
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

PART I

1
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;
- 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 (5) The taking of any other necessary or appropriate
17 actions for the purpose of facilitating any matter
18 covered by paragraphs (1) to (4), notwithstanding the
19 fact that the non-preparation or non-completion of
20 environmental assessments or environmental impact
21 statements, the lack of acceptance of an environmental
22 impact statement, or the lack of a finding of no



1 significant impact, would otherwise have barred,
2 delayed, been a condition precedent to, or interfered
3 with the same; provided that upon commencement of
4 inter-island ferry service, the large capacity ferry
5 vessel company shall comply with the conditions and
6 protocols established under this Act, and with any
7 additional conditions and protocols set by the
8 governor by executive order, or subsequently
9 established by the legislature by law.

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

- 15 (1) A large capacity ferry vessel company and large
16 capacity ferry vessels may operate;
- 17 (2) Agreements with respect to such operation, including
18 the operating agreements, entered into between the
19 State and a large capacity ferry vessel company may be
20 enforced, executed, or re-executed; and



1 state harbors where appropriate, notwithstanding the depth of
2 the harbor.

3 SECTION 3. Notwithstanding chapters 205A, 269, 271G, and
4 343, Hawaii Revised Statutes, or their state or county
5 implementing rules or ordinances, including but not limited to
6 provisions relating to special management area permits,
7 certificates of public convenience and necessity, common
8 carriers by water, environmental assessments, and environmental
9 impact statements, and further notwithstanding that
10 environmental assessments and environmental impact statements
11 have not been prepared or completed, or have been completed and
12 an environmental impact statement is not accepted, is found
13 unacceptable, or a finding of no significant impact has not been
14 made:

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



- 1 (2) All state harbor improvements, projects, and
2 facilities available for or to be utilized by the
3 large capacity ferry vessel company may be completed
4 and utilized for any purpose agreed to and authorized
5 by appropriate state entities;
- 6 (3) A large capacity ferry vessel company and the
7 appropriate state entities may proceed pursuant to and
8 subject to all executed tariffs, agreements, and
9 contracts between the company and the state entities,
10 whether the tariffs, agreements, and contracts may
11 have previously been found to be in violation of
12 chapter 343, Hawaii Revised Statutes, or any other law
13 and may re-execute the same, including an operating
14 agreement, in the same general form as previously
15 executed;
- 16 (4) The operation of large capacity ferry vessels between
17 the islands of Oahu, Maui, Kauai, and Hawaii,
18 including the use of harbor facilities on each island
19 and improvements at Kahului harbor, is declared to be
20 a required public convenience and necessity;
- 21 (5) A certificate of public convenience and necessity
22 issued to a large capacity ferry vessel company shall



1 not be revoked or modified on the basis that
2 environmental assessments or environmental impact
3 statements have not been prepared or completed; and
4 (6) The construction, use, or operation of any facilities
5 or improvements authorized by any agreement between a
6 large capacity ferry vessel company and a state
7 department, board, commission, or agency shall not be
8 subject to or require any county permits or approvals,
9 notwithstanding the fact that the non-preparation or non-
10 completion of environmental assessments or environmental impact
11 statements, the lack of acceptance of an environmental impact
12 statement, or the lack of a finding of no significant impact,
13 would otherwise have barred, delayed, been a condition precedent
14 to, or interfered with the same.

15 SECTION 4. (a) As a condition precedent to the rights
16 conferred by section 3 of this Act, any large capacity ferry
17 vessel company seeking to operate pursuant to this Act shall
18 comply with the following conditions:

19 (1) Regarding whale encounters:

20 (A) Apply with the National Oceanic and Atmospheric
21 Administration for an incidental-take permit; and



