
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 Part I.

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

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



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1 is not explicitly contemplated in chapter 343, Hawaii Revised
2 Statutes, is not consistent with the intent of the legislature,
3 and as such, the policy that should be adopted under law must be
4 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 that are capable of transporting
8 large numbers of people, motor vehicles, and cargo with ease, is
9 in 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. In
12 addition, in furtherance of the legislature's goal of promoting
13 a sustainable future for its residents, a large capacity ferry
14 vessel company would also utilize technology that produces less
15 carbon emissions when compared to inter-island aircraft
16 transportation with the same carrying capacity. With its
17 ability to transport large quantities of cargo between islands
18 in a very short period of time, agricultural produce would
19 suffer less heat damage in transit, resulting in higher quality
20 produce and fresh food products at a lower cost for all
21 residents of the State. By encouraging the growing of products
22 on the islands of Kauai, Maui, and Hawaii for the Oahu market,



1 the operations of a large capacity ferry vessel company would
2 foster diversified agriculture, helping the State of Hawaii to
3 meet one of its constitutional mandates. Further, in times of
4 natural or other disasters, a large capacity ferry vessel
5 company could provide the means to rapidly deploy disaster
6 relief personnel, equipment, and supplies.

7 The legislature also finds that the immediate operation of
8 a large capacity ferry vessel company is in the public interest
9 and that it is clearly in the public interest that a large
10 capacity ferry vessel company be allowed to operate, and that
11 harbor improvements continue to be constructed and be allowed to
12 be used, while any environmental studies, including
13 environmental assessments and environmental impact statements,
14 are conducted.

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



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1 including impacts of a large capacity ferry vessel company and
2 its operations.

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

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

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

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



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

3 (1) A large capacity ferry vessel company and large
4 capacity ferry vessels may operate subject to the
5 employment of measures to prevent significant adverse
6 environmental impacts, if any;

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

13 (3) Related harbor improvements may be constructed and
14 used by the State, by a large capacity ferry vessel
15 company, and by others,

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



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1 (c) This Act further clarifies and amends existing law to
2 provide that:

3 (1) Due to the unique nature and critical importance of
4 the inter-island ferry service industry to the people
5 of our state, the construction and use of harbor
6 improvements to facilitate this new type of inter-
7 island ferry service is to be governed by this Act,
8 and not by chapter 343, Hawaii Revised Statutes; and

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

21 (d) The purpose of this Act is to facilitate the
22 establishment of inter-island ferry service and, at the same



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1 time, protect Hawaii's fragile environment by clarifying that
2 neither the preparation of an environmental assessment, nor a
3 finding of no significant impact, nor acceptance of an
4 environmental impact statement shall be a condition precedent
5 to, or otherwise be required prior to:

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

9 (2) The operation of a large capacity ferry vessel company
10 and large capacity ferry vessel between any port or
11 harbor in Hawaii pursuant to any written operating
12 agreement;

13 (3) The construction, use, or operation of any
14 improvements at Kahului harbor and any other harbor in
15 the state relating to the operation of a large
16 capacity ferry vessel company or large capacity ferry
17 vessel; or

18 (4) The appropriation or expenditure of any funds, the use
19 of state lands, the issuance of any permits, or the
20 entering into of any agreements, or the otherwise
21 taking of any necessary or appropriate actions for the
22 purpose of facilitating any matter covered by



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1 paragraphs (1) to (3), notwithstanding the fact that
2 the non-preparation or non-completion of environmental
3 assessments or environmental impact statements, the
4 lack of acceptance of an environmental impact
5 statement, or the lack of a finding of no significant
6 impact, would otherwise have barred, delayed, been a
7 condition precedent to, or interfered with the same;
8 provided that upon commencement of inter-island ferry service,
9 the large capacity ferry vessel company shall comply with the
10 conditions set by the governor by executive order.

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

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



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

4 Part II.

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

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

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

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

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



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

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



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- 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
13 law;
- 14 (4) The operation of large capacity ferry vessels between
15 the islands of Oahu, Maui, Kauai, and Hawaii,
16 including the use of harbor facilities on each island
17 and improvements at Kahului harbor, is declared to be
18 a required public convenience and necessity;
- 19 (5) A certificate of public convenience and necessity
20 issued to a large capacity ferry vessel company shall
21 not be revoked or modified on the basis that



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

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



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1 In making such determinations, the governor shall consider
2 the effects such operations may have on:

3 (1) Ocean life and marine animals and plants, including a
4 whale avoidance policy and procedures;

5 (2) Water resources and quality;

6 (3) Harbor infrastructure;

7 (4) Vehicular traffic;

8 (5) Public safety and security;

9 (6) Controlling the spread of 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 the
14 governor deems appropriate.

