies, when it comes to reviews of our own operations or of the water carriage industry as a whole.

The Young Brothers' hub-and-spoke system includes 12 sailings weekly from Honolulu to the Neighbor Islands. This system supports the Neighbor Islands' "just-in-time" form of inventory management. Generally, we load our barges during the day, sail overnight, and arrive the next morning at the destination port. Depending on the cargo transported, a shipper can drop off cargo at YB one day and pick it up at another YB port the next day.

With newer and more fuel-efficient designs of, for example, barge hulls and tug propulsion systems and with the larger payload of barges, these vessels easily constitute the most efficient means of cargo transportation. Young Brothers has moved between 7 million and 11 million tons of cargo in each year since 2003. Other forms of cargo transportation, including a high-speed ferry, cannot come near these annual totals. Moreover, Young Brothers has moved these millions of tons of cargo in a fuel-efficient manner. Young Brothers uses an average of little over 0.50 gallon (one half gallon) of fuel to move a ton of cargo from Honolulu to a Neighbor Island port. This figure includes both shore-side fuel to load cargo with heavy lift equipment at both ports as well as fuel for the marine voyage between ports. In the future, fuel efficiency will continue to increase. YB will have entire years with its recently acquired new fleet of more efficient barges as well as higher cargo volumes that will come with economic recovery. Again, other forms of cargo transportation, including a high-speed ferry, cannot come near these levels of fuel efficiency. In a time of history when energy efficiency and increased energy independence are essential, these figures cannot be overlooked and are important to understand.

Nonetheless, there may be a place for high-speed ferries in inter-island transportation and, as noted, we defer to the Legislature's judgment on this matter and to the outcome of the study proposed by HB2667 HD1. A case for a ferry need not be made, however, at the expense of the many dedicated persons who currently are in the business of inter-island transportation (whether by sea or by air) and who serve our Neighbor Island communities each day. Instead, one might look to the rationale posed by a Hawaii Superferry founder when he stated that the Superferry was created because "Hawaii needed an affordable maritime transportation option to serve the need between flying and the barge." In other words, in the context of tug and barge systems and airlines, a ferry would provide a differentiated service—*i.e.*, it is primarily a *passenger* service that carries automobiles as well as a *cargo service* that carries trucks traveling with passengers. A ferry may have a travel time for both passengers and cargo that falls between the transit times of airlines and barges and may carry cargo volumes greater than airlines but substantially lower than barges. If these statements are in fact true, then a ferry possibly has a firm basis in meeting an unmet need and providing a service that is not otherwise available.

Relying on (what we believe to be) this more accurate rationale also eliminates the need to recite other misstatements in the bill. For example, in the second paragraph of Section 1, HB 2667 HD1 recites:

By way of example, had the airport at Lihue been shut down operationally in the aftermath of Hurricane Iniki, it would have taken days, if not weeks, before any major aid and relief in the form of water, food, medical supplies, and rescue workers could have reached the island.

This misstatement overlooks one of the greatest moments in community service in Young Brothers' 110-year history.

The hurricane struck on September 11, 1992, inundating coastal areas and tearing apart structures. Damages of nearly \$2 billion were almost entirely on Kauai. In Honolulu, the Young Brothers response to the crisis began immediately through a pledge of the company to the rescue effort. The company had the knowledge, experience, and heavy lift capacity to respond without delay. Relief agencies were invited to ship supplies to Kauai at no cost through October and, in individual cases, for longer periods of time. Priority was given to the American Red Cross, Hawai'i Food Bank, Catholic Charities and the Salvation Army to ensure that the full benefit of shipments of goods, clothing, and other essential supplies went to where they were most needed.

On Sunday, September 13, less than 48 hours after the hurricane and the first day on which Kauai and its harbor were any shape to take large volumes of supplies (largely because of the work Young Brothers and others did to clear the yard and put navigational buoys back into place in the harbor), virtually every Young Brothers employee in Kauai reported for work to unload relief supplies, leaving behind their own damaged homes. They continued to work straight through until October 10 without a day off—machine operators, freight clerks, everyone. As one employee then stated, "We just had to stay open. We had to move the freight."

In the first week after the hurricane, Young Brothers had moved 20,000 tons of cargo to Nawiliwili. It could and would have carried more, but the harbor and community could not absorb any additional cargo. In fact, as a result, Young Brothers had to slow down the rate of delivery of cargo. Cargo could not get to the island's warehouses, and the harbor was beyond its storage capacity with cargo waiting to go into the community. Tons of cargo had to be stacked at Nawiliwili Harbor until it could be distributed.

Contrary to the statement in the bill, the airport in Lihue was closed for several days. When the airport finally re-opened, Young Brothers' heavy lift equipment was used to off-load military airplanes.

It took four to five months for some semblance of recovery, with Young Brothers donating tens of thousands of dollars in services and labor to the relief effort. The employees were rightfully proud of their success in shipping barge loads of much needed food, construction materials, and other vital supplies to Kauai. They, however, were frustrated by the inability of the island's damaged infrastructure to absorb those supplies so that they could more quickly get into the community.

In this disaster, when the harbor and its staging area became accessible, it was inadequacy of other infrastructure, such as roads, warehouses, electricity (refrigeration), and communications, that prevented or slowed the distribution of relief supplies into the community once these supplies arrived. People and vessels, as well as airlines, were ready to and did serve the community. Many people from Kauai and all other parts of the State and all walks of life did step up and, as is our State's tradition and culture in times of need or crisis, went to remarkable and oftentimes heroic lengths to help others.

With the foregoing in mind, we respectfully offer the following amendments to Section 1 of the bill:

With the exception of ~~slow, time-consuming~~ interisland shipping and barge operations for the transportation of property between the islands, the only link between the islands for the transportation of persons is air transportation, with our present reliance on two interisland carriers and a few smaller commuter operations. However, this reliance on air-transportation may be misplaced. With the exception of the island of Hawaii, each of the neighbor islands is served by only one airport, and each may be subjected to severe operational interruption in the event of a natural disaster, such as a hurricane or earthquake. Even the Hickam Air Force Base-Honolulu international airport complex, with its location along the shoreline on Oahu may be operationally shut down by a natural disaster. ~~By way of example, had the airport at Lihue been shut down operationally in the aftermath of Hurricane Iniki, it would have taken days, if not weeks, before any major aid and relief in the form of water, food, medical supplies, and rescue workers could have reached the island. Hawaii is too reliant on its present slow water carriers and air carriers in the event of a major natural disaster.~~

While the Hawaii superferry operation had its shortcomings, rocky start, and questionable financial forecast, it proved to be a very successful mode of transportation of both persons and property between the islands of Maui and Oahu. ~~It was the missing link~~ provided a transportation option to serve the need that falls between flying and barge service and could have been an important component in the transportation system between the islands that is so essential for the health, safety, and well-being of the people of Hawaii. In the future, a ferry may provide a travel time for both passengers and cargo that falls between the transit times of airlines and barges, may transport cargo volumes greater than airlines but substantially lower than barges, and may otherwise provide a needed and differentiated service from those transportation services currently available.

The purpose of this Act is to require the department of transportation to conduct a study on the feasibility of establishing a statewide ferry system to provide ~~the a~~ a necessary and essential additional missing link component for the carriage of persons and property between the islands of the State.

Thank you for this opportunity to testify.