- 1 (B) Request an observer from the National Marine
2 Fisheries Service, a division of the National
3 Oceanic and Atmospheric Administration, be
4 onboard its vessels at all times when traveling
5 through the Hawaiian Islands Humpback Whale
6 National Marine Sanctuary;
- 7 (2) Regarding invasive species:
- 8 (A) Post signage and notify passengers beforehand of
9 all bans, inspections, and check-in procedures
10 and deadlines;
- 11 (B) Post signage and notify passengers beforehand of
12 all bans such as the ban on the transport of
13 fishing gill nets and fishing nets for commercial
14 use, or rocks, soil, or dirt or sand without a
15 permit from the appropriate government agency.
16 For the purposes of this paragraph, "soil or
17 dirt" shall exclude soil or dirt in potted plants
18 inspected and cleared for transport by the
19 department of agriculture;
- 20 (C) Require passengers to declare all plants, fruits,
21 seeds, and any other biological medium and



1 confiscate any pests for control or eradication
2 purposes or invasive species;

3 (D) Inspect or cause to be inspected all vehicles
4 prior to boarding, including the trunks of all
5 cars, the beds of all pickup trucks and the
6 undercarriage and interiors of all vehicles; and

7 (E) Promptly notify the appropriate governmental
8 agency regarding any violation or potential
9 violation of invasive species, agricultural,
10 conservation or other law; and

11 (3) Any other conditions or protocols the governor deems
12 necessary and appropriate to protect the State's
13 environment; provided that any such conditions or
14 protocols established under this paragraph shall be
15 executed by the governor, by means of an executive
16 order, and without regard to chapter 91, Hawaii
17 Revised Statutes, or any other provision of law.

18 Prior to the commencement of operations by a large capacity
19 ferry vessel company pursuant to the right to operate conferred
20 by section 3 of this Act, the governor shall notify the
21 legislature of all the conditions or protocols established



1 pursuant to this subsection, including the entities consulted in
2 establishing the conditions or protocols.

3 (b) Any large capacity ferry vessel company authorized to
4 operate pursuant to this Act shall execute an agreement with the
5 State, in a form acceptable to the attorney general, by which
6 the large capacity ferry vessel company shall expressly agree to
7 abide by any conditions or protocols established pursuant to
8 this section.

9 (c) The governor, by means of an executive order, and
10 without regard to chapter 91, Hawaii Revised Statutes, or any
11 other provision of law, may amend the conditions and protocols
12 established under this section on a large capacity ferry vessel
13 company's inter-island operations to ensure the reasonable,
14 efficient, and expedient application of environmental protection
15 measures set forth in this section.

16 In addition, the governor, by means of an executive order,
17 and without regard to chapter 91, Hawaii Revised Statutes, or
18 any other provision of law, shall also impose additional
19 conditions and protocols on a large capacity ferry vessel
20 company's inter-island operations to mitigate significant
21 environmental effects that the governor determines, in the



1 governor's judgment, are likely to be caused by such inter-
2 island operations.

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

- 5 (1) Ocean life and marine animals and plants, including a
6 whale avoidance policy and procedures;
- 7 (2) Water resources and quality;
- 8 (3) Harbor infrastructure;
- 9 (4) Vehicular traffic;
- 10 (5) Public safety and security;
- 11 (6) Controlling the spread of invasive species;
- 12 (7) Cultural resources, including hunting, fishing, and
13 native Hawaiian resources;
- 14 (8) Economic consequences and impact; and
- 15 (9) Any other natural resource or community concern the
16 governor deems appropriate.

17 The governor shall also consider establishing conditions
18 and protocols such as requiring department of agriculture
19 inspectors and department of land and natural resources
20 conservation and resources enforcement personnel on each inter-
21 island voyage conducted by a large capacity ferry vessel
22 company, as the governor deems necessary and appropriate. If



1 the governor establishes such agriculture inspector and
2 conservation and resources enforcement personnel conditions and
3 protocols, the governor shall do so by means of an executive
4 order, and without regard to chapter 91, Hawaii Revised
5 Statutes, or any other provision of law. The governor shall
6 notify the legislature of any conditions or protocols
7 established pursuant to this subsection, including the entities
8 consulted, within ten days of establishing the condition or
9 protocol.

10 The governor shall also review and determine the efficacy
11 and appropriateness of all conditions or protocols established
12 pursuant to this section and report to the legislature at the
13 end of each fiscal quarter of the State on the efficacy and
14 appropriateness of all conditions or protocols established
15 pursuant to this section and the costs incurred by the State in
16 establishing and maintaining the enforcement activities required
17 under this section.