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



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1 protocols established, including the entities consulted, within
2 ten days of establishing the condition or protocol.

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

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

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

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

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



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

3 Part III.

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

12 SECTION 7. As used in this Part, unless the context
13 otherwise requires:

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



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1 "Action" means any program or project that is proposed or
2 completed by the department and covered by this Act.

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

11 "Agency" means any department, office, board, or commission
12 of the state or county government which is a part of the
13 executive branch of that government.

14 "Approval" means a discretionary consent required from an
15 agency prior to actual implementation of an action.
16 Discretionary consent means a consent, sanction, or
17 recommendation from an agency for which judgment and free will
18 may be exercised by the issuing agency, as distinguished from a
19 ministerial consent. Ministerial consent means a consent,
20 sanction, or recommendation from an agency upon a given set of
21 facts, as prescribed by law or rule without the use of judgment
22 or discretion.



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1 "Council" means the environmental council.

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

9 "Department" means the department of transportation.

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

20 "Environment" means humanity's surroundings, inclusive of
21 all the physical, economic, cultural, and social conditions that
22 exist within the area affected by an action, including land,



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1 human and animal communities, air, water, minerals, flora,
2 fauna, ambient noise, and objects of historic or aesthetic
3 significance.

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

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

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

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



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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 and water and other
14 natural systems, including ecosystems.

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



1 SECTION 8. (a) The environmental impact statement
2 required to be prepared under this Act by the department shall
3 comply with and be in conformity with the provisions of this
4 Act.

5 (b) The environmental impact statement process shall
6 involve at a minimum:

- 7 (1) Identifying environmental concerns;
- 8 (2) Obtaining various relevant data;
- 9 (3) Conducting necessary studies;
- 10 (4) Receiving public and agency input;
- 11 (5) Evaluating alternatives; and
- 12 (6) Proposing measures for avoiding, minimizing,
13 rectifying, or reducing adverse impacts.

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



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1 comments, and revise it, taking into account all critiques and
2 responses.

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

19 (d) The environmental impact statement shall contain an
20 explanation of the environmental consequences of the action.
21 The contents shall fully declare the environmental implications
22 of the action and shall discuss all relevant and feasible



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1 consequences of the action. In order that the public can be
2 fully informed and that the department can make a sound decision
3 based upon the full range of responsible opinion on
4 environmental effects, a statement shall include responsible
5 opposing views, if any, on significant environmental issues
6 raised by the action.

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

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



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

3 (1) A summary sheet which concisely discusses the
4 following:

5 (A) Brief description of the action;

6 (B) Significant beneficial and adverse impacts,
7 including cumulative impacts and secondary
8 impacts;

9 (C) Proposed mitigation measures;

10 (D) Alternatives considered;

11 (E) Unresolved issues; and

12 (F) Compatibility with land use plans and policies,
13 and listing of permits or approvals;

14 (2) A table of contents;

15 (3) A separate and distinct section that includes a
16 statement of purpose and need for the action;

17 (4) A project description which shall include the
18 following information, but need not supply extensive
19 detail beyond that needed for evaluation and review of
20 the environmental impact:

21 (A) A detailed map, preferably a United States
22 Geological Survey topographic map, Flood



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



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1 environmental effects, costs, and risks. Examples of
2 alternatives include:

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

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

- 20 (6) A description of the environmental setting, including
21 a description of the environment in the vicinity of
22 the action, as it exists before commencement of the



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

- 18 (7) A statement of the relationship of the action to land
19 use plans, policies, and controls for the affected
20 area. Discussion of how the action may conform or
21 conflict with objectives and specific terms of
22 approved or proposed land use plans, policies, and



