
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 PART I

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

11 The legislature finds that the existing circumstances,
12 specifically the construction and completion of harbor
13 improvements and the subsequent operation of a large capacity
14 ferry vessel company for a limited period of time, present a
15 unique situation. Seldom, if ever, has a judicial determination
16 overturned harbor improvements and business operations that were
17 previously authorized by the government and approved by the
18 lower court approximately two years earlier. Such an occurrence



1 is not explicitly contemplated in chapter 343, Hawaii Revised
2 Statutes, and is not consistent with the intent of the
3 legislature. As such, the policy that applies under law should
4 be amended and clarified.

5 The legislature further finds that the operation of a large
6 capacity ferry vessel company, specifically, using a new class
7 of large capacity ferry vessels capable of transporting large
8 numbers of people, motor vehicles, and cargo with ease, is in
9 the public interest in that it provides a real and innovative
10 alternative to existing modes of transporting people, motor
11 vehicles, and cargo between the islands of the state. With its
12 ability to transport large quantities of cargo between islands
13 in a very short period of time, agricultural produce would
14 suffer less heat damage in transit, resulting in higher quality
15 produce and fresh food products at a lower cost for all
16 residents of the state. By encouraging the growing of products
17 on the islands of Kauai, Maui, and Hawaii for the Oahu market,
18 the operations of a large capacity ferry vessel company would
19 foster diversified agriculture, helping the State of Hawaii to
20 meet one of its constitutional mandates. Further, in times of
21 natural or other disasters, a large capacity ferry vessel



1 company could provide the means to rapidly deploy disaster
2 relief personnel, equipment, and supplies.

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

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

19 The legislature further finds that it would be appropriate
20 for:

21 (1) An oversight task force to study the State's actions
22 regarding the establishment of the operations of any



1 large capacity ferry vessel company as a whole, and
2 the impact of any existing or proposed large capacity
3 ferry vessel operations, and to report its findings to
4 the legislature and governor; and

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

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

20 (1) A large capacity ferry vessel company and large
21 capacity ferry vessels may operate subject to the



1 employment of measures to mitigate significant
2 environmental effects;

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

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

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

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

20 (1) Due to the unique nature and critical importance of
21 the inter-island ferry service industry to the people
22 of our state, the construction and use of harbor



1 improvements to facilitate this new type of inter-
2 island ferry service is to be governed by this Act,
3 and not by chapter 343, Hawaii Revised Statutes; and

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

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



- 1 (1) The operation of a large capacity ferry vessel company
2 pursuant to any certificate of public convenience and
3 necessity approved by the public utilities commission;
 - 4 (2) The operation of a large capacity ferry vessel company
5 and large capacity ferry vessel between any port or
6 harbor in Hawaii pursuant to any written operating
7 agreement;
 - 8 (3) The construction, use, or operation of any
9 improvements at Kahului harbor and any other harbor in
10 the state relating to the operation of a large
11 capacity ferry vessel company or large capacity ferry
12 vessel; or
 - 13 (4) The appropriation or expenditure of any funds, the use
14 of state lands, the issuance of any permits, or the
15 entering into of any agreements; or
- 16 The otherwise taking of any other necessary or appropriate
17 actions for the purpose of facilitating any matter covered
18 by paragraphs (1) to (4), notwithstanding the fact that the
19 non-preparation or non-completion of environmental
20 assessments or environmental impact statements, the lack of
21 acceptance of an environmental impact statement, or the
22 lack of a finding of no significant impact, would otherwise



1 have barred, delayed, been a condition precedent to, or
2 interfered with the same;
3 provided that upon commencement of inter-island ferry service,
4 the large capacity ferry vessel company shall comply with the
5 conditions and protocols set by the governor by executive order.

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

- 11 (1) A large capacity ferry vessel company and large
12 capacity ferry vessels may operate;
- 13 (2) Agreements with respect to such operation, including
14 the operating agreements, entered into between the
15 State and a large capacity ferry vessel company may be
16 enforced, executed, or re-executed; and
- 17 (3) Related harbor improvements may be constructed and
18 used by the State, by a large capacity ferry vessel
19 company, and by others.