- 18 (d) The legislature reserves the sole right to:
- 19 (1) Review the adequacy of any conditions or protocols
20 imposed or amended by the governor under this Act; and
21 (2) Impose, by law, any other conditions or protocols it
22 deems necessary and appropriate to further protect the



1 state's environment or communities, or both, in
2 addition to any conditions or protocols imposed or
3 amended by the governor under this Act,

4 provided that this subsection shall not be construed as a
5 condition precedent to the rights conferred by section 3.

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

13 PART III

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

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

19 "Acceptance" means a formal determination of acceptability
20 that the document required to be filed pursuant to this part,
21 fulfills the definitions and requirements of an environmental
22 impact statement, adequately describes identifiable



1 environmental impacts, and satisfactorily responds to comments
2 received during the review of the statement. Acceptance does
3 not mean that the action is environmentally sound or unsound,
4 but only that the document complies with this part.

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

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

14 "Agency" means any department, office, board, or commission
15 of the state or county government which is a part of the
16 executive branch of that government.

17 "Approval" means a discretionary consent required from an
18 agency. Discretionary consent means a consent, sanction, or
19 recommendation from an agency for which judgment and free will
20 may be exercised by the issuing agency, as distinguished from a
21 ministerial consent. Ministerial consent means a consent,
22 sanction, or recommendation from an agency upon a given set of



1 facts, as prescribed by law or rule without the use of judgment
2 or discretion.

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

10 "Department" means the department of transportation.

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

21 "Environment" means humanity's surroundings, inclusive of
22 all the physical, economic, cultural, and social conditions that



1 exist within the area affected by an action, including land,
2 human and animal communities, air, water, minerals, flora,
3 fauna, ambient noise, and objects of historic or aesthetic
4 significance.

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

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

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

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



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

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

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

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



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

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

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

- 15 (1) Identifying environmental concerns;
- 16 (2) Obtaining various relevant data;
- 17 (3) Conducting necessary studies;
- 18 (4) Receiving public and agency input;
- 19 (5) Evaluating alternatives; and
- 20 (6) Proposing measures for avoiding, minimizing,
21 rectifying, or reducing adverse impacts.



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

11 (c) In developing the statement, preparers shall make
12 every effort to convey the required information succinctly in a
13 form easily understood both by members of the public and by
14 public decision-makers, giving attention to the substance of the
15 information conveyed rather than to the particular form, length,
16 or detail of the statement. Data and analyses in the statement
17 shall be commensurate with the importance of the impact, and
18 less important material may be summarized, consolidated, or
19 simply referenced. Statements shall indicate at appropriate
20 points in the text any underlying studies, reports, and other
21 information obtained and considered in preparing the statement,
22 including cost-benefit analyses and reports required under other



1 legal authorities. Care shall be taken to concentrate on
2 important issues and to ensure that the statement remains an
3 essentially self-contained document, capable of being understood
4 by the reader without the need for undue cross-reference.

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

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



1 (f) Any substantive comments received by the department
2 pursuant to this part shall be responded to in writing and as
3 appropriate, incorporated into the draft environmental impact
4 statement by the department prior its filing with the office.
5 Letters submitted which contain no comments on the project but
6 only serve to acknowledge receipt of the document do not require
7 a written response. Acknowledgement of receipt of these items
8 shall be included in the final statement.

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

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

13 (A) Brief description of the action;

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

17 (C) Proposed mitigation measures;

18 (D) Alternatives considered;

19 (E) Unresolved issues; and

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

22 (2) A table of contents;



- 1 (3) A separate and distinct section that includes a
- 2 statement of purpose and need for the action;
- 3 (4) A project description which shall include the
- 4 following information, but need not supply extensive
- 5 detail beyond that needed for evaluation and review of
- 6 the environmental impact:
- 7 (A) A detailed map, preferably a United States
- 8 Geological Survey topographic map, Flood
- 9 Insurance Rate Maps or Floodway Boundary Maps as
- 10 applicable, and a related regional map;
- 11 (B) Statement of objectives;
- 12 (C) General description of the action's technical,
- 13 economic, social, and environmental
- 14 characteristics;
- 15 (D) Use of public funds or lands for the action;
- 16 (E) Phasing and timing of action;
- 17 (F) Summary technical data, diagrams, and other
- 18 information necessary to permit an evaluation of
- 19 potential environmental impact by commenting
- 20 agencies and the public; and
- 21 (G) Historic perspective;



