A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

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

The legislature also finds that the existing circumstances, specifically the construction and completion of harbor improvements and the subsequent operation of a qualifying ferry vessel company for a limited period of time, presents a unique situation. Seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court approximately two years earlier. Such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised
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Statutes, and as such, the policy that should be adopted under law must be clarified.

The legislature further finds that the operation of a qualifying ferry vessel company, specifically, using a new class of large ferry vessels that are capable of transporting large capacities of people, motor vehicles, and cargo with ease, is in the public interest in that it provides a real and innovative alternative to existing modes of transporting people, motor vehicles, and cargo between the islands of the State. In addition, in furtherance of the legislature's goal of promoting a sustainable future for its residents, a qualifying ferry vessel company would also utilize technology that produces less carbon emissions when compared to inter-island aircraft transportation with the same carrying capacity. With its ability to transport large quantities of cargo between islands in a very short period of time, agricultural produce would suffer less heat damage in transit, resulting in higher quality produce and fresh food products at a lower cost for all residents of the State. By encouraging the growing of products on the islands of Kauai, Maui, and Hawaii for the Oahu market, the operations of a qualifying ferry vessel company would foster diversified agriculture, helping the State of Hawaii to meet one
of its constitutional mandates. Further, in times of natural or
other disasters, a qualifying ferry vessel company could provide
the means to rapidly deploy disaster relief personnel,
equipment, and supplies.

The legislature also finds that the immediate operation of
a qualifying ferry vessel company is in the public interest and
that it is clearly in the public interest that a qualifying
ferry vessel company be allowed to operate while any
environmental studies, including environmental assessments and
environmental impact statements, are conducted.

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

The legislature also finds, however, that it would neither
be desirable nor in the public interest that the operations of a
qualifying ferry vessel company cease during the preparation of any required environmental studies, including the environmental impact statement.

The legislature further finds that it would be appropriate for:

(1) An oversight task force to study the State's actions regarding the establishment of the operations of any qualifying ferry vessel company as a whole, and the impact of any existing or proposed inter-island ferry operations, and to report back its findings to the legislature; and

(2) The auditor to conduct a performance audit on how the State conducted its proceedings and determined that a certain qualifying ferry vessel company and harbor improvements related to the operation of its vessels should receive an exemption from the need to conduct either an environmental assessment or environmental impact statement under chapter 343, Hawaii Revised Statutes.

(b) This Act adopts a new policy with respect to this new type of inter-island ferry service to provide that, during the period any required environmental review and studies, including
environmental assessments and environmental impact statements, are prepared, and also following their completion:

(1) The qualifying ferry vessel company may operate subject to the employment of measures to prevent adverse environmental impacts;

(2) Agreements with respect to its operation, including a qualifying ferry vessel company operating agreement, entered into between the State and a qualifying ferry vessel company may be enforced or re-executed; and

(3) Related harbor improvements may be constructed and used by the State, by a qualifying ferry vessel company, and by others.

This Act further clarifies that due to the unique nature and critical importance of the inter-island ferry service industry to the people of our state, the construction and use of harbor improvements to facilitate this new type of inter-island ferry service is to be governed by this Act, and not by chapter 343, Hawaii Revised Statutes.

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

(1) The operation of a qualifying ferry vessel company
pursuant to any certificate of public convenience and
necessity approved by the public utilities commission;

(2) The operation of a qualifying ferry vessel company
between any ports or harbors in Hawaii pursuant to any
written operating agreement;

(3) The construction, use, or operation of any
improvements at Kahului harbor and any other harbor in
the state relating to the operation of a qualifying
ferry vessel company; or

(4) The appropriation or expenditure of any funds, the use
of state lands, the issuance of any permits, or the
entering into of any agreements for the purpose of
facilitating any matters covered by paragraphs (1) to
(3);

provided that upon commencement of inter-island ferry service,
the qualifying ferry vessel company shall comply with reasonable
conditions that are designed to protect Hawaii's environment and
mitigate adverse environmental impacts that are proximately
caused by a qualifying ferry vessel company's inter-island operation.

SECTION 2. As used in this Act:

"Qualifying 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.