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PART II

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

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

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

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

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

SECTION 3. Notwithstanding chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes, or their state or county



1 implementing rules or ordinances, including but not limited to
2 provisions relating to special management area permits,
3 certificates of public convenience and necessity, common
4 carriers by water, environmental assessments, and environmental
5 impact statements, and further notwithstanding that
6 environmental assessments and environmental impact statements
7 have not been prepared or completed, or have been completed and
8 an environmental impact statement is not accepted, is found
9 unacceptable, or a finding of no significant impact has not been
10 made:

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

19 (2) All state harbor improvements, projects, and
20 facilities available for or to be utilized by the
21 large capacity ferry vessel company may be completed



- 1 and utilized for any purpose agreed to and authorized
2 by appropriate state entities;
- 3 (3) A large capacity ferry vessel company and the
4 appropriate state entities may proceed pursuant to and
5 subject to all executed tariffs, agreements, and
6 contracts between the company and the state entities,
7 whether the tariffs, agreements, and contracts may
8 have previously been found to be in violation of
9 chapter 343, Hawaii Revised Statutes, or any other
10 law;
- 11 (4) The operation of large capacity ferry vessels between
12 the islands of Oahu, Maui, Kauai, and Hawaii,
13 including the use of harbor facilities on each island
14 and improvements at Kahului harbor, is declared to be
15 a required public convenience and necessity;
- 16 (5) A certificate of public convenience and necessity
17 issued to a large capacity ferry vessel company shall
18 not be revoked or modified on the basis that
19 environmental assessments or environmental impact
20 statements have not been prepared or completed; and
- 21 (6) The construction, use, or operation of any facilities
22 or improvements authorized by any agreement between a



1 large capacity ferry vessel company and a state
 2 department, board, commission, or agency shall not be
 3 subject to or require any county permits or approvals,
 4 notwithstanding the fact that the non-preparation or non-
 5 completion of environmental assessments or environmental impact
 6 statements, the lack of acceptance of an environmental impact
 7 statement, or the lack of a finding of no significant impact,
 8 would otherwise have barred, delayed, been a condition precedent
 9 to, or interfered with the same.

10 SECTION 4. (a) As a condition precedent to the rights
 11 conferred by section 3 of this Act, the governor shall impose,
 12 by means of an executive order, and without regard to chapter
 13 91, Hawaii Revised Statutes, or any other provision of law,
 14 conditions and protocols on a large capacity ferry vessel
 15 company's inter-island operations to mitigate significant
 16 environmental effects that the governor determines, in the
 17 governor's judgment, are likely to be caused by such inter-
 18 island operations.

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

- 21 (1) Ocean life and marine animals and plants, including a
- 22 whale avoidance policy and procedures;



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

11 The governor shall notify the legislature of any conditions
12 or protocols established, including the entities consulted,
13 within ten days of establishing the condition or protocol.

14 (b) As a further condition precedent to the rights
15 conferred by section 3 of this Act, any large capacity ferry
16 vessel company authorized to operate pursuant to this Act shall
17 be governed by the following conditions:

- 18 (1) If the large capacity ferry vessel travels in a route
19 that is in any part in state marine waters less than
20 one hundred fathoms, the vessel shall travel at the
21 National Oceanic and Atmospheric Administration's
22 recommended speed of no more than thirteen knots. The



1 large capacity ferry vessel shall at all times,
2 regardless of depth, execute its whale avoidance
3 policy to provide safe passage to passengers and to
4 minimize strikes to whales;

5 (2) The large capacity ferry vessel company shall
6 immediately apply for an incidental take permit from
7 the National Oceanic and Atmospheric Administration
8 and pursuant to Section 7 of the federal Endangered
9 Species Act engage in consultation with the National
10 Oceanic and Atmospheric Administration regarding the
11 impacts of its large capacity ferry vessel operations
12 on protected marine mammals;