MAUI TOMORROW

Protecting Maui's Future

February 22, 2010

To: Chairman Oshiro and Members of the House Committee on Finance

Re: HB2667 Relating to Ferries

Maui Tomorrow Foundation, Inc. cautions the House Finance Committee to look closely at the implications of HB 2667. This bill, which would create a special fund to establish a state-subsidized ferry system using fast ferries needs to be fully thought out before committing state funds and taxpayer dollars to such a plan.

HB 2667 directs the Ferry Authority to seek federal funding assistance and purchase or lease two fast ferries that can carry at least 400 passengers and travel at speeds of 30 knots or more.

The director of the state Department of Budget and Finance testified that any diversion from the General Fund "cannot be considered at this time" and stated: "*It is unclear if the Hawaii State Ferry System special fund would be financially self-sustaining.*" This is a valid point as during the period of time the Hawaii Superferry was operating it only ran half full at best. A KITV online poll has shown that only about 50% of those taking part in the survey have voted in favor of tax payer dollars being spent on a state-subsidized ferry system.

The US Coast Guard classifies "high speed" vessels as those traveling over 32k. Most vessels including cruise ships, barges, tankers, etc. are traveling at maximum speeds of 20k. The two Hawaii Superferry vessels were "high-speed ferries." This class of vessel incurs many environmental problems wherever they operate.

Issues of the transporting of invasive species from island to island; the impact on the Hawaii humpback whale population; quality of life from traffic impact and pressures on natural and cultural resources on the neighbor islands all remain whether this system is run by a private corporation or subsidized by the state.

Extensive research shows with vessels traveling at 18knots whales strikes result in the animal's death. The recommended speed is 13k when traveling through humpback whale breeding areas.

Although Hawaii Superferry claimed that due to lack of propellers they would not cause harm to whales, research shows that 83% of kill strikes are the result of blunt trauma injury. These vessels have a draft of 14 feet, which means that 350 feet of ship is traveling at speeds over 40 miles an hour to a depth of 14 feet below the surface. It clearly represents danger to these marine mammals which are an endangered species.

Vessels similar to the Alakai in the Canary Islands have been responsible for numerous whale deaths. In New Zealand use of similar vessels led to an absence of humpback whales in the areas they traversed.

Also because of their high rate of speed these fast ferries have a very large wake of over 5 feet. Studies have shown extreme degradation where shorelines are continually impacted by such wakes.

The high cavitation or bubbling caused by the engine's water jets has been shown to cause acoustic noise that is detrimental to schooling and migrating species, including fish and marine mammals.

An inter-island ferry system must be studied in detail in accordance with both NEPA and HEPA regulations.

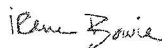
Further, this type of fast ferry vessel does not fit into the Clean Energy Initiative promoted by the Lingle administration. These ferries burns 15 times the petroleum-based fuel (MDO diesel) that a Hawaiian airplane (using jet fuel) burns to cover the same route, if you multiply the Hawaiian flights up to the fast ferry's maximum capacity, Hawaiian is still at least twice as fuel efficient as this type of ferry at transporting people inter-island.

To cloak a high-speed ferry system as needed primarily for emergency response is disingenuous at best. When Hurricane Iniki struck Kauai in 1992, Young Brothers' vessels brought needed supplies to the island almost immediately. Surely those vessels and others, military included, could be relied upon again if necessary.

As someone who attended (as a member of the public) almost every Oversight Task Force meeting during the year Hawaii Superferry was in service, I must express my dismay at how those on the task force were chosen and what their level of knowledge was in the issues surrounding fast ferries and environmental impacts. If this bill is allowed to pass and the State of Hawaii again convenes a group to look at a state-wide ferry system, Maui Tomorrow Foundation asks that this study be made up of truly informed individuals with diverse backgrounds and view-points in order to thoroughly investigate the potential impacts of such a system on both our fragile environment and our communities and I would ask to be considered for such a study.

In closing, this seems an especially poor time to be adding to the economic pressure the state is currently experiencing. We would hope this bill is shelved until a more prosperous time.

Sincerely,



Irene Bowie
Executive Director

Kahului Harbor Coalition
P.O. Box 170
Haiku, HI 96708

Testimony

Measure: HB2667 Relating to Ferries

Position: oppose and we request the inclusion of our organization in any "Study Group".

To:

Chairman Oshiro and Members of the House Committee on Finance

From:

Jeffrey Parker

Director, Kahului Harbor Coalition

2-22-10

Dear Chairman Oshiro and Members,

Our organization opposes Bill HB2667 for reasons outlined in this testimony. Also, should this ill-conceived and ill-written Bill actually pass and a "DOT Study Group" is authorized, then our group, a group who has been intimately involved in the Superferry debacle for approx. 5 years, formally requests to be named to any "Study Group" studying a State-run ferry system.

I. Study

The best model to look at when deciding whether or not the State should embark on something like the study proposed in HB2667 is the "Superferry Task Force" (OTF) that was required by the unconstitutional Act 2. Our members attended all the OTF meetings held on Maui and some of our associates even attended meetings in Honolulu. We hoped that the OTF members would listen to the concerns of the many organizations and individuals who appeared before them and would make recommendations which might mitigate some of the impacts of the Superferry operation. Instead, with the notable exception of 2 or 3 individuals, the Task Force members were political appointees who seemed to be only acting as cheerleaders for the Superferry.

When we asked the OTF to recommend procedures to limit or stop the "resource extraction" (the taking of Maui's reef fish, opihi, seaweed, rocks, etc) enabled by the Superferry, the OTF failed to do that. When we asked that the OTF recommend additional procedures that would have helped limit the spread of dangerous invasive species between the islands, the OTF failed to that. When we asked that the OTF recommend alternate routes and procedures that would have reduced the likelihood of whale strikes, the OTF did not make those recommendations.

So any study like the one proposed by HB2667 must included real citizens with real expertise, not political appointees merely acting as cheerleaders for a State-run ferry system.

II. Why a State-run ferry system now?

Conducting a costly "Study" at a time when our State faces unprecedented financial challenges, is counter to good and responsible policy. Shall we lay off more teachers and agricultural inspectors, close more libraries, to pay for this study? Of course we see the

same old inferences in the Bill - alluding to financing a ferry and the "study" through "Special Funds" or fees and charges. We heard this time and again during the Superferry debacle. For example, that the \$50 Million for the barges and harbor improvements would eventually be covered by increased harbor fees paid by the Superferry and other harbor users. No, what happened instead was that the State was left holding the bag. And some people just never seemed to put two and two together: that the increased fees charged to users like Young Brothers and Matson were passed along to Hawaii's consumers through higher freight charges on almost every item passing through Hawaii's harbors. How will jacking up the costs of goods and services passing through the harbors help Hawaii's people recover from severe economic downturn?

III. And all of this to achieve what?

Contrary to statements in the introduction of the Bill, the Hawaii Superferry definitely proved to NOT be "a very successful mode of transportation of both persons and property..." In the end the Hawaii Superferry could not generate enough rider ship and could not operate on enough days to do much more than cover its outrageous fuel consumption cost. (Even this, that it covered its fuel, is questionable)

This despite:

- A. a multimillion dollar public relations campaign
- B. one-sided reporting and promotion by many of Hawaii's newspaper and broadcast media.
- C. an owner, John Lehman, who bragged about his investors "deep pockets"
- D. massive subsidy by the State of Hawaii and subsidy by other harbor users
- E. a Loan Guaranty backed by the U.S. taxpayers,

Why does the State now believe that it can accomplish what these super-savvy businessmen could not?