"Qualifying ferry vessel company" means any company that owns or operates a qualifying 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, including state harbors where appropriate, notwithstanding the depth of the harbor.

SECTION 3. Notwithstanding any provisions to the contrary in chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes,
including provisions relating to special management area
permits, certificates of public convenience and necessity,
common carriers by water, environmental assessments, and
environmental impact statements, and further notwithstanding
that environmental assessments and environmental impact
statements have not been prepared or completed, or have been
completed and the environmental impact statement is found
unacceptable:

(1) Subject to section 4 of this Act, a qualifying ferry
vessel company shall have the right to operate and the
right to utilize Kahului harbor improvements and other
improvements and facilities on any island, pursuant to
and subject to any and all agreements and contracts
with state entities, relating to the operation of the
qualifying ferry vessel and the use of state harbor
facilities;

(2) All state harbor improvements, projects, and
facilities available for or utilized by the qualifying
ferry vessel company may be completed and utilized for
any purpose agreed to and authorized by appropriate
state entities;
(3) A qualifying ferry vessel company and the appropriate state entities may proceed pursuant to and subject to all executed tariffs, agreements, and contracts between the company and the entities, whether the tariffs, agreements, and contracts may have previously been found to be in violation of chapter 343, Hawaii Revised Statutes; provided that any operating agreements executed or re-executed between a qualifying ferry vessel company and state entity shall include an explicit and comprehensive indemnity clause that holds the State and its entities harmless from any and all liability that have or may have been caused by any judicial action regarding the establishment and operation of the qualifying ferry vessel in the state;

(4) The improvements at Kahului harbor intended for and to be used by qualifying ferry vessels between the islands of Oahu, Maui, Kauai, and Hawaii, using harbor facilities on each island is declared to be required by the public convenience and necessity. A certificate of public convenience and necessity issued to a qualifying ferry vessel company shall not be
revoked or modified on the basis that environmental assessments or environmental impact statements have not been prepared or completed; and

(5) The construction, use, or operation of any facilities or improvements authorized by any agreement between the qualifying ferry vessel company and a state entity shall not be subject to or require any county permits or approvals.

SECTION 4. (a) Notwithstanding the authority to operate provided under section 3 of this Act, as a condition precedent to the execution of section 3 of this Act, the governor shall impose, without regard to chapter 91, Hawaii Revised Statutes, reasonable conditions and protocols on a qualifying ferry vessel company's inter-island operation to mitigate adverse environmental effects that are proximately caused by the qualifying ferry vessel company's inter-island operations. At a minimum, the governor shall establish operating conditions and protocols that address and mitigate the impact of a qualifying ferry vessel company's inter-island operations on:

(1) Ocean life and marine animals and plants, including but not limited to a qualifying ferry vessel company's
inter-island ferry operations' whale avoidance policy
and procedures;

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

The governor shall also consider establishing conditions and protocols such as requiring department of agriculture inspectors and department of land and natural resources conservation and resources enforcement personnel on each inter-island voyage conducted by a qualifying ferry vessel company. The governor shall notify the legislature of any conditions or protocols established, including the entities consulted, within ten days of establishing the condition or protocol.

(b) Any qualifying ferry vessel company authorized to operate pursuant to this Act shall agree to abide by any
conditions or protocols established by the governor pursuant to this section as a condition precedent to commencing its operations authorized under this Act.

(c) In addition to any conditions or protocols imposed by the governor under this section, the legislature reserves the right to impose, by law, any other conditions or protocols it deems necessary and appropriate to further protect the state's environment or communities, or both.

SECTION 5. Any qualifying ferry vessel operating in state marine waters pursuant to section 3 shall comply with all laws of general applicability, except as provided in this Act. The environmental review process for state actions in connection with a qualifying ferry vessel shall be governed by this Act, and not by chapter 343, Hawaii Revised Statutes.

SECTION 6. The department of transportation shall perform or contract to perform an environmental impact statement for the improvements made to commercial harbors throughout the State that require the expenditure of public funds to accommodate the use thereof by a qualifying ferry vessel company and the secondary environmental effects of those operations on the State's environment, including the operation of the qualifying ferry vessel company.
SECTION 7. The department of transportation shall make the
environmental impact statement available for public review and
comment in the manner provided by section 343-3, Hawaii Revised
Statutes.