13 (3) Prior to boarding the vessel, the operator of the
14 large capacity ferry vessel company shall randomly
15 inspect for matters that contravene the intended
16 purpose of the governor's conditions and protocols:

17 (A) Trunks of cars;

18 (B) Beds of pickup trucks;

19 (C) Engine compartments of these vehicles; and

20 (D) The interiors of these vehicles, including items
21 such as coolers, boxes, and trunks, shall be
22 opened and inspected;



1 (4) Agricultural inspections shall be conducted randomly;

2 (5) The large capacity ferry vessel company shall post
3 signage at all harbors regarding the prohibition of
4 invasive species on the vessel. Specific information
5 about invasive species shall be disseminated through
6 the ticketing process;

7 (6) There shall be two qualified department of agriculture
8 agricultural inspectors present and participating in
9 agricultural inspections at all times of embarkation
10 at each port. The department of agriculture
11 inspectors shall supervise all screeners hired by the
12 large capacity ferry vessel company; and

13 (7) With the approval of the governor:

14 (A) The department of transportation shall transfer
15 operating funds and positions within its
16 authorized position ceiling to the department of
17 agriculture necessary to fulfill the agricultural
18 inspection personnel requirement set forth in
19 paragraph (6); and

20 (B) The department of agriculture shall transfer
21 operating funds and positions within its
22 authorized position ceiling necessary to fulfill



1 the agricultural inspection personnel requirement
2 set forth in paragraph (6).

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

9 (d) The legislature reserves the sole right to:

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

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

17 SECTION 5. Any large capacity ferry vessel operating in
18 state marine waters pursuant to section 3 shall comply with all
19 laws of general applicability, except as otherwise provided in
20 this Act. The environmental review process for state actions in
21 connection with a large capacity ferry vessel company shall be



1 governed by this Act, and not by chapter 343, Hawaii Revised
2 Statutes.

3 PART III

4 SECTION 6. Nothing in this part shall be deemed or
5 construed to impose a condition precedent to any activity
6 authorized under parts I, II, or IV of this Act.

7 SECTION 7. As used in this part, unless the context
8 otherwise requires:

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

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

19 "Addendum" means an attachment to a draft environmental
20 impact statement, prepared at the discretion of the department,
21 and distinct from a supplemental statement, for the purpose of
22 disclosing and addressing clerical errors such as inadvertent



1 omissions, corrections, or clarifications to information already
2 contained in the draft environmental impact statement already
3 filed with the office.

4 "Agency" means any department, office, board, or commission
5 of the state or county government which is a part of the
6 executive branch of that government.

7 "Approval" means a discretionary consent required from an
8 agency. Discretionary consent means a consent, sanction, or
9 recommendation from an agency for which judgment and free will
10 may be exercised by the issuing agency, as distinguished from a
11 ministerial consent. Ministerial consent means a consent,
12 sanction, or recommendation from an agency upon a given set of
13 facts, as prescribed by law or rule without the use of judgment
14 or discretion.

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

22 "Department" means the department of transportation.



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

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

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

19 "Environmental impact statement" or "statement" means an
20 informational document prepared in compliance with this part and
21 which discloses the environmental effects of an action, effects
22 of an action on the economic welfare, social welfare, and



1 cultural practices of the community and state, effects of the
2 economic activities arising out of the action, measures proposed
3 to minimize adverse effects, and alternatives to the action and
4 their environmental effects.

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

11 "Office" means the office of environmental quality control.

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

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

18 "Secondary impact" or "secondary effect" or "indirect
19 impact" or "indirect effect" means effects which are caused by
20 the action and are later in time or farther removed in distance,
21 but are still reasonably foreseeable. Indirect effects may
22 include growth inducing effects and other effects related to



1 induced changes in the pattern of land use, population density
2 or growth rate, and related effects on air, water, and other
3 natural systems, including ecosystems.

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

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

20 SECTION 9. (a) The environmental impact statement
21 required to be prepared under this part by the department shall



1 comply with and be in conformity with the provisions of this
2 part.