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1 controls, if any, for the area affected shall be
2 included. Where a conflict or inconsistency exists,
3 the statement shall describe the extent to which the
4 department has reconciled its action with the plan,
5 policy, or control, and the reasons why the department
6 has decided to proceed, notwithstanding the absence of
7 full reconciliation. The draft statement shall also
8 contain a list of necessary approvals, required for
9 the action, from governmental agencies, boards, or
10 commissions or other similar groups having
11 jurisdiction. The status of each identified approval
12 shall also be described;

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



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1 describe the probable impact of the action on the
2 environment. The population and growth impacts of an
3 action shall be estimated if expected to be
4 significant, and an evaluation made of the effects of
5 any possible change in population patterns or growth
6 upon the resource base, including but not limited to
7 land use, water, and public services, of the area in
8 question. Also, if the action constitutes a direct or
9 indirect source of pollution as determined by any
10 governmental agency, necessary data shall be
11 incorporated into the statement. The significance of
12 the impacts shall be discussed in terms of paragraphs
13 (9), (10), (11), and (12);

- 14 (9) A separate and distinct section describing the
15 relationship between local short-term uses of
16 humanity's environment and the maintenance and
17 enhancement of long-term productivity. The extent to
18 which the action involves trade-offs among short-term
19 and long-term gains and losses shall be discussed.
20 The discussion shall include the extent to which the
21 action forecloses future options, narrows the range of
22 beneficial uses of the environment, or poses long-term



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1 risks to health or safety. In this context, short-
2 term and long-term do not necessarily refer to any
3 fixed time periods, but shall be viewed in terms of
4 the environmentally significant consequences of the
5 action;

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

21 (11) All probable adverse environmental effects which
22 cannot be avoided. Any adverse effects such as water



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



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

20 (13) A separate and distinct section that summarizes
21 unresolved issues and containing either a discussion
22 of how such issues will be resolved prior to



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1 commencement of the action, or what overriding reasons
2 there are for proceeding without resolving the
3 problems;

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

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

17 (b) The final environmental impact statement shall consist
18 of:

19 (1) The draft statement revised to incorporate substantive
20 comments received during the consultation and review
21 processes;



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1 (2) Reproductions of all letters received containing
2 substantive questions, comments, or recommendations
3 and, as applicable, summaries of any scoping meetings
4 held;

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

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

13 SECTION 10. (a) The department shall file the original
14 (signed) draft environmental impact statement with the office,
15 along with a minimum number of copies determined by the office.
16 Simultaneously, a minimum number of four copies of the draft
17 statement shall be filed with the office.

18 (b) The department shall file the original (signed) final
19 statement with the office, along with a minimum number of copies
20 determined by the office. Simultaneously, four copies of the
21 final statement shall be filed with the office.



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1 (c) An environmental impact statement may be filed at any
2 time at the office by the department as follows

3 (1) The office shall inform the public of the availability
4 of any statements or addendum documents for review and
5 comment, and the acceptance or non-acceptance of
6 statements;

7 (2) The office shall inform the public of the availability
8 of any statements or addendum documents for review and
9 comment, and the acceptance or non-acceptance of
10 statements through the periodic bulletin or any other
11 method of publication used by the office. The
12 bulletin shall be made available to any person upon
13 request through the office and public libraries;

14 (3) All submittals to the office for publication in the
15 bulletin shall be accompanied by a completed
16 informational form which provides whatever information
17 the office needs to properly notify the public. The
18 information requested may include the following: the
19 title of the action; the islands affected by the
20 action; tax map key numbers; street addresses; nearest
21 geographical landmarks; latitudinal and longitudinal
22 coordinates; the type of document prepared; the names,



1 addresses, and contact persons as applicable, of the
2 office, department, and the consultant; and a brief
3 narrative summary of the action which provides
4 sufficient detail to convey the full impact of the
5 action to the public; and

6 (4) The office may provide recommendations to the
7 department regarding any applicable administrative
8 content requirements set forth in this Act.

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

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

19 (f) The office shall be responsible for the publication of
20 the notice of availability of the environmental impact statement
21 in its periodic bulletin or any other method of publication used
22 by the office. The office shall develop a distribution list of



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

15 (g) The draft and final statements shall be prepared by
16 the department and submitted to the office. The draft statement
17 shall be made available for public review and comment through
18 the office for a period of forty-five days. The office shall
19 inform the public of the availability of the draft statement for
20 public review and comment pursuant to this subsection. The
21 department shall respond in writing to comments received during
22 the review and prepare a final statement.