Additionally, we have a problem with enshrining into legislation this assertion in the Bill:

"By way of example, had the airport at Lihue been shut down operationally in the aftermath of Hurricane Iniki, it would have taken days, if not weeks, before any major aid and relief in the form of water, food, medical supplies, and rescue workers could have reached the island."

Young Bros. submitted testimony to Rep. Souki's Transportation Committee (on HB2433) refuting this assertion and detailed Young Bros. rather rapid response to the Hurricane Iniki disaster.

IV. Compliance with HRS Chapter 343.

After the landmark decisions handed down by the Hawaii Supreme Court regarding the errors of the Administration and the Legislature in exempting the Superferry from Chapter 343, and the broad condemnation of the State Auditor Marion Higa, we find it both troubling and alarming that this Bill does not specifically require compliance with HRS Chapter 343 for any ferry system proposed by the HDOT or the "Ferry Authority". Instead the Bill rather weakly suggests:

"The Study shall also include (b-2) "(2) Any impact a statewide ferry system would have on the state and the counties;"

and (b-5)

"(5) Information on the impact a statewide ferry system would have on the other water carriers in the state."

And then the Bill ends with an extremely worrisome condition:

(c-3) "The study shall also include the following information on the development of a Hawaii state ferry system authority:

(3) The ability of the authority to eliminate or reduce barriers to travel between the Hawaiian islands and provide a positive and competitive business environment.

What does this mean? Is this supposed to be a foot in the door for those who see environmental protection as a barrier to travel or as a barrier to business?

So, if this Bill is passed (and we hope not) very strong specific language should be inserted regarding compliance with HEPA and NEPA such as

"all ferry systems proposed by the Ferry Authority or studied by HDOT must comply with HRS Chapter 343 (HEPA) and further must comply with NEPA (National Environmental Policy Act). All projects which are proposed as a result of this "Ferry Authority" or this "HDOT Study" will be subject to full environmental review under the law, and not merely some other kind of environmental review such as the pseudo-EIS required by Act 2."

Thank you for the opportunity to comment and we urge you to table this proposal at least until economic prospects for Hawaii vastly improve.

Sincerely

Jeffrey Parker



RE: HB2667

To: House Finance Committee

From: Malama Kaua'i

DATE: February 23, 2010

TIME: 4:30 p.m.

PLACE: Room 308

State Capitol, 415 South Beretania Street

Testimony to oppose HB2667

Dear Honorable House Members,

Malama Kaua'i would like to state our opposition to HB2667.

In this time of economic distress, the state of Hawaii would be remiss to focus its financial resources on conducting the study suggested in HB2667. Both Enterprise Honolulu and Market Scope Inc. have both conducted recent studies similar to the one being requested by HB2667, it is therefore an unneeded request at this time.

Further, it is ironic that a study to look at the financial viability of a ferry service that utterly failed to be financially viable despite an enormous financial investment from both the public and private sectors is even a consideration. The continued contribution of state money on a proven market failure is not the kind of sound investment that is needed at this time.

The fine members of this committee are well aware of the budgetary shortfalls that we must endure as a state over the coming years. Let us cut our losses with this failed endeavor and focus on viable solutions to uplift the communities of Hawaii as we head into this challenging time.

Mahalo nui loa,

Keone Kealoha
Executive Director

HB 2667, HD1 Tuesday, 23 February 2010 at 1630 in Room 308
House Committee on Finance
In Support of HB 2667 HD1 if amended to Protect the Present
Lanai and Molokai Private Ferry Operators

Chair Oshiro and Respected members of the Committee;

My name is Reg White. The reason I ask you to make an HD2 for section 3, Subparagraph 17 (b) is that we already have very dependable passenger ferry service operating for a number of years from Lahaina and Maalaea on Maui to Lanai and another company operating ferry service from Lahaina to Molokai. These are private companies. Local businessmen who have founded and built their businesses to serve the people of Maui, Lanai and Molokai as private enterprise. It is not proper that this bill should intend to take their paid in tax monies and use it to compete with them on their routes with a government owned and operated ferry. These are small businesses that employ local people and support our local economy. Please protect this condition in this bill.

I was one of the two captains of the Seaflite Hydrfoil passenger ferry KAMEHAMEHA which operated between our islands in the mid seventies. This proved that an interisland ferry system can work. By the time the parent company quit all private enterprise ventures in which they were involved worldwide, Seaflite was already breaking even, after only three years in operation. This might be a wee bit more difficult considering today's fuel prices, but probably can be done again with careful planning. Unfortunately, careful planning is what seemed to be lacking in the recent Hawaii SuperFerry attempt to serve us. It is most important that the vessels involved be designed with Hawaiian waters in mind. The waters that must be negotiated between our islands involve operating in conditions that are found in very few other locations around the world. In designing and building ships and boats destined to carry passengers in Hawaii for the past 36 years, I have learned that most well known and very expert designers do not understand the conditions that we must deal with here in Hawaiian waters almost every day. The berthing problems faced by Hawaii SuperFerry are a classic example of this oversight. Once our operating conditions have been made clear to these designers a very successful boat can be developed to do the job very well. The Seaflite Hydrofoils did quite well once Boeing had modified their systems to operate more dependably in our waters. After the modifications, we missed very few trips due to weather.

Respectfully,
Reg White
1540 S. King St.
Honolulu, HI 96826-1919
(808) 222-9794
RawcoHI@cs.com

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 21, 2010 2:00 PM
To: FINTestimony
Cc: mauibrad@hotmail.com
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM
Attachments: 04-0180_CA_2004-10-29.pdf

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Brad Parsons
Organization: Aloha Analytics
Address:
Phone:
E-mail: mauibrad@hotmail.com
Submitted on: 2/21/2010

Comments:
Aloha Representatives:

Commenting on the revised text of this bill HB 2667:

"While the Hawaii superferry operation had its shortcomings, rocky start, and questionable financial forecast, it proved to be a very successful mode of transportation of both persons and property between the islands of Maui and Oahu."

Actually, it did not. The financial failings were because of the amount of fuel consumed by these particular vessels, the distances involved, and low ridership partly due to conditions. These were intrinsic to it's failure.

"The purpose of this Act is to require the department of transportation to conduct a study on the feasibility of establishing a statewide ferry system..."

Interesting that this bill as a fall-back was turned into a study that's already been done, not once, but twice before. Enterprise Honolulu did a study on the ferry for the Legislature in 2004/2005 and Market Scope Inc. also did a similarly applicable study presented to the PUC. Both of them have been taken down from the Internet since the entity went bankrupt, but copies of those are still timely and circulating.

"The department shall study various types of ferry systems, including passenger-only and passenger, automobile, and cargo ferry systems, that the department determines are suitable for operations within Hawaiian waters, taking into account such parameters as vessel design and speed, passenger capacity, cargo capacity, automobile capacity, availability of smaller vessels for transportation between the islands of Maui, Molokai, and Lanai, and compatibility with harbor infrastructure."

And from the prior version of the bill:

"At minimum, the authority shall operate one high speed passenger and vehicular ferry vessel, with a minimum capacity of four hundred passengers and __ hundred vehicles, capable of operating at thirty knots or more, for the carriage of passengers and property between the major islands, and other small vessels, as needed, for service to the between the islands of Maui, Molokai, and Lanai and other routes."