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

5 (1) Identifying environmental concerns;

6 (2) Obtaining various relevant data;

7 (3) Conducting necessary studies;

8 (4) Receiving public and agency input;

9 (5) Evaluating alternatives; and

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

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



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

17 (d) The environmental impact statement shall contain an
18 explanation of the environmental consequences of the action.
19 The contents shall fully declare the environmental implications
20 of the action and shall discuss all relevant and feasible
21 consequences of the action. In order that the public can be
22 fully informed and that the department can make a sound decision



1 based upon the full range of responsible opinions on
2 environmental effects, the statement shall include responsible
3 opposing views, if any, on significant environmental issues
4 raised by the action.

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

13 (f) Any substantive comments received by the department
14 pursuant to this part shall be responded to in writing and as
15 appropriate, incorporated into the draft environmental impact
16 statement by the department prior its filing with the office.
17 Letters submitted which contain no comments on the project but
18 only serve to acknowledge receipt of the document do not require
19 a written response. Acknowledgement of receipt of these items
20 shall be included in the final statement.

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



- 1 (1) A summary sheet which concisely discusses the
- 2 following:
- 3 (A) Brief description of the action;
- 4 (B) Significant beneficial and adverse impacts,
- 5 including cumulative impacts and secondary
- 6 impacts;
- 7 (C) Proposed mitigation measures;
- 8 (D) Alternatives considered;
- 9 (E) Unresolved issues; and
- 10 (F) Compatibility with land use plans and policies,
- 11 and a listing of permits or approvals;
- 12 (2) A table of contents;
- 13 (3) A separate and distinct section that includes a
- 14 statement of purpose and need for the action;
- 15 (4) A project description which shall include the
- 16 following information, but need not supply extensive
- 17 detail beyond that needed for evaluation and review of
- 18 the environmental impact:
- 19 (A) A detailed map, preferably a United States
- 20 Geological Survey topographic map, Flood
- 21 Insurance Rate Maps or Floodway Boundary Maps as
- 22 applicable, and a related regional map;



- 1 (B) Statement of objectives;
- 2 (C) General description of the action's technical,
- 3 economic, social, and environmental
- 4 characteristics;
- 5 (D) Use of public funds or lands for the action;
- 6 (E) Phasing and timing of action;
- 7 (F) Summary technical data, diagrams, and other
- 8 information necessary to permit an evaluation of
- 9 potential environmental impact by commenting
- 10 agencies and the public; and
- 11 (G) Historic perspective;
- 12 (5) A separate and distinct section of alternatives which
- 13 could attain the objectives of the action, regardless
- 14 of cost, in sufficient detail to explain why they were
- 15 rejected. The section shall include a rigorous
- 16 exploration and objective evaluation of the
- 17 environmental impacts of all such alternative actions.
- 18 Particular attention shall be given to alternatives
- 19 that might enhance environmental quality or avoid,
- 20 reduce, or minimize some or all of the adverse
- 21 environmental effects, costs, and risks. Examples of
- 22 alternatives include:



- 1 (A) The alternative of no action;
- 2 (B) Alternatives requiring actions of a significantly
3 different nature which would provide similar
4 benefits with different environmental impacts;
- 5 (C) Alternatives related to different designs or
6 details of the actions which would present
7 different environmental impacts;
- 8 (D) The alternative of postponing action pending
9 further study; and
- 10 (E) Alternative locations for the proposed project,
11 as appropriate.

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

- 18 (6) A description of the environmental setting, including
19 a description of the environment in the vicinity of
20 the action, as it exists before commencement of the
21 action, from both a local and regional perspective.

