
A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

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

10 The legislature also finds that the existing circumstances,
11 specifically the construction and completion of harbor
12 improvements and the subsequent operation of a qualifying ferry
13 vessel company for a limited period of time, presents a unique
14 situation. Seldom, if ever, has a judicial determination
15 overturned harbor improvements and business operations that were
16 previously authorized by the government and approved by the
17 lower court approximately two years earlier. Such an occurrence
18 is not explicitly contemplated in chapter 343, Hawaii Revised



1 Statutes, and as such, the policy that should be adopted under
2 law must be clarified.

3 The legislature further finds that the operation of a
4 qualifying ferry vessel company, specifically, using a new class
5 of large ferry vessels that are capable of transporting large
6 capacities of people, motor vehicles, and cargo with ease, is in
7 the public interest in that it provides a real and innovative
8 alternative to existing modes of transporting people, motor
9 vehicles, and cargo between the islands of the State. In
10 addition, in furtherance of the legislature's goal of promoting
11 a sustainable future for its residents, a qualifying ferry
12 vessel company would also utilize technology that produces less
13 carbon emissions when compared to inter-island aircraft
14 transportation with the same carrying capacity. With its
15 ability to transport large quantities of cargo between islands
16 in a very short period of time, agricultural produce would
17 suffer less heat damage in transit, resulting in higher quality
18 produce and fresh food products at a lower cost for all
19 residents of the State. By encouraging the growing of products
20 on the islands of Kauai, Maui, and Hawaii for the Oahu market,
21 the operations of a qualifying ferry vessel company would foster
22 diversified agriculture, helping the State of Hawaii to meet one



1 of its constitutional mandates. Further, in times of natural or
2 other disasters, a qualifying ferry vessel company could provide
3 the means to rapidly deploy disaster relief personnel,
4 equipment, and supplies.

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

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

21 The legislature also finds, however, that it would neither
22 be desirable nor in the public interest that the operations of a



1 qualifying ferry vessel company cease during the preparation of
2 any required environmental studies, including the environmental
3 impact statement.

4 The legislature further finds that it would be appropriate
5 for:

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

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

20 (b) This Act adopts a new policy with respect to this new
21 type of inter-island ferry service to provide that, during the
22 period any required environmental review and studies, including



1 environmental assessments and environmental impact statements,
2 are prepared, and also following their completion:

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

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

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

13 This Act further clarifies that due to the unique nature
14 and critical importance of the inter-island ferry service
15 industry to the people of our state, the construction and use of
16 harbor improvements to facilitate this new type of inter-island
17 ferry service is to be governed by this Act, and not by chapter
18 343, Hawaii Revised Statutes.

19 (c) The purpose of this Act is to facilitate the
20 establishment of inter-island ferry service and, at the same
21 time, protect Hawaii's fragile environment by clarifying that
22 neither the preparation of an environmental assessment, nor a



1 finding of no significant impact, nor acceptance of an
2 environmental impact statement shall be a condition precedent
3 to, or otherwise be required prior to:

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

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

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

14 (4) The appropriation or expenditure of any funds, the use
15 of state lands, the issuance of any permits, or the
16 entering into of any agreements for the purpose of
17 facilitating any matters covered by paragraphs (1) to
18 (3);

19 provided that upon commencement of inter-island ferry service,
20 the qualifying ferry vessel company shall comply with reasonable
21 conditions that are designed to protect Hawaii's environment and
22 mitigate adverse environmental impacts that are proximately



1 caused by a qualifying ferry vessel company's inter-island
2 operation.

3 SECTION 2. As used in this Act:

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

9 "Qualifying ferry vessel company" means any company that
10 owns or operates a qualifying ferry vessel.

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

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

21 SECTION 3. Notwithstanding any provisions to the contrary
22 in chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes,



1 including provisions relating to special management area
2 permits, certificates of public convenience and necessity,
3 common carriers by water, environmental assessments, and
4 environmental impact statements, and further notwithstanding
5 that environmental assessments and environmental impact
6 statements have not been prepared or completed, or have been
7 completed and the environmental impact statement is found
8 unacceptable:

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

17 (2) All state harbor improvements, projects, and
18 facilities available for or utilized by the qualifying
19 ferry vessel company may be completed and utilized for
20 any purpose agreed to and authorized by appropriate
21 state entities;



- 1 (3) A qualifying ferry vessel company and the appropriate
2 state entities may proceed pursuant to and subject to
3 all executed tariffs, agreements, and contracts
4 between the company and the entities, whether the
5 tariffs, agreements, and contracts may have previously
6 been found to be in violation of chapter 343, Hawaii
7 Revised Statutes; provided that any operating
8 agreements executed or re-executed between a
9 qualifying ferry vessel company and state entity shall
10 include an explicit and comprehensive indemnity clause
11 that holds the State and its entities harmless from
12 any and all liability that have or may have been
13 caused by any judicial action regarding the
14 establishment and operation of the qualifying ferry
15 vessel in the state;
- 16 (4) The improvements at Kahului harbor intended for and to
17 be used by qualifying ferry vessels between the
18 islands of Oahu, Maui, Kauai, and Hawaii, using harbor
19 facilities on each island is declared to be required
20 by the public convenience and necessity. A
21 certificate of public convenience and necessity issued
22 to a qualifying ferry vessel company shall not be



