

SIXTH DAY

Wednesday, October 31, 2007

The House of Representatives of the Twenty-Fourth Legislature of the State of Hawaii, Second Special Session of 2007, convened at 12:09 o'clock p.m., with Temporary Chair B. Oshiro presiding.

The invocation was delivered by Representative Joey Manahan, after which the Roll was called showing all members present with the exception of Representatives Carroll, Hanohano, Luke, Marumoto, Saiki and Takamine, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fifth Day of the Second Special Session was deferred.

SENATE COMMUNICATION

The following communication, (Sen. Com. No. 2, Second Special Session of 2007) was received and announced by the Clerk, and was placed on file:

Sen. Com. No. 2, Second Special Session of 2007, transmitting H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO SENTENCING," which passed Third Reading in the Senate on October 31, 2007.

INTRODUCTIONS

The following introductions were made to the members of the House:

Representative Waters introduced Ms. Marilyn Monroe (Mandie Pearson) and Ms. Tigger Too (Amy Luke).

Representative Meyer introduced Governor Linda Lingle.

Representative Ward introduced Mr. Lenny Klompus, Governor Lingle's Senior Advisor for Communications.

Representative Ching introduced Ms. Joy Watari, Governor Lingle's interim Chief of Staff.

ORDER OF THE DAY

SUSPENSION OF RULES

On motion by Representative Caldwell seconded by Representative Meyer and carried, the rules were suspended for the purpose of considering a certain bill on Third Reading on the basis of a modified consent calendar. (Representatives Luke, Marumoto, Saiki and Takamine were excused.)

THIRD READING

S.B. No. 1, SD 1:

Representative Caldwell moved that S.B. No. 1, SD 1, pass Third Reading, seconded by Representative Say.

The Chair then stated:

"Members, before we proceed on to the debate, I would like to remind you that we will likely be having a very lively and lengthy discussion so to that extent, I will remind you of Rule 50.1 of the House Rules where every Member only gets five minutes of time to debate. At that point, I will be interjecting and reminding you that

you need to conclude. If someone wants to yield their time and wants the speaker to continue, at that point a Member needs to stand up and yield their time. I will not be asking Members to yield their time. Let us proceed."

Representative Souki rose to speak in support of the measure, stating:

"Mr. Speaker, I wish to speak for Senate Bill No. 1, SD 1. Mr. Speaker and Members of the House, after months, maybe even years of somewhat agonizing through this odyssey of the Superferry, we have come to this point.

"I ask the community and the Members here to open their minds and their hearts to a new system of transportation throughout the State that hopefully can connect the islands, the respective islands and counties, respective cultures, subcultures within the islands as one state, one Hawaii. Not a divided Hawaii. Not the little fiefdoms that we have or potentially can have as a result of this.

"Mr. Speaker and Members, with no hesitation, I support the ferry. Ferries have been used throughout the world. Why should we be any different? My only concern is that with this ferry here we are providing, because of the uproar of the community, exceptions to the ferry that they must comply with whereas the other carriers throughout the State don't need to do.

"It's a compromise bill. And what it shows is that a fearful feeling of a new entity that might provide chaos throughout the islands transferring diseases, invasive species, and people from other communities invading their shores. This should not be. We should not have this kind of feeling. We should not have an adverse feeling for the people from Oahu going to Maui, going to Kauai and to the Big Island, or from Maui to Oahu. We're one island, one state. The water is our highway. The air is our highway. Why should we put barriers between the highways whether they're in water, land, or air? It should be made available. Free to access. To enjoy what the respective islands have to offer and what we have to offer as we visit these respective islands. We are one *aina*, one Hawaii. We are not four Hawaiis or eight Hawaiis. We are one. And we must remember that.

"And we must respect the people from the different islands as they traverse between the islands. It's the way it's supposed to be. Treat each other with civility. Sometimes we forgot that, even among our own selves. We who should be the bearers of civility need to remind ourselves and the community."

Representative Cabanilla rose to yield her time, and the Chair, "so ordered."