22 Special emphasis shall be placed on environmental



1 resources that are rare or unique to the region and
2 the project site, including natural or human-made
3 resources of historic, archaeological, or aesthetic
4 significance; specific reference to related projects,
5 public and private, existent or planned in the region
6 shall also be included for purposes of examining the
7 possible overall cumulative impacts of such actions.
8 The department shall also identify, if appropriate,
9 population and growth characteristics of the affected
10 area and any population and growth assumptions used to
11 justify the action and determine secondary population
12 and growth impacts resulting from the action and its
13 alternatives. The sources of data used to identify,
14 qualify, or evaluate any and all environmental
15 consequences shall be expressly noted;

16 (7) A statement of the relationship of the action to land
17 use plans, policies, and controls for the affected
18 area. Discussion of how the action may conform or
19 conflict with objectives and specific terms of
20 approved or proposed land use plans, policies, and
21 controls, if any, for the area affected shall be
22 included. Where a conflict or inconsistency exists,



1 the statement shall describe the extent to which the
2 department has reconciled its action with the plan,
3 policy, or control, and the reasons why the department
4 has decided to proceed, notwithstanding the absence of
5 full reconciliation. The draft statement shall also
6 contain a list of necessary approvals which were
7 obtained from governmental agencies, boards, or
8 commissions or other similar groups having
9 jurisdiction;

- 10 (8) A statement of the probable impact of the action on
11 the environment, and impacts of the natural or human
12 environment on the project, which shall include
13 consideration of all phases of the action and
14 consideration of all consequences on the environment;
15 direct and indirect effects shall be included. The
16 interrelationships and cumulative environmental
17 impacts of the action and other related projects shall
18 be discussed in the draft statement. Secondary
19 effects shall be thoroughly discussed to fully
20 describe the probable impact of the action on the
21 environment. The population and growth impacts of an
22 action shall be estimated if expected to be



1 significant, and an evaluation made of the effects of
2 any possible change in population patterns or growth
3 upon the resource base, including but not limited to
4 land use, water, and public services, of the area in
5 question. Also, if the action constitutes a direct or
6 indirect source of pollution as determined by any
7 governmental agency, necessary data shall be
8 incorporated into the statement. The significance of
9 the impacts shall be discussed in terms of paragraphs
10 (9), (10), (11), and (12);

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



1 the environmentally significant consequences of the
2 action;

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

18 (11) All probable adverse environmental effects which
19 cannot be avoided. Any adverse effects such as water
20 or air pollution, urban congestion, threats to public
21 health, or other consequences adverse to environmental
22 goals and guidelines established by environmental



1 response laws, coastal zone management laws, pollution
2 control and abatement laws, and environmental policy
3 such as those found in chapters 128D, 205A, 342B,
4 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L,
5 342N, 342P, and 344, Hawaii Revised Statutes, shall be
6 included, including those effects discussed in other
7 actions of this paragraph which are adverse and
8 unavoidable under the action. Also, the rationale for
9 proceeding with an action, notwithstanding unavoidable
10 effects, shall be clearly set forth in this section.
11 The draft statement shall indicate what other
12 interests and considerations of governmental policies
13 are thought to offset the adverse environmental
14 effects of the action. The statement shall also
15 indicate the extent to which these stated
16 countervailing benefits could be realized by following
17 reasonable alternatives to the action that would avoid
18 some or all of the adverse environmental effects;

19 (12) Mitigation measures proposed to avoid, minimize,
20 rectify, or reduce impact, including provisions for
21 compensation for losses of cultural, community,
22 historical, archaeological, fish and wildlife



1 resources, including the acquisition of land, waters,
2 and interests therein. Description of any mitigation
3 measures included in the action plan to reduce
4 significant, unavoidable, adverse impacts to
5 insignificant levels, and the basis for considering
6 these levels acceptable shall be included. Where a
7 particular mitigation measure has been chosen from
8 among several alternatives, the measures shall be
9 discussed and reasons given for the choice made.
10 Included, where possible and appropriate, should be
11 specific reference to the timing of each step proposed
12 to be taken in the mitigation process, what
13 performance bonds, if any, may be posted, and what
14 other provisions are proposed to assure that the
15 mitigation measures will in fact be taken;

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

19 (14) A separate and distinct section that contains a list
20 identifying all governmental agencies, other
21 organizations, and private individuals consulted in
22 preparing the statement, and the identity of the



1 persons, firms, or agency preparing the statement, by
2 contract or other authorization, shall be disclosed;
3 and

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

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

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

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

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

21 (4) The responses of the department to each substantive
22 question, comment, or recommendation received in the



1 review and consultation processes. The text of the
2 final statement shall be written in a format which
3 allows the reader to easily distinguish changes made
4 to the text of the draft statement.