Interesting key limitations and exclusions in that last paragraph. The high speed, vehicular ferry is an uncommon combination throughout the whole U.S. There are only a few vessels in the U.S. that meet that requirement. It also goes to the crux of two of the key points of contention with the HSF vessels. But further, notice the requirement of at least "four hundred passengers and ___ hundred vehicles" capacity. That differs from the unconstitutional Act 2 that required 500 passengers and 200 vehicles capacity, a key point that made it unconstitutional. The 400/100 opens it up to more vessels in the U.S. that meet that requirement, but none of them are high speed ferries except for the Akakai, Huakai, and The Cat (The Cat not Jones Act compliant). At present there are no other qualified fast ferry vessels made in the U.S. that meet the original requirements of this bill, other than the Alakai and Huakai, even if they do NOT match the operational requirements for cost-effective propulsion over the distances involved.

An undeniable realistic conclusion expected from the repetitive study envisioned by this bill would be to *subsidizing* a state run ferry service, most likely at a *loss*, to compete with a number of private sector companies by water and air.

Now, when there's not enough money for keiki here to have 5 decent, full days of school a week, you are being asked to spend more money on a study that has effectively been done, not once, but twice before?

Ladies and Gentlemen, we recommend responsibly deferring or outright killing this bill and leaving the private sector to do a ferry or not based on studies and experience that are already out there. The State of Hawaii cannot waste any more money on this.

Mahalo,
Brad Parsons

DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

PUBLIC UTILITIES
COMMISSION

OCT 29 3 29 PM '04

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII SUPERFERRY, INC.)
For Approval of a Certificate of Public)
Convenience and Necessity to engage in)
operations as a Water Carrier)

DOCKET NO. 04-0180

DIVISION OF CONSUMER ADVOCACY'S
STATEMENT OF POSITION

Pursuant to the Commission's Rules of Practice and Procedure, Hawaii Administrative Rules ("HAR") § 6-61-62, the Division of Consumer Advocacy ("Consumer Advocate") informs the Commission that it has completed its review of the above Application. Based upon that review, the Consumer Advocate hereby states that it does not object to the Commission's approval of the Application. The Consumer Advocate provides the following discussion on the basis for its recommendation.

I. PROCEDURAL HISTORY.

Hawaii Superferry, Inc. ("Applicant," "HSF" or "Company") filed an application for a certificate of public convenience and necessity ("CPCN") on July 22, 2004, to engage

in operations as a water carrier of persons and property between Honolulu and Nawiliwili, Kahului, and Kawaihae.

On July 29, 2004, pursuant to a Stipulation for Protective Order entered into between Applicant and the Consumer Advocate, the Commission issued Protective Order No. 21190 setting forth the procedures for dealing with privileged and confidential information that may be requested and/or filed in this docket.

On August 3, 2004, the Commission issued Order No. 21194 approving the proposed stipulated procedural order, subject to certain modifications stated in said order. The Consumer Advocate served information requests upon Hawaii Superferry on August 16, 2004. Hawaii Superferry's responses to the Consumer Advocate's information requests were filed on September 8, 2004.¹ Applicant's supplemental responses to the Consumer Advocate's information requests were filed on September 14, 2004. On September 27, 2004, the Consumer Advocate filed its supplemental information requests. Applicant responded on October 11, 2004.

On August 19, 2004, Young Brothers, Limited ("Young Brothers" or "YB") filed a motion to participate in the instant proceeding. In addition to receiving copies of all documents filed in this docket, YB requested permission to submit a Statement of Position on the issues set forth in Order No. 21194. On August 27, 2004, Applicant submitted a memorandum in opposition to Young Brothers' motion to participate. On September 2, 2004, YB filed its reply memorandum. In Order No. 21391, filed on October 1, 2004, the Commission granted YB's motion to participate and be allowed to

¹ Applicant requested Commission authorization to modify the procedural schedule and file the responses to the Consumer Advocate's Information Requests on September 8, 2004 instead of September 7, 2004. On September 9, 2004, the Commission approved Applicant's request.

receive copies of all correspondence, filings, and briefs that are not designated confidential under Protective Order No. 21190. In addition, YB is allowed to submit a written Statement of Position on the issues established in Order No. 21194. In its Order, the commission also stated that public hearings will be held on Oahu, Hawaii (Kona), Maui and Kauai during the month of November.²

II. DISCUSSION.

Applicant is a corporation organized in Hawaii on September 22, 2002, under the name HSF, Ltd. On February 2, 2004, Applicant changed its corporate name to Hawaii Superferry, Inc. Applicant's principal place of business is listed as Pier 19, Ferry Terminal in Honolulu, Hawaii.³

As previously stated, Applicant seeks a CPCN to provide a transportation service for persons and property between the Hawaiian islands. The proposed service will be provided using two 105-meter, semi-SWATH (i.e., Small Waterplane Area Twin Hull) aluminum catamaran vessels. Service is expected to commence upon delivery of the first vessel in late 2006, with the second vessel targeted for delivery in mid-2008.

As will be discussed herein, in its review of the Application, the Consumer Advocate prioritized each of the issues set forth in Order No. 21194 as follows:

² By letter dated October 11, 2004, the Commission informed Applicant and the Consumer Advocate that the public hearings would be held as follows: Oahu on November 10, 2004, Kauai on November 16, 2004; Maui on November 17, 2004, and Hawaii on November 18, 2004. The letters also stated that notice of the public hearing schedule would be published statewide on October 18, November 1, 8, and 16, 2004 in all five island/county newspapers.

³ Application, pages 3 and 4.

1. Whether Applicant's proposed service is or will be required by the present or future public convenience and necessity.
2. Whether Applicant's proposed service is consistent with the public interest and transportation policy of the State of Hawaii as set forth in the declaration of policy in Hawaii Revised Statutes ("HRS") §271G-2.
3. Whether Applicant is fit, willing and able to properly perform the proposed service and to conform to the provisions of the Hawaii Water Carrier Law, Chapter 271G, HRS, and the requirements, rules and regulations of the Commission thereafter.

A. APPLICANT HAS IDENTIFIED A DEMAND FOR THE PROPOSED SERVICE.

The Application states that each vessel will be able to transport 866 passengers and 282 vehicles per trip and have features that will allow passengers to drive their vehicles on and off the vessels. Businesses will also have the ability to transport their goods between the islands using their own drivers and trucks. In addition, Applicant has indicated the possible use of the proposed vessels by the military⁴ to transport military personnel and cargo between the islands. This specific ferry service is presently not available and provides the public with an alternative to air travel and for property carriage between the Hawaiian Islands.⁵

The proposed ferry service may provide a unique mode of transportation between the islands because passengers will be able to transport their vehicles on the

⁴ Application, page 20, Section 8.

⁵ Application, page 4 and 5.

same vehicle or craft upon which the passenger is also transported. Notwithstanding this uniqueness, the carriage of passengers and/or goods is a market that is already being served. Thus, the forecasted demand for the service is critical to Applicant's ability to sustain operations and meet its debt service obligations.

1. Analysis performed by Applicant to support the assessed demand for the proposed service.

To support the forecasted demand for the proposed service, Applicant provided a copy of a confidential study conducted by Market Scope, Inc., which analyzed the latent market potential for the proposed ferry system. The market research process is described in the *Guide to Research for Marine Transportation Services* on the U.S. Department of Transportation, Maritime Administration's ("MARAD") website.⁶ Market Scope, Inc. used focus groups and telephone surveys in the research process.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] by the ferry. Results from

the [REDACTED]

[REDACTED] that might potentially use the ferry system.