- 1 (5) A separate and distinct section of alternatives which
2 could attain the objectives of the action, regardless
3 of cost, in sufficient detail to explain why they were
4 rejected. The section shall include a rigorous
5 exploration and objective evaluation of the
6 environmental impacts of all such alternative actions.
7 Particular attention shall be given to alternatives
8 that might enhance environmental quality or avoid,
9 reduce, or minimize some or all of the adverse
10 environmental effects, costs, and risks. Examples of
11 alternatives include:
- 12 (A) The alternative of no action;
 - 13 (B) Alternatives requiring actions of a significantly
14 different nature which would provide similar
15 benefits with different environmental impacts;
 - 16 (C) Alternatives related to different designs or
17 details of the actions which would present
18 different environmental impacts;
 - 19 (D) The alternative of postponing action pending
20 further study; and
 - 21 (E) Alternative locations for the proposed project,
22 as appropriate.



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

- 7 (6) A description of the environmental setting, including
8 a description of the environment in the vicinity of
9 the action, as it exists before commencement of the
10 action, from both a local and regional perspective.
11 Special emphasis shall be placed on environmental
12 resources that are rare or unique to the region and
13 the project site, including natural or human-made
14 resources of historic, archaeological, or aesthetic
15 significance; specific reference to related projects,
16 public and private, existent or planned in the region
17 shall also be included for purposes of examining the
18 possible overall cumulative impacts of such actions.
19 The department shall also identify, if appropriate,
20 population and growth characteristics of the affected
21 area and any population and growth assumptions used to
22 justify the action and determine secondary population



1 and growth impacts resulting from the action and its
2 alternatives. The sources of data used to identify,
3 qualify, or evaluate any and all environmental
4 consequences shall be expressly noted;

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

21 (8) A statement of the probable impact of the action on
22 the environment, and impacts of the natural or human



1 environment on the project, which shall include
2 consideration of all phases of the action and
3 consideration of all consequences on the environment;
4 direct and indirect effects shall be included. The
5 interrelationships and cumulative environmental
6 impacts of the action and other related projects shall
7 be discussed in the draft statement. Secondary
8 effects shall be thoroughly discussed to fully
9 describe the probable impact of the action on the
10 environment. The population and growth impacts of an
11 action shall be estimated if expected to be
12 significant, and an evaluation made of the effects of
13 any possible change in population patterns or growth
14 upon the resource base, including but not limited to
15 land use, water, and public services, of the area in
16 question. Also, if the action constitutes a direct or
17 indirect source of pollution as determined by any
18 governmental agency, necessary data shall be
19 incorporated into the statement. The significance of
20 the impacts shall be discussed in terms of paragraphs
21 (9), (10), (11), and (12);



- 1 (9) A separate and distinct section describing the
2 relationship between local short-term uses of
3 humanity's environment and the maintenance and
4 enhancement of long-term productivity. The extent to
5 which the action involves trade-offs among short-term
6 and long-term gains and losses shall be discussed.
7 The discussion shall include the extent to which the
8 action forecloses future options, narrows the range of
9 beneficial uses of the environment, or poses long-term
10 risks to health or safety. In this context, short-
11 term and long-term do not necessarily refer to any
12 fixed time periods, but shall be viewed in terms of
13 the environmentally significant consequences of the
14 action;
- 15 (10) A separate and distinct section that describes all
16 irreversible and irretrievable commitments of
17 resources that would be involved in the action should
18 it be implemented. Identification of unavoidable
19 impacts and the extent to which the action makes use
20 of non-renewable resources during the phases of the
21 action, or irreversibly curtails the range of
22 potential uses of the environment shall also be



1 included. The possibility of environmental accidents
2 resulting from any phase of the action shall also be
3 considered. "Resources" shall not be interpreted to
4 mean only the labor and materials devoted to an
5 action, but to include the natural and cultural
6 resources committed to loss or destruction by the
7 action;