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

8 (b) The department shall file the original (signed) final
9 statement with the office, along with a minimum number of copies
10 determined by the office.

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

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

18 All submittals to the office for publication in the
19 bulletin shall be accompanied by a completed informational form
20 which provides whatever information the office needs to properly
21 notify the public. The information requested may include the
22 following: the title of the action; the islands affected by the



1 action; tax map key numbers; street addresses; nearest
2 geographical landmarks; latitudinal and longitudinal
3 coordinates; the type of document prepared; the names,
4 addresses, and contact persons as applicable, of the office,
5 department, and the consultant; and a brief narrative summary of
6 the action which provides sufficient detail to convey the full
7 impact of the action to the public.

8 The office may provide recommendations to the department
9 regarding any applicable administrative content requirements set
10 forth in this part.

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

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

21 (f) The office shall be responsible for the publication of
22 the notice of availability of the environmental impact statement



1 in its periodic bulletin. The office shall develop a
2 distribution list of reviewers (i.e., persons and agencies with
3 jurisdiction or expertise in certain areas relevant to various
4 actions) and a list of public depositories, which shall include
5 public libraries, where copies of the statements shall be
6 available, to be developed cooperatively between the department
7 and the office; provided that the office shall be responsible
8 for determining the final list. To the extent possible, the
9 department shall make copies of the statement available to
10 individuals requesting the statement. The department shall
11 directly distribute the required copies to those on the
12 distribution list after the office has verified with the
13 department the accuracy of the distribution list. For final
14 statements, the department shall give the commentor an option of
15 requesting a copy of the final statement or portions thereof.

16 (g) The draft and final statements shall be prepared by
17 the department and submitted to the office. The draft statement
18 shall be made available for public review and comment through
19 the office for a period of forty-five days. The office shall
20 inform the public of the availability of the draft statement for
21 public review and comment pursuant to this part. The department



1 shall respond in writing to comments received during the review
2 and prepare a final statement.

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

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

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



- 1 (1) Point-by-point discussion of the validity,
- 2 significance, and relevance of comments; and
- 3 (2) Discussion as to how each comment was evaluated and
- 4 considered in planning the action.

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

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



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

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

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

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

21 (1) The procedures for consultation process, review, and
22 the preparation and submission of the statement, have



1 all been completed satisfactorily as specified in this
2 part;

3 (2) The content requirements described in this part have
4 been satisfied; and

5 (3) Comments submitted during the review process have
6 received responses satisfactory to the office, and
7 have been incorporated in the statement.

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

15 (f) A non-accepted statement shall be revised by the
16 department to address the concerns of the office. The revision
17 shall take the form of a revised draft environmental impact
18 statement document which shall fully address the inadequacies of
19 the non-accepted statement and shall completely and thoroughly
20 discuss the changes made. The requirements for filing,
21 distribution, publication of availability for review, acceptance
22 or non-acceptance, and notification and publication of



1 acceptability shall be the same as the requirements prescribed
2 by this part for an environmental impact statement submitted for
3 acceptance. In addition, the revised draft statement shall be
4 evaluated for acceptability on the basis of whether it
5 satisfactorily addresses the findings and reasons for non-
6 acceptance.