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

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

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

21 (1) Point-by-point discussion of the validity,
22 significance, and relevance of comments; and



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

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

21 SECTION 11. (a) The final authority to accept a final
22 statement required under this Act shall rest with the office, or



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1 the office's authorized representative. The department may
2 request the office to make a preliminary review regarding the
3 acceptability or non-acceptability of the environmental impact
4 statement. The office, when requested by the department, may
5 review and make a recommendation as to the acceptability of the
6 final statement.

7 (b) The office shall take prompt measures to determine the
8 acceptability or nonacceptability of the department's statement.

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

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

18 (1) The procedures for assessment, consultation process,
19 review, and the preparation and submission of the
20 statement, have all been completed satisfactorily as
21 specified in this section;



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1 (2) The content requirements described in this section
2 have been satisfied; and

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

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

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



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

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

12 Part IV.

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



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1 impact, if any, of the operations of any existing or proposed
2 large capacity ferry vessel company on:

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

7 (2) Water resources and quality;

8 (3) Harbor infrastructure;

9 (4) Vehicular traffic;

10 (5) Public safety and security;

11 (6) The potential to spread 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.

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

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

21 (2) The director of business, economic development, and
22 tourism, or the director's designee;



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



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

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

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

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



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

7 SECTION 13. (a) The auditor shall conduct a performance
8 audit on the state administration's actions in exempting certain
9 harbor improvements to facilitate large capacity ferry vessels
10 from the requirements of conducting an environmental assessment
11 or environmental impact statement under chapter 343, Hawaii
12 Revised Statutes. The audit shall also include the state
13 administration's actions in not considering potential secondary
14 environmental impacts of the harbor improvements prior to
15 granting the exemption from these requirements. To facilitate
16 the timely execution of the performance audit by the auditor,
17 the governor and the director of transportation are requested to
18 waive any attorney-client privilege with the attorney general
19 and provide the auditor with any information requested by the
20 auditor that, in the auditor's opinion, is relevant to the
21 performance audit. In addition, the governor and any other
22 state officer deemed appropriate by the auditor are requested to



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1 provide all documents and information deemed relevant by the
2 auditor in the conduct of the performance audit and otherwise
3 fully cooperate with the auditor's requests made pursuant to
4 this section.

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

10 SECTION 14. Any previously made appropriation or
11 previously authorized expenditure of funds for any inter-island
12 ferry operations of a large capacity ferry vessel company, or
13 for improvements or operating expenses to accommodate its
14 provision of inter-island ferry service shall be approved and
15 authorized to the extent they are needed to effectuate the
16 provisions of this Act.

17 Any state lands previously authorized to be used to
18 facilitate or support the operation of an inter-island ferry
19 service, shall be authorized to be used to effectuate the
20 provisions of this Act.

21 Any state harbor improvement or state or county facilities
22 previously made or made available to facilitate or support the



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1 operation of an inter-island ferry service may be used by any
2 large capacity ferry vessel company or any other person to
3 effectuate the provisions of this Act.

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

7 Any tariffs issued for the purpose of facilitating the
8 provision of inter-island ferry service may be used to
9 effectuate the provisions of this Act.

10 Any agreements between the department of transportation or
11 the state and a large capacity ferry vessel company previously
12 entered into for the purpose of facilitating the provision of
13 inter-island ferry service may be used to effectuate the
14 provisions of this Act.

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



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1 establishment and operation of the large capacity ferry vessel
2 in the state, and will indemnify and defend the State of Hawaii,
3 its agencies, and its officers and employees, in both their
4 official and individual capacities, from such claims brought by,
5 through, or under the large capacity ferry vessel company, or
6 any of its agents, successors, and assigns.

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

13 SECTION 17. This Act shall take effect upon its approval;
14 provided that this Act, except as otherwise provided, shall be
15 repealed on the earlier of:

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

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

21 Further provided that:



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- 1 (1) The final environmental impact statement by the
- 2 department of transportation that is accepted by the
- 3 office of environmental quality control under this Act
- 4 shall be and remain effective for all purposes under
- 5 the laws of this state, notwithstanding the repeal of
- 6 this Act; and
- 7 (2) Section 16 of this Act shall not be repealed when this
- 8 Act is repealed.
- 9
- 10

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 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.