- 8 (11) All probable adverse environmental effects which
9 cannot be avoided. Any adverse effects such as water
10 or air pollution, urban congestion, threats to public
11 health, or other consequences adverse to environmental
12 goals and guidelines established by environmental
13 response laws, coastal zone management laws, pollution
14 control and abatement laws, and environmental policy
15 such as those found in chapters 128D, 205A, 342B,
16 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L,
17 342N, 342P, and 344, Hawaii Revised Statutes, shall be
18 included, including those effects discussed in other
19 actions of this paragraph which are adverse and
20 unavoidable under the action. Also, the rationale for
21 proceeding with an action, notwithstanding unavoidable
22 effects, shall be clearly set forth in this section.



1 The draft statement shall indicate what other
2 interests and considerations of governmental policies
3 are thought to offset the adverse environmental
4 effects of the action. The statement shall also
5 indicate the extent to which these stated
6 countervailing benefits could be realized by following
7 reasonable alternatives to the action that would avoid
8 some or all of the adverse environmental effects;

9 (12) Mitigation measures proposed to avoid, minimize,
10 rectify, or reduce impact, including provisions for
11 compensation for losses of cultural, community,
12 historical, archaeological, fish and wildlife
13 resources, including the acquisition of land, waters,
14 and interests therein. Description of any mitigation
15 measures included in the action plan to reduce
16 significant, unavoidable, adverse impacts to
17 insignificant levels, and the basis for considering
18 these levels acceptable shall be included. Where a
19 particular mitigation measure has been chosen from
20 among several alternatives, the measures shall be
21 discussed and reasons given for the choice made.

22 Included, where possible and appropriate, should be



1 specific reference to the timing of each step proposed
2 to be taken in the mitigation process, what
3 performance bonds, if any, may be posted, and what
4 other provisions are proposed to assure that the
5 mitigation measures will in fact be taken;

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

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

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



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

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

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

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

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

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

21 (b) The department shall file the original (signed) final



1 statement with the office, along with a minimum number of copies
2 determined by the office.

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

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

10 All submittals to the office for publication in the
11 bulletin shall be accompanied by a completed informational form
12 which provides whatever information the office needs to properly
13 notify the public. The information requested may include the
14 following: the title of the action; the islands affected by the
15 action; tax map key numbers; street addresses; nearest
16 geographical landmarks; latitudinal and longitudinal
17 coordinates; the type of document prepared; the names,
18 addresses, and contact persons as applicable, of the office,
19 department, and the consultant; and a brief narrative summary of
20 the action which provides sufficient detail to convey the full
21 impact of the action to the public.



1 The office may provide recommendations to the department
2 regarding any applicable administrative content requirements set
3 forth in this part.

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

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

14 (f) The office shall be responsible for the publication of
15 the notice of availability of the environmental impact statement
16 in its periodic bulletin. The office shall develop a
17 distribution list of reviewers (i.e., persons and agencies with
18 jurisdiction or expertise in certain areas relevant to various
19 actions) and a list of public depositories, which shall include
20 public libraries, where copies of the statements shall be
21 available, to be developed cooperatively between the department
22 and the office; provided that the office shall be responsible



1 for determining the final list. To the extent possible, the
2 department shall make copies of the statement available to
3 individuals requesting the statement. The department shall
4 directly distribute the required copies to those on the
5 distribution list after the office has verified with the
6 department the accuracy of the distribution list. For final
7 statements, the department shall give the commentor an option of
8 requesting a copy of the final statement or portions thereof.

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

17 (h) Review of the environmental impact statement shall
18 serve to provide the public and other agencies an opportunity to
19 discover the extent to which the department has examined
20 environmental concerns and available alternatives. Public
21 review shall not substitute for open discussion with interested



1 persons and agencies, concerning the environmental impacts of
2 the action.

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

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

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

20 The response shall endeavor to resolve conflicts,
21 inconsistencies, or concerns. Response letters reproduced in
22 the text of the final statement shall indicate verbatim changes



1 that have been made to the text of the draft statement. The
2 response shall describe the disposition of significant
3 environmental issues raised (e.g., revisions to the proposed
4 project to mitigate anticipated impacts or objections, etc.).
5 In particular, the issues raised when the department's position
6 is at variance with recommendations and objections raised in the
7 comments shall be addressed in detail, giving reasons why
8 specific comments and suggestions were not accepted, and factors
9 of overriding importance warranting an override of the
10 suggestions.