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

13 PART IV

14 SECTION 13. (a) There is established in the department of
15 transportation a temporary Hawaii inter-island ferry oversight
16 task force. The department of transportation shall be
17 responsible for administering the work of the temporary Hawaii
18 inter-island ferry oversight task force, providing a
19 facilitator, and submitting reports to the legislature and
20 governor. The goal of the temporary Hawaii inter-island ferry
21 oversight task force shall be to study the State's actions
22 regarding the establishment of the operations of any large



1 capacity ferry vessel company as a whole and to examine the
2 impact, if any, of the operations of any existing or proposed
3 large capacity ferry vessel company on:

4 (1) Ocean life and marine animals and plants, including
5 but not limited to an existing or proposed inter-
6 island ferry operations' whale avoidance policy and
7 procedures;

8 (2) Water resources and quality;

9 (3) Harbor infrastructure;

10 (4) Vehicular traffic;

11 (5) Public safety and security;

12 (6) The potential to spread invasive species;

13 (7) Cultural resources, including hunting, fishing, and
14 native Hawaiian resources;

15 (8) Economic consequences and impact; and

16 (9) Any other natural resource or community concern.

17 (b) The members of the temporary Hawaii inter-island ferry
18 oversight task force, totaling thirteen members, shall include
19 the following:

20 (1) The director of transportation, or the director's
21 designee;



- 1 (2) The director of business, economic development, and
2 tourism, or the director's designee;
- 3 (3) The chairperson of the board of land and natural
4 resources, or the chairperson's designee;
- 5 (4) The attorney general, or the attorney general's
6 designee;
- 7 (5) The president of a large capacity ferry vessel
8 company, or the president's designee;
- 9 (6) One representative from each of the four major
10 counties, including at least one representative from
11 the environmental community, one representative who is
12 active or knowledgeable in native Hawaiian cultural
13 practices, and one representative from the general
14 business community; provided that each such
15 representative shall be appointed by the speaker of
16 the house of representatives; and
- 17 (7) One representative from each of the four major
18 counties, including at least one representative from
19 the environmental community, one representative who is
20 active or knowledgeable in native Hawaiian cultural
21 practices, and one representative from the general
22 business community; provided that each such



1 representative shall be appointed by the president of
2 the senate.

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

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

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

19 (2) A review of the mitigation measures implemented and
20 the efficacy of those mitigation measures on deterring
21 or minimizing any adverse environmental impact caused



1 by the operation of the large capacity ferry vessel
2 company and its vessels.

3 (e) The temporary Hawaii inter-island ferry oversight task
4 force shall submit a final report of its findings and
5 recommendations to the legislature and governor no later than
6 twenty days prior to the convening of the regular session of
7 2009 and shall cease to exist upon the submission of the final
8 report.

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



1 (b) The auditor shall submit the performance audit to the
2 legislature no later than March 1, 2008. If the performance
3 audit is not completed by March 1, 2008, the auditor shall
4 submit a preliminary report by that date and a final report as
5 soon as possible thereafter, but no later than April 20, 2008.

6 SECTION 15. Any previously made appropriation or
7 previously authorized expenditure of funds for any inter-island
8 ferry operations of a large capacity ferry vessel company, or
9 for improvements or operating expenses to accommodate its
10 provision of inter-island ferry service, shall be approved and
11 authorized to the extent they are needed to effectuate the
12 provisions of this Act.

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

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



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

4 Any tariffs issued for the purpose of facilitating the
5 provision of service by a large capacity ferry vessel may be
6 used to effectuate the provisions of this Act.

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

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

21 (1) The need, requirement, preparation, non-preparation,
22 acceptance, or lack of acceptance of or for any



1 environmental assessments or environmental impact
2 statements; or
3 (2) Any judicial action regarding the establishment and
4 operation of the large capacity ferry vessel in the
5 state,
6 and such large capacity ferry vessel company by such operation
7 accepts the obligation to, and thus shall indemnify and defend
8 the State of Hawaii, its agencies, and its officers and
9 employees, in both their official and individual capacities,
10 from such claims brought by, through, or under the large
11 capacity ferry vessel company, or any of its agents, successors,
12 and assigns.

13 SECTION 17. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

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



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

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

6 and

7 provided further that:

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

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

16

INTRODUCED BY: Debra A. Belatti



Report Title:

Environmental Law; Transportation; Ferry Operations

Description:

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