Representative Souki continued, stating:

"So members with this ... Did someone yield or must I sit down? They have yielded? Thank you very much. Well I'll be closing very soon.

"I just want to thank Members from both sides, those who are for the ferry and those who are against the ferry. It's healthy debate. This debate brought out a lot of good. It brought out the weaknesses of the original bill so that we could strengthen it. And hopefully differences that we've had can be somehow brought together so that in these next few months we can heal. So that the community can heal as it moves along with this new vehicle of transportation, and our fears can be curbed. So my good friends, let's all have aloha for each other. Thank you very much."

Representative Herkes rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. Mr. Speaker, in support. Just for the record Mr. Speaker, I have been threatened with recall in case I vote for this bill. And unfortunately threats are becoming much more common in my district and I find that very unfortunate. I'm comfortable that my vote is in the best interest of the people of my district, the Big Island and the State as a whole."

Representative Morita rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to this measure. The Constitution of the State of Hawaii grants this body the power to enact legislation that is not inconsistent with the constitutions of the United States and Hawaii. We generally make laws to protect the health, safety and welfare of Hawaii's people and its environment. We should not be making laws to correct political fixes gone bad which is what Senate Bill 1, Senate Draft 1 attempts to do. I want to emphasize, in this bill this body is not making a new policy or protecting the public interest. Rather, Senate Bill 1, Senate Draft 1 establishes a process to circumvent existing laws to facilitate a permitting process.

"Furthermore, our State Constitution, Article XI, Section 9 states:

"Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law."

"In *Sierra Club v. Department of Transportation, Civil No. 05-1-0114(3) (Declaratory Judgment), October 9, 2007*, Judge Joseph Cardoza found and concluded "that the balance of irreparable damage favors the issuance of a permanent injunction in this case as Plaintiffs have demonstrated the possibility of irreparable injury with respect to the environmental impacts of Hawaii Superferry operations on natural resources, protected species, increased introduction of invasive species and causing social and cultural impacts." Furthermore, the Court also found and concluded that "the public interest in implementing the environmental review process supports the granting of a permanent injunction in this case."

"There is no dispute that the legislative intent of Chapter 343, specifically HRS 343-5(b) requires that the "acceptance of the requested final statement shall be a condition precedent to the implementation of the proposed action." And, simply put, Senate Bill 1, Senate Draft 1 clearly abrogates the constitutional rights of the plaintiffs in *Sierra Club v. Department of Transportation*.

"There is no effort in this measure to "strike a balance between the issues of public interest and concerns for the environment" by allowing the Hawaii Superferry to operate. The public interest is served only when the rule of law is followed, not by changing the law to serve the interests of one company, especially after a judicial ruling and injunction against said company.

"This body's own Committee Report states, "Your Committees believe that State officials should have been more vigilant in the interests of protecting the environment while seeking to enhance the economy of the State and that more due diligence is required when making decisions that may have significant environmental impacts for future generations." Well, will someone please explain to me how you all can pass this measure and honestly say we are acting in the public's interest when the Committee Report clearly states otherwise and that the Administration has clearly been derelict in its responsibilities to follow the law and protect the public's interest.

"We can learn some important lessons from history. I mentioned several days ago on this floor, arrogance and speed led to the sinking of the Titanic. Much like the Titanic, in our quest to embrace new

opportunities for economic development, we are acting solely on the information provided by the Hawaii Superferry without heeding red flags or performing due diligence to assess the acceptable ..."

Representative Takumi rose to yield his time, and the Chair, "so ordered."

Representative Morita continued, stating:

"Again, we are acting solely on the information provided by the Hawaii Superferry without heeding red flags or performing due diligence ..."

Representative Meyer rose, stating:

"Mr. Speaker, I'd like to get some clarification on this procedure of yielding your time. I believe the Representative who yielded his time has already done that once."

The Chair then stated:

"No he has not. There's only been one yield and that was Representative Cabanilla."

Representative Meyer: "I thought it was the Representative from Pearl City."

Temporary Chair B. Oshiro: "No, it was not."