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

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



1 review and make a recommendation as to the acceptability of the
2 final statement.

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

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

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

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

19 (2) The content requirements described in this part have
20 been satisfied; and



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

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

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



1 satisfactorily addresses the findings and reasons for non-
2 acceptance.

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

9 PART IV

10 SECTION 13. (a) There is established under the department
11 of transportation, a temporary Hawaii inter-island ferry
12 oversight task force. The department of transportation shall be
13 responsible for administering the work of the temporary Hawaii
14 inter-island ferry oversight task force, providing a
15 facilitator, and submitting reports to the legislature and
16 governor. The goal of the temporary Hawaii inter-island ferry
17 oversight task force shall be to study the State's actions
18 regarding the establishment of the operations of any large
19 capacity ferry vessel company as a whole and to examine the
20 impact, if any, of the operations of any existing or proposed
21 large capacity ferry vessel company on:



- 1 (1) Ocean life and marine animals and plants, including
2 but not limited to an existing or proposed inter-
3 island ferry operations' whale avoidance policy and
4 procedures;
- 5 (2) Water resources and quality;
- 6 (3) Harbor infrastructure;
- 7 (4) Vehicular traffic;
- 8 (5) Public safety and security;
- 9 (6) The potential to spread invasive species;
- 10 (7) Cultural resources, including hunting, fishing, and
11 native Hawaiian resources;
- 12 (8) Economic consequences and impact; and
- 13 (9) Any other natural resource or community concern.
- 14 (b) The members of the temporary Hawaii inter-island ferry
15 oversight task force, totaling thirteen members, shall include
16 the following:
- 17 (1) The director of transportation, or the director's
18 designee;
- 19 (2) The chairperson of the board of agriculture, or the
20 chair's designee;
- 21 (3) The chairperson of the board of land and natural
22 resources, or the chairperson's designee;



- 1 (4) The attorney general, or the attorney general's
2 designee;
- 3 (5) The president of a large capacity ferry vessel
4 company, or the president's designee;
- 5 (6) One representative from each of the four major
6 counties, including at least one representative from
7 the environmental community, one representative who is
8 active or knowledgeable in native Hawaiian cultural
9 practices, and one representative from the general
10 business community; provided that each such
11 representative shall be appointed by the speaker of
12 the house of representatives; and
- 13 (7) One representative from each of the four major
14 counties, including at least one representative from
15 the environmental community, one representative who is
16 active or knowledgeable in native Hawaiian cultural
17 practices, and one representative from the general
18 business community; provided that each such
19 representative shall be appointed by the president of
20 the senate.
- 21 (c) Members of the temporary Hawaii inter-island ferry
22 oversight task force shall serve without compensation but shall



1 be reimbursed for expenses, including travel expenses, necessary
2 for the performance of their duties. All expenses, including
3 travel expenses, shall be paid by the department of
4 transportation.

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

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

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

20 (e) The temporary Hawaii inter-island ferry oversight task
21 force shall submit a final report of its findings and
22 recommendations to the legislature and governor no later than



1 twenty days prior to the convening of the regular session of
2 2009 and shall cease to exist upon the submission of the final
3 report.

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

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



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

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

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

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

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



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

6 SECTION 16. Every large capacity ferry vessel company that
7 has the legal right to operate pursuant to section 3 of this
8 Act, during the time period this Act is effective, by exercising
9 such right to operate at any time this Act is effective, by such
10 operation, releases and waives any and all claims that have
11 accrued or arisen as of the effective date of this Act for
12 damages or other judicial relief it or any of its agents,
13 successors, and assigns might otherwise have or assert against
14 the State of Hawaii, its agencies, and its officers and
15 employees, in both their official and individual capacities,
16 that have or may have been caused by or are related in any way
17 to:

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



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

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

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

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



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

3 and

4 provided further that:

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

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



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. (SD1)