Although [REDACTED] comprise the [REDACTED] of HSF's forecasted revenues, the study also estimated other sources of revenue [REDACTED]

[REDACTED]. The historical data indicated that [REDACTED] was quite volatile over the

⁶ http://www.marad.dot.gov/marad_statistics/PDF/Guide_Market_Research_Marine_Transportation_svcs.pdf.

historical period. To forecast these revenue sub-segments, the study used the [REDACTED]

[REDACTED]. For purposes of this study, the Consumer Advocate has no objections to the method used by Market Scope, Inc. to determine the volume and associated revenues for these revenue sources.

Based on the Company's latent demand forecasts, revenue estimates were determined and compared to HSF's Cash Flow models. The Company determined that the latent market demand revenues as calculated from the various revenue streams would be several times greater than its breakeven revenue requirements. Thus, HSF asserts [REDACTED]

2. Analysis performed by the Consumer Advocate to determine the reasonableness of the Applicant's study supporting the claimed demand for the services.

The Consumer Advocate reviewed the methodology and results of the Market Scope, Inc. study to determine the study's reasonableness as it pertained to the number of passengers traveling on the proposed ferry since this is the primary support for the service. The survey questions were reviewed to determine if there were any biases that may have skewed the results. In addition, the resultant factors determined by the survey were compared with other data sources such as the 2000 Census and other information published in the Department of Business, Economic Development & Tourism ("DBED&T"), State Data Book to test the reasonableness of the study results.

3. The Consumer Advocate's concerns based upon the analysis conducted.

After reviewing the survey questionnaires and results, the Consumer Advocate had the following three concerns about the demand study, which appear to [REDACTED] the demand figures.

- The [REDACTED] appears to be have [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- The assumed [REDACTED]
[REDACTED] the number of potential passengers; and
- The [REDACTED]
[REDACTED] for the [REDACTED].

- a. **Emphasis on** [REDACTED] may have [REDACTED]
[REDACTED].

The survey appeared to emphasize [REDACTED]
[REDACTED]
[REDACTED], one would assume that most of the survey participants would have [REDACTED]
[REDACTED]. The focus group participants indicated, [REDACTED]
[REDACTED]
[REDACTED] by

Market Scope, Inc. in the [REDACTED] conducted. It appears from the resultant forecast by Market Scope, Inc. that [REDACTED]. The Consumer Advocate [REDACTED].

b. **Party size** [REDACTED].

Market Scope, Inc. concludes [REDACTED].

[REDACTED]. The Consumer Advocate contends that the party size (the number of passengers per travelling group) [REDACTED] households, especially for [REDACTED]. According to the 2000 U.S. Census, the average household [REDACTED]⁷ while the [REDACTED].⁸ It is possible that the survey respondents may have [REDACTED] in responding to [REDACTED] to the [REDACTED]. Thus, [REDACTED].

⁷ Table 1.45, Hawaii State Data Book, 2003, State DBED&T.

⁸ Confidential demand study, Table 8.

[REDACTED]

[REDACTED]

[REDACTED]

c. **Number of households used to forecast passengers is**
[REDACTED].

In addition to the concern articulated above regarding the [REDACTED]
[REDACTED], there is a potential concern regarding the [REDACTED]
[REDACTED]. The Consumer Advocate contends that the [REDACTED]
[REDACTED] appear to be [REDACTED]. In
the confidential response to CA-SIR-3, the Company indicated that the [REDACTED]
[REDACTED]
[REDACTED]. Although the methodology to [REDACTED]
[REDACTED]
[REDACTED]. The
[REDACTED] used in the study appears to be [REDACTED]
[REDACTED]
[REDACTED]. The
[REDACTED]. The
use of [REDACTED] the forecasted passenger counts,
especially from [REDACTED].

4. **Reasons why the above concerns are alleviated.**

Because some of the underlying numbers in the Company's study appeared to [REDACTED], the Consumer Advocate performed an alternative analysis that compared the capacity of the ferries to the level needed to [REDACTED]. As previously stated, passengers [REDACTED] to the Company; therefore, this category of revenues was the focus of the Consumer Advocate's review.

The capacity of each ferry is 866 passengers, which translates to approximately 2.9 million potential passengers on an annual basis based on two ferries and the expected sailing schedules.⁹ The passenger count based on [REDACTED] [REDACTED] translates to approximately [REDACTED] [REDACTED].¹⁰ The [REDACTED] potential ferry passenger trips would be [REDACTED] inter-island passenger trips.¹¹ It does not seem unreasonable to expect that HSF's new ferry service could [REDACTED].

The high airfares in recent years have resulted in a decrease in the number of inter-island trips taken by residents. The annual study by SMS Research and Marketing Inc. indicated that the number of Hawaii residents traveling inter-island has shrunk by 22 percent since 2000.¹² Thus, there appears to be a latent demand for residential use

⁹ 866 x 64 trips per week for 2 vessels x 52 weeks = 2,882,048.

¹⁰ Confidential response to CA-IR-9, Exhibit 10, page 113 of 113 also provided similar load factors.

¹¹ State of Hawaii Data Book 2003, Table 18.37.

¹² "Fewer Hawaii residents travel interisland," Honolulu Star-Bulletin, Sunday, September 5, 2004.

of the ferry system, assuming that the service can be offered at prices lower than existing airfare rates; [REDACTED]

[REDACTED]

[REDACTED]

Moreover, the Company has [REDACTED]

[REDACTED] HSF has indicated that the [REDACTED]

[REDACTED].¹³

Based on all of the above, the Consumer Advocate contends that with HSF's lower fares, advertising, and adequate and dependable service, Applicant could reasonably attract passengers and generate sufficient revenues to meet its financial obligations and operate a viable ferry system between the islands.

In addition, although the Consumer Advocate has concerns with Applicant's study, it must be noted that the Commission's review is only one of several reviews that must be satisfactorily completed before the sailing vessels can be constructed and operations commence. Of the [REDACTED] financing required to complete the project budget, \$ [REDACTED], \$55 million will be an equity investment [REDACTED]

[REDACTED]. As the funding commitments are contingent on a realistic revenue and operating budget, the prospective creditors are currently completing their due diligence of the financial projections which include the demand for the proposed service. MARAD's credit committee has commissioned an independent

¹³ Market Study, page 61.

consultant to review the confidential study prepared by Market Scope, Inc.¹⁴ According to Applicant, this requirement was recently incorporated into MARAD's loan guaranty review procedures. Given the significant risk that will be assumed by these entities, it is likely that the due diligence review conducted will be comprehensive and also likely that the concerns with the Market Scope, Inc. study results will be adequately addressed before completing any financing commitments.

Last, there are alternative means of traveling and transporting goods between the Hawaiian islands. Thus, consumers are provided some level of protection by the existing services considered viable substitutes to the proposed ferry service.

5. Summary conclusion on the demand for the proposed service.

Although the Consumer Advocate's analysis indicates some concern with respect to the results of the demand study conducted by Market Scope, Inc., the concerns are alleviated by other factors such as latent demand [REDACTED]. In addition, the demand study is also being independently reviewed by other entities in conjunction with their assessment of HSF's ability to meet the debt obligations, if the loans were granted.

Furthermore, the new ferry service would provide possible economic benefits in the form of placing competitive pressures on existing airfares and cargo tariffs that would ultimately benefit ratepayers. In addition, the ferry system could mitigate the impact of certain monopolistic services that may become unavailable for whatever reasons (e.g., union strikes, etc.). Finally, the service meets the State policy for use of

¹⁴ Response to CA-IR-7(a).

the waterways between islands and is supported by members of government and the private sector.¹⁵

B. APPLICANT'S PROPOSED SERVICE IS CONSISTENT WITH THE PUBLIC INTEREST AND TRANSPORTATION POLICY OF THE STATE OF HAWAII AS SET FORTH IN THE DECLARATION OF POLICY IN HRS §271G-2.