1 revoked or modified on the basis that environmental
2 assessments or environmental impact statements have
3 not been prepared or completed; and

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

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

20 (1) Ocean life and marine animals and plants, including
21 but not limited to a qualifying ferry vessel company's



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

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

21 (b) Any qualifying ferry vessel company authorized to
22 operate pursuant to this Act shall agree to abide by any



1 conditions or protocols established by the governor pursuant to
2 this section as a condition precedent to commencing its
3 operations authorized under this Act.

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

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

15 SECTION 6. The department of transportation shall perform
16 or contract to perform an environmental impact statement for the
17 improvements made to commercial harbors throughout the State
18 that require the expenditure of public funds to accommodate the
19 use thereof by a qualifying ferry vessel company and the
20 secondary environmental effects of those operations on the
21 State's environment, including the operation of the qualifying
22 ferry vessel company.



1 SECTION 7. The department of transportation shall make the
2 environmental impact statement available for public review and
3 comment in the manner provided by section 343-3, Hawaii Revised
4 Statutes.

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

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

20 (2) Water resources and quality;

21 (3) Harbor infrastructure;

22 (4) Vehicular traffic;



- 1 (5) Public safety and security;
- 2 (6) The potential to spread invasive species;
- 3 (7) Cultural resources, including hunting, fishing, and
4 native Hawaiian resources;
- 5 (8) Economic consequences and impact; and
- 6 (9) Any other natural resource or community concern.
- 7 (b) The members of the temporary Hawaii inter-island ferry
8 oversight task force, totaling thirteen members, shall include
9 the following:
- 10 (1) The director of transportation, or the director's
11 designee;
- 12 (2) The director of business, economic development, and
13 tourism, or the director's designee;
- 14 (3) The chair of the board of land and natural resources,
15 or the chair's designee;
- 16 (4) The attorney general, or the attorney general's
17 designee;
- 18 (5) The president of a qualifying ferry vessel company, or
19 the president's designee;
- 20 (6) One representative from each of the four major
21 counties, including at least one representative from
22 the environmental community, one representative who is



1 active or knowledgeable in native Hawaiian cultural
2 practices, and one representative from the general
3 business community, each such representative to be
4 appointed by the speaker of the house of
5 representatives; and

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

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

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



1 Hawaii inter-island ferry oversight task force shall include, in
2 its monthly status reports, at a minimum:

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

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

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

17 SECTION 9. The auditor shall conduct a performance audit
18 on the state administration's actions in providing the Hawaii
19 Superferry, Inc., its operations, and related harbor
20 improvements with an exemption from the requirements of
21 conducting an environmental assessment or environmental impact
22 statement under chapter 343, Hawaii Revised Statutes. To



1 facilitate the timely execution of the performance audit by the
2 auditor, the governor and the director of transportation are
3 requested to waive any attorney-client privilege with the
4 attorney general and provide the auditor with any information
5 requested by the auditor that, in the auditor's opinion, is
6 relevant to the performance audit. In addition, the governor
7 and any other state officer deemed appropriate by the auditor
8 are requested to provide all documents and information deemed
9 relevant by the auditor in the conduct of the performance audit
10 and otherwise fully cooperate with the auditor's requests made
11 pursuant to this section.

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

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

20 (1) The following shall be reinstated to effectuate the
21 purpose of this Act and take effect retroactively on
22 their respective effective dates:



- 1 (A) The appropriation or expenditure of any funds;
- 2 (B) The use of any state lands for the purpose of
- 3 facilitating the inter-island ferry service by a
- 4 qualifying ferry vessel company;
- 5 (C) The construction of any state harbor improvements
- 6 or facilities relating to inter-island ferry
- 7 service by a qualifying ferry vessel company on
- 8 any island;
- 9 (D) The approval of the certificate of public
- 10 convenience and necessity for a qualifying ferry
- 11 vessel company;
- 12 (E) The issuance of any tariffs for the purpose of
- 13 facilitating the inter-island ferry service by a
- 14 qualifying ferry vessel company; and
- 15 (F) The entering into of any agreements, including a
- 16 qualifying ferry vessel company operating
- 17 agreement, for the purpose of facilitating the
- 18 inter-island ferry service by a qualifying ferry
- 19 vessel company;
- 20 and
- 21 (2) This Act shall be repealed on the adjournment sine die
- 22 of the 2009 regular session of the legislature.



1

INTRODUCED BY: _____



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.