SECTION 8. (a) There is established in the department of
transportation a temporary Hawaii inter-island ferry oversight
task force. The department of transportation shall be
responsible for administering the work of the temporary Hawaii
inter-island ferry oversight task force, providing a
facilitator, and submitting reports to the legislature. The
goal of the temporary Hawaii inter-island ferry oversight task
force shall be to study the State's actions regarding the
establishment of the operations of any qualifying ferry vessel
company as a whole and to examine the impact of the operations
of any existing or proposed qualifying ferry vessel company on:

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

(2) Water resources and quality;

(3) Harbor infrastructure;

(4) Vehicular traffic;
(5) Public safety and security;
(6) The potential to spread invasive species;
(7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
(8) Economic consequences and impact; and
(9) Any other natural resource or community concern.

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

(1) The director of transportation, or the director's designee;
(2) The director of business, economic development, and tourism, or the director's designee;
(3) The chair of the board of land and natural resources, or the chair's designee;
(4) The attorney general, or the attorney general's designee;
(5) The president of a qualifying ferry vessel company, or the president's designee;
(6) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is
active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community, each such representative to be appointed by the speaker of the house of representatives; and

(7) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community, each such representative to be appointed by the president of the senate.

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

(d) The temporary Hawaii inter-island ferry oversight task force shall submit monthly status reports of its findings and recommendations to the legislature and governor at the beginning of each month commencing with December 1, 2007. The temporary
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Hawaii inter-island ferry oversight task force shall include, in its monthly status reports, at a minimum:

(1) A listing and description of the mitigation measures established to deter or minimize any adverse environmental impact of the qualifying ferry vessel company and its operations; and

(2) A review of the mitigation measures implemented to determine the efficacy of those mitigation measures on deterring or minimizing any adverse environmental impact caused by the operation of the qualifying ferry vessel company and its vessels.

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

SECTION 9. The auditor shall conduct a performance audit on the state administration's actions in providing the Hawaii Superferry, Inc., its operations, and related harbor improvements with an exemption from the requirements of conducting an environmental assessment or environmental impact statement under chapter 343, Hawaii Revised Statutes. To
facilitate the timely execution of the performance audit by the
auditor, the governor and the director of transportation are
requested to waive any attorney-client privilege with the
attorney general and provide the auditor with any information
requested by the auditor that, in the auditor’s opinion, is
relevant to the performance audit. In addition, the governor
and any other state officer deemed appropriate by the auditor
are requested to provide all documents and information deemed
relevant by the auditor in the conduct of the performance audit
and otherwise fully cooperate with the auditor’s requests made
pursuant to this section.

SECTION 10. If any provision of this Act, or the
application thereof to any person or circumstance, is held
invalid, the invalidity does not affect other provisions or
applications of the Act that can be given effect without the
invalid provision or application, and to this end the provisions
of this Act are severable.

SECTION 11. This Act shall take effect upon its approval;
provided that:

(1) The following shall be reinstated to effectuate the
purpose of this Act and take effect retroactively on
their respective effective dates:
(A) The appropriation or expenditure of any funds;
(B) The use of any state lands for the purpose of 
facilitating the inter-island ferry service by a 
qualifying ferry vessel company;
(C) The construction of any state harbor improvements 
or facilities relating to inter-island ferry 
service by a qualifying ferry vessel company on 
any island;
(D) The approval of the certificate of public 
convenience and necessity for a qualifying ferry 
vessel company;
(E) The issuance of any tariffs for the purpose of 
facilitating the inter-island ferry service by a 
qualifying ferry vessel company; and
(F) The entering into of any agreements, including a 
qualifying ferry vessel company operating 
agreement, for the purpose of facilitating the 
inter-island ferry service by a qualifying ferry 
vessel company;

and

(2) This Act shall be repealed on the adjournment sine die 
of the 2009 regular session of the legislature.
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 qualifying ferry vessel companies to operate prior to completion of EIS upon meeting certain minimum conditions. Establishes a temporary Hawaii Inter-island Ferry Oversight Task Force.