HRS §271 G-2 provides in pertinent part as follows:

The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest.

The Consumer Advocate contends that the public's interest will be served if

Applicant is granted the requested CPCN for the following reasons:

- The proposed service will provide more opportunities for transportation of persons and property between Oahu and the major neighbor islands.
- The proposed service is expected to be provided at a lower cost than air travel.¹⁶

In addition, the proposed service is in line with the State Plan--Transportation Objectives and Policies, HRS §226-17 which is directed towards the achievement of the following objectives:

- An integrated multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe, and convenient movement of people and goods.

¹⁵ Applicant has received letters from government and the private sector supporting this service (See Application, Exhibits 24, 25, and 26).

¹⁶ Application, Exhibit 20.

- Encouragement of a variety of carriers to offer increased opportunities and advantages to inter-island movement of people and goods.
- Increasing the capacities of airport and harbor systems and support facilities to effectively accommodate transshipment and storage needs.
- Encouragement of the development of transportation systems and programs that would assist statewide economic growth and diversification.¹⁷

C. APPLICANT IS FIT AND ABLE TO PERFORM THE PROPOSED SERVICE.

In addressing the fitness and ability of Applicant, the Consumer Advocate considered the following factors:

- Will Applicant be financially fit to provide the proposed service by securing the necessary funds to start operations, and then generate sufficient funds to sustain the proposed operations and meet its debt service? If not immediately, will Applicant have access to financing to cover the revenue shortfall until the demand for the service meets or exceeds the anticipated projection?
- Will Applicant possess the technical knowledge to successfully operate the ferry system?
- Will Applicant be able to provide the proposed service by securing the necessary governmental approvals to complete the harbor infrastructure

¹⁷

Approximately 261 full time equivalent positions are projected to support the two-ferry operation based on response to CA-IR-11a and b.

on each island, including the lease of harbor facilities and receiving delivery of the vessels as anticipated?

The Consumer Advocate has reviewed the Application and Applicant's responses to the information requests and has concluded that Applicant is financially fit and able to support the proposed service. The basis for the conclusion as it pertains to these issues will be addressed below:

1. Applicant is financially fit.

As mentioned in Section A.4 of this discussion, the project cost is estimated at \$ [REDACTED]. Applicant has identified the funding sources needed to finance the startup operations and vessel construction¹⁸ and is in the process of securing these commitments. The first phase of the equity funding was completed with the issuance of \$3.3 million in Series A preferred stock. The second phase, which involves the issuance of \$55 million in Series B preferred stock, should complete the equity infusion requirements to obtain approval for the MARAD loan guaranty in the amount of approximately \$ [REDACTED].¹⁹ Applicant has also entered into a subordinated loan agreement with ship builder, Austal USA, LLC for up to 10% of the shipyard contract price for each vessel.²⁰ The Company has asserted that the combination of the above

¹⁸ Application, pages 12-13, Section X.

¹⁹ Response to CA-IR-7, Exhibit 8, page 2 The Federal Ship Financing Program is administered by the MARAD. The program, established pursuant to Title IX of the Merchant Marine Act, 1936, as amended, provides for a full faith and credit guarantee by the United States Government for the purpose of promoting the growth and modernization of the U.S. merchant marine and U.S. shipyards.

²⁰ Application, page 13, Section 2.

arrangements will provide sufficient financing for start-up, on-going operations, and construction of both vessels.

According to Applicant, the equity financing must be approved by October 15, 2004,²¹ with a formal response from MARAD on October 31, 2004.²² Austal USA, LLC, who has been contracted to build the two vessels will not continue with the construction of the vessels until the equity and MARAD funding are finalized. If Applicant is not able to secure the equity funding, there may be a delay in the approval of the MARAD loan guaranty, which would also delay the construction of the proposed vessels and eventual commencement of operations.

The financing transactions have yet to be completed (as the financing is contingent upon receiving approval from other sources, such as the Commission's issuance of the instant CPCN). The Consumer Advocate's finding of financial fitness is based upon Applicant's representations that the financing transactions described above will be executed. Thus, the Consumer Advocate recommends that Applicant submit documentation upon receipt of the final commitments for the \$55 million equity funding and the estimated \$ [REDACTED] that will be secured by the MARAD loan guaranty. This reporting will allow the Commission and the Consumer Advocate to monitor Applicant's progress in finalizing the financial commitments for the proposed service, thereby confirming that Applicant is financially fit to offer the proposed service.

²¹ Response to CA-IR-6.

²² Response to CA-IR-7b.

2. Applicant has provided evidence of extensive managerial skills.

Based on the descriptions on pages 10 through 12 and Exhibit E of the Application, the Consumer Advocate will rely on Applicant's representations that Applicant's management possesses the management skills to support the proposed service. The management team has extensive experience in corporate management, the airline industry and marine operations and appears to have the ability to manage the company.²³

3. Applicant has provided evidence that it will possess the technical skills needed to reliably operate and maintain the ferry system.

Based on a review of the Application and responses to information requests, it appears that the Applicant has the technical ability to provide the proposed service. The vessels will be maintained and operated by an affiliate/subsidiary of Hornblower Marine Services, Inc. ("Hornblower").²⁴ Hornblower and its subsidiaries have been in operation since 1997 and currently support other similar vessels in the United States,²⁵ which includes the Lake Express ferry in Michigan that commenced operations earlier this year.

According to Hornblower's website,²⁶ their management team appears to include individuals with extensive experience in marine management and technology. John

²³ Application, pages 10-12, Section IX and Exhibit 14.

²⁴ Application, Exhibit 15, pages 1-6 and response to CA-IR-5a and 5b.

²⁵ Application, Exhibit 15, page 1.

²⁶ Hornblowermarine.com.

Waggoner, co-founder, President and CEO of Hornblower, "has been instrumental in the development of maritime safety in the United States."

The Consumer Advocate has relied on the representations presented by Applicant in determining the quality of the Hornblower's technical expertise. In addition the Consumer Advocate notes that Hornblower has been servicing existing ferry operations in Florida, Michigan and California since 1997.

4. Applicant will have the necessary facilities to provide the proposed service.

The sailing vessels will be built by Austal USA, LLC, a joint venture of Austal, Limited and Bender Shipbuilding & Repair Co., Inc. Austal, Limited is an Australian company who has developed and built several similar type vessels including the Spirit of Ontario ferry²⁷ that stopped in Hawaii earlier this year on its way to its homeport in Rochester, New York. Austal USA, LLC, located in Mobile, Alabama, built the Lake Express ferry that has been operating since June 2004, between Muskegon, Michigan and Milwaukee, Wisconsin.²⁸ The Consumer Advocate recommends that Applicant submit periodic (i.e., annual, beginning on December 31, 2004) progress reports on the construction of the vessels to monitor the progress of HSF's ability to commence services in late 2006 with the first vessel and mid-2008 with the second vessel.

²⁷ According to Canadian American Transportation Systems website, www.catsfastferry.com. the "Spirit of Ontario" also known as "The Breeze" has suspended its operations.

²⁸ According to the response to CA-SIR-2(a-d), the Austal USA's factory in Mobile Alabama was not affected by the recent hurricanes. Thus, it was not necessary to amend the completion dates of Applicant's two ferries at this time.

Prior to commencing operations in the Hawaiian waters, the vessels will undergo sea trials and obtain certification from the U.S. Coast Guard to ensure safe passage between the islands. A copy of the certification should be provided.

In addition to the ferries that will be used in the operations, Applicant requires terminal and associated infrastructure at each of the landing piers on each island. The Consumer Advocate notes that other State government agencies are responsible for developing and completing the infrastructure at the respective harbors to support the operation of the vessels. Applicant has represented that they are working closely with these agencies to ensure that the necessary permits, leases, and infrastructure are available. Based on the above, the Consumer Advocate will rely on the representations of Applicant as it pertains to procuring the necessary infrastructure at the harbors.

D. APPLICANT'S PROPOSED RULES AND RATES ARE REASONABLE.

According to the Hawaii Water Carrier Act §271-G-16(a), "it shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto"

The Consumer Advocate has reviewed Applicant's proposed Tariff No. 1 containing the rules, regulations and charges relating to the proposed service.²⁹ The analysis focused on the following issues:

- Are the rates reasonable?

²⁹

Application, Exhibit 6.

- Are the rules and regulations just and reasonable in protecting the consumer?

Based on the analysis of the proposed tariff, the Consumer Advocate has concluded that the tariff is reasonable for the reasons discussed below.

1. The proposed rates are market based.

The proposed service will be an alternative mode of transportation (i.e., not a monopoly service) between Honolulu and Kahului, Nawiliwili and Kawaihae. As such, rates for this service will be based on the market and HSF's ability to meet its debt service. Furthermore, should potential customers deem the instant proposed rates to be unreasonable, the customers have alternatives to travel inter-island.

In addition, since Applicant has not commenced operations, there is no historical data from which to review to determine the reasonableness of the projections upon which the instant proposed rates is based. Furthermore, Applicant will be required to abide by the Hawaii Water Act, HRS §271G-17(b) and provide notice of any proposed change. At such time, the Consumer Advocate and Commission can review historical data (i.e., data supporting the revenues per sailing, actual costs of operations, market demand, etc.) to better assess the reasonableness of future rate changes.

Based on all of the above, the Consumer Advocate will not oppose the instant proposed rates.

As an aside, the HAR §6-65-4 states that "A water carrier shall make all of its tariffs available for public inspection or examination at: (1) Its principal place of business; and (2) each of its stations or offices." The Consumer Advocate recommends

that Applicant's tariff also be posted on their website since Applicant has stated that passengers will have the ability to purchase tickets from the website.³⁰

2. The rules and regulations are reasonable and protect the potential HSF consumer.

In the Consumer Advocate's review of the proposed rules and regulations, the following was considered to determine whether Applicant's customers' interests were adequately protected:

- What procedures are in place for sailing cancellations?
- How will Applicant handle customer disputes?

a. HSF has made provisions to provide adequate notice to customers regarding sailing cancellations.

Applicant acknowledged that sailings may be cancelled due to mechanical issues, inclement weather conditions or other reasons as determined by Applicant. These cancellations may be scheduled or unscheduled and Applicant has included their procedure to inform ticketed passengers of such cancellations.³¹ In the proposed tariff, Applicant has stated that passengers will be notified of downtimes through Applicant's website, e-mail and through its reservations systems and marketing efforts. For scheduled cancellations, a minimum one month's advance notice will be provided. For unscheduled cancellations, Applicant will attempt to contact pre-booked customers by

³⁰ Application, Exhibit 6, Section I.C.

³¹ Application, Exhibit 6, Section I.F

e-mail or telephone, once a cancellation is scheduled.³² The Consumer Advocate has determined that Applicant appears to be making reasonable efforts to notify customers of sailing cancellations. In addition, when an unscheduled cancellation occurs because of unsafe conditions or vessel maintenance, passengers will have the option of a full refund or ticket transfer to a future voyage

Based on a review of the proposed procedures, it appears that Applicant will take the necessary steps in making reasonable efforts to notify customers of unscheduled cancellations, and compensate the customers in such situations. The number of unscheduled cancellations, however, will have an impact on the demand for the service and ultimately Applicant's ability to generate sufficient revenues to meet its debt service obligations. Thus, in order to monitor the number of unscheduled sailing cancellations, the Consumer Advocate recommends that the Applicant be required to submit a quarterly report on the number of sailing cancellations and state the reasons for each cancellation.

b. Customer complaints and dispute resolution.

The Consumer Advocate notes that although the tariff includes information regarding cancellations, there may be instances where a customer wants to file a complaint, or dispute entitlement to compensation for a matter dealing with the ferry system (e.g., overbooking or a damage claim). The proposed tariff does not provide language for resolving customer disputes (i.e., overbooking, sailing delays, etc.) Thus,

³² Response to CA-IR-2(e).

the Consumer Advocate recommends that Applicant provide the following provision discussing customer disputes and resolution.

The Customer may refer a complaint or dispute to Hawaii Superferry, Inc. either in writing or by phone at:

Hawaii Superferry, Inc.
Pier 19, Ferry Terminal
Honolulu, HI 96817

Telephone : (808) XXX-XXXX

If the Customer is unable to resolve its complaint or dispute with Hawaii Superferry, Inc., the Customer may contact the Hawaii Public Utilities Commission in writing or by phone at the following address and telephone number:

Hawaii Public Utilities Commission
Kekuanaoa Building
465 South King Street,, Room 103
Honolulu, Hawaii 96813

Telephone: (808) 586-2020
Facsimile: (808) 586-2066

III. RECOMMENDATIONS.

The Consumer Advocate hereby states that it does not object to the approval of Applicant's request to obtain a CPCN for the following reasons:

1. The proposed service is needed and serves a public interest as it will provide:
 - An alternative means of transportation for passengers, vehicles and cargo between the islands;
 - Potential economic benefits through lower travel costs between the islands as compared to air travel;

- Additional potential economic benefits through the addition of new jobs and demand for more services; and
- Support the State's Transportation Objectives and Policies set forth in HRS §226-17.

2. Applicant appears to be fit, willing and able to provide this service.

The Consumer Advocate's position is, however, predicated upon the belief that the Applicant is able to consummate the financing and harbor infrastructure commitments, and to complete the construction and delivery of the vessels to commence the proposed service. Therefore, as discussed above, Applicant should be required to submit:

- documentation to indicate receipt of the commitment for the \$55 million equity funding and the estimated \$ [REDACTED] (see discussion in Section II.C.1.);
- semi-annual progress reports on the construction of the vessels beginning on December 31, 2004 (see discussion in Section II.C.4.);
- a copy of the certification received from the U.S. Coast Guard indicating that the vessels have passed the sea trials (see discussion in Section II.C.4.); and
- a quarterly report on the number of sailing cancellations, stating the reasons for each cancellation (see discussion in Section II.D.2.a.).

Finally, Applicant should include language in its tariff informing customers of the place and phone number to register complaints or resolve disputes, as discussed in Section II.D.2.b.).

DATED: Honolulu, Hawaii, October 29, 2004.

Respectfully submitted,

By 
JOHN E. COLE
Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

JOHN GARIBALDI
Hawaii Superferry, Inc.
Pier 19, Ferry Terminal
Honolulu, Hawaii 96817

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
AUDREY E.J. NG, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813

LISA M.K. SAKAMOTO
VICE PRESIDENT FINANCE AND GOVERNMENT AFFAIRS
YOUNG BROTHERS, LIMITED
1331 North Nimitz Highway
Honolulu, Hawaii 96817

J. DOUGLAS ING, ESQ.
WRAY H. KONDO, ESQ.
EMI L.M. KAIMULOA, ESQ.
WATANABE ING KAWASHIMA & KOMEIJI LLP
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, October 29, 2004.



FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 21, 2010 2:30 PM
To: FINTestimony
Cc: judie@aloha.net
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Judie Lundborg
Organization: Individual
Address: 4865 G Nonour Rd Kapaa, Hawaii
Phone: 808-639-0212
E-mail: judie@aloha.net
Submitted on: 2/21/2010

Comments:

I totally oppose WASTING any money to study the feasibility of a state owned high speed ferry. The State is in serious financial difficulty and you want to waste dollars for a study that's been done twice before for an operation that wasn't and never will be profitable because it's a fuel guzzler and too big for the amount of potential passengers. Not to mention that it's unlikely that a high speed ferry could favorably pass an EIS. If you have money to burn in the legislature, please spend it on getting the teachers back to work.

Aloha,

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 21, 2010 3:15 PM
To: FINTestimony
Cc: GLaBedzMD@aol.com
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Gordon LaBedz
Organization: Surfider Foundation, Kaua'i
Address: PO Box 819 Waimea, HI 96796
Phone: 808 337 9977
E-mail: GLaBedzMD@aol.com
Submitted on: 2/21/2010

Comments:

To spend money on these whale killing machines when there isn't enough money for schools, borders on criminal.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 22, 2010 9:37 PM
To: FINTestimony
Cc: Karen@RedwoodGames.com
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Karen Chun
Organization: Individual
Address: 87 Lae St. Paia HI 96779
Phone: 808 283-3049
E-mail: Karen@RedwoodGames.com
Submitted on: 2/22/2010

Comments:

In this time when we are unable to pay for even the most necessary and basic of government services it does not make sense to throw away money on yet another study of a ferry.

In particular, limiting this study to a "fast" ferry virtually guarantees that the study will conclude that fuel costs and environmental damage will make any ferry both financially infeasible and opposed by large numbers of people.

A more moderate speed ferry would be far more likely to pencil out as financially feasible so it makes no sense to limit the study by including the words "high speed" or "fast"; and artificially limiting our options.

Please vote against this legislation. If you do pass it, please study ALL ferry options rather than limiting it to the worst possible option in terms of financial feasibility.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 22, 2010 9:26 PM
To: FINTestimony
Cc: mauibrad@hotmail.com
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Brad Parsons
Organization: Aloha Analytics
Address: Hawaii
Phone:
E-mail: mauibrad@hotmail.com
Submitted on: 2/22/2010

Comments:
LATE but condensed and slightly revised testimony:

Aloha Representatives:

Commenting on the revised text of this bill HB 2667:

"While the Hawaii superferry operation had its shortcomings, rocky start, and questionable financial forecast, it proved to be a very successful mode of transportation of both persons and property between the islands of Maui and Oahu."

Actually, it did not. The financial failings were because of the amount of fuel consumed by these particular vessels, the distances involved, and low ridership partly due to conditions. These were intrinsic to it's failure.

"The purpose of this Act is to require the department of transportation to conduct a study on the feasibility of establishing a statewide ferry system..."

Interesting that this bill as a fallback was turned into a study that's already been done, not once, but twice before. Enterprise Honolulu did a study on the ferry for the Legislature in 2004/2005 and Market Scope Inc. also did a more comprehensive study presented to the PUC.

As written, this bill would task the State Department of Transportation (DOT) with doing this study. That's a DOT that has shown itself to be biased and unobjective on even basic logistical matters of a prospective ferry, such as passenger-only, cargo, size, speed, and propulsion. Should newfound objectivity on this matter be expected from DOT-Harbors? Further, the hastily substituted current version of this bill does not indicate how much money is to be wasted on this study, a matter the Finance Committee no doubt should take strong note of.

An undeniably realistic conclusion expected from the repetitive study envisioned by this bill would be *subsidizing* a state run ferry service, most likely at a *loss*, to compete with a number of private sector companies by water and air. Not an outcome any better than the present.

Now, when there's not enough money for keiki here to have 5 decent, full days of school a week, you are being asked to spend more money on a study that has effectively been done, not once, but twice before?

Ladies and Gentlemen, we recommend responsibly deferring or outright killing this bill and leaving the private sector to do a ferry or not based on studies and experience that are already out there. The State of Hawaii should not waste any more money on this.

Mahalo,
Brad Parsons

**Testimony to the House Finance Committee
Tuesday, February 23, 2010 4:30 p.m.
Conference Room 308**

Prof. (Emeritus) Dick Mayer
1111 Lower Kimo Dr.
Kula, Maui, HI 96790
Phone: 808-283-4376
Email: dickmayer@earthlink.net

February 22, 2010

**Chair Marcus Oshiro, Vice Chair Marilyn Lee
and Members of the Finance Committee:**

Strong Opposition to HB 2667 RELATING TO FERRIES.

Requires the Department of Transportation to conduct a study on the feasibility of establishing a statewide ferry system and the Hawaii State Ferry System Authority for the operation of a ferry system between the islands.

I am a retired (34 Years) Maui Community College Professor (Economics and Geography). For the past three years I have served as the Vice-Chair of the Maui General Plan Advisory Committee (Advisory to the Maui County Council). I am speaking on my own behalf, and not as a member of the Maui General Plan Advisory Committee.

HB 2667 would authorize a most wasteful expenditure of scarce funds, at a time when many far more important programs are being scaled back. Not only would the "Ferry Study" itself have significant, and as yet unspecified costs, but any prospective ferry system would lead to seriously expensive on-going State subsidies.

Where will the ferry study funds come from? General Funds? The State Harbor Special Fund which is already paying large amounts for unneeded barges/ramps, pier repairs, a legal defence resulting from an improper environmental review exemption, a large-capacity ferry vessel task force, an improper EIS review mandated by Act 2, etc.? All of these costs will actually be paid by every Hawaii resident whose products come through any of the State's harbors.

There is a need to keep the study out of the hands of H-DOT. They so mis-managed the Hawaii Superferry initiative that they are neither a wise choice to do a needed comprehensive study as called for in HB 2667, nor an impartial agency to evaluate the financial and operational feasibility of such an operation. Quite simply, the H-DOT has conflicts of interest that may have H-DOT trying to kill any ferry proposal, or conversely, unrealistically trying to promote a particular ferry option.

HB 2667 entirely avoids mention of requiring an Environmental Assessment. Have we learned nothing?

HB 2667 is a finically extravagant bill and I ask all members of the Finance Committee to vote "NO" on this bill; and not "Yes, with reservations". There is no need to waste further legislative time or energy on this bill.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 23, 2010 12:32 AM
To: FINTestimony
Cc: shannonkona@gmail.com
Subject: Testimony for HB2667 on 2/23/2010 4:30:00 PM

Testimony for FIN 2/23/2010 4:30:00 PM HB2667

Conference room: 308
Testifier position:
Testifier will be present: No
Submitted by: Shannon Rudolph
Organization: Individual
Address: P. O. 243 Holualoa
Phone: 808-322-6604
E-mail: shannonkona@gmail.com
Submitted on: 2/23/2010

Comments:
Aloha Representatives:

Commenting on the revised text of this bill HB 2667:

"While the Hawaii superferry operation had its shortcomings, rocky start, and questionable financial forecast, it proved to be a very successful mode of transportation of both persons and property between the islands of Maui and Oahu."

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Ladies and Gentlemen, we recommend responsibly deferring or outright killing this bill and leaving the private sector to do a ferry or not based on studies and experience that are already out there. The State of Hawaii should not waste any more money on this.

Mahealani,
Shannon Rudolph