Representative Morita continued, stating:

"Thank you. Again, we are acting solely on the information provided by the Hawaii Superferry without heeding red flags or performing due diligence to assess the acceptable amount of risk to the State and its resources in this endeavor.

"But more importantly, we need to understand and respect the importance of judicial independence. I would like to submit to the Journal an opinion piece by Chief Justice Moon dated July 24, 1999 which appeared in the *Honolulu Star-Bulletin* where the 1930's Massie alleged rape case and the subsequent murder of Joseph Kahahawai illustrated the need for an unfettered Judiciary that would not bend to political pressure. Let me read key parts of Chief Justice Moon's essay.

"HISTORICALLY, in this country, there has always been a certain level of criticism of the judiciary, which, in a free society, is inevitable. Recently, however, there have been unprecedented attacks upon judicial institutions and judges at both federal and state levels by politicians, the media and others, because of the court's unpopular decisions, emotional reactions to those decisions, or both.

The concept of judicial independence and the importance of preserving it are often mystifying and/or misunderstood by the public.

Just what is judicial independence? It means that judges must be free to make their decisions without fear of reprisal. In other words, a decision must be based solely on the legal merits of a case -- not on popular opinion polls or surveys, the views of special interest groups or even a judge's personal preference.

When judges are perceived as formulating their decisions in response to political pressure or the perceived majority opinion of the moment, our system of government is placed in serious jeopardy . . .

. . . By attacking the integrity and independence of the judiciary, politicians, the media, special interest groups and the like threaten to undermine the delicate balance of power, which, left unchecked,

has the great potential of essentially transforming our three branches of government into two.

Should this occur, the nation would be left vulnerable to the passing whims of partisan politics that now dominate the executive and legislative branches."

"And then he ends:

"I hope that I have helped foster an understanding of why every individual in our society should care about preserving and maintaining judicial independence. Be mindful that judicial independence is not, as some may believe, for the protection of judges.

It is for the protection of our society against those who commit crimes, the protection of our free enterprise system, and the protection of the rights that every citizen is guaranteed under our state and federal Constitutions."

So with this measure, in one fell swoop, we attempt to emasculate the Judiciary and the rule of law.

"Finally, I think it is really appropriate that we are voting on this measure on Halloween. Senate Bill 1, Senate Draft 1 dressed in the facade of the toothless conditions is still one ugly bill that reeks the horrors of political favors gone awry and should be haunting this Legislature on how cheap we sold the credibility and respectability of this institution and our moral compass.

"Mr. Speaker, I also have additional comments and documents that I would like to submit into the Journal," and the Chair "so ordered."

Representative Morita submitted the following written remarks and document:

"Mr. Speaker: I stand in opposition to this measure. For the Journal, I would like to insert a formal complaint I filed with the Hawaii Public Utilities Commission (PUC) with regard to this issue. As I have mentioned before, the PUC is the proper agency to require the environmental review as it is the Hawaii Superferry operations that will have the primary impacts that warrant and trigger an environmental review connected to the issuance of the Certificate of Public Convenience and Necessity. In the PUC docket on this issue, the PUC "punted" to the Department of Transportation regarding the environmental review where the exemption was erroneously granted.

"The second point I would like to touch on is the purpose of an Environmental Impact Statement. An Environmental Impact Statement is simply a disclosure document, perhaps mislabeled as it must consider not only environmental impacts but also economic, social and cultural impacts, both positive and negative. The reason for "structured" disclosure is so that as a government body, we can make the best informed decision for a particular project at its inception, not after approval. The developers let the financing drive the timetable of this particular project without full disclosure or government doing the necessary due diligence on the need, purpose and viability of the Hawaii Superferry.

"In the Attorney General's public testimony, he alluded that it is our prerogative to make policy and cited two "projects" that are exempt from environmental review through law. The first was the purchase of the assets of Waiahole Ditch and the second was Hawaiian fishponds. I see no similarity to these exceptions and what we are proposing in Senate Bill 1, Senate Draft 1. Waiahole Ditch and Hawaiian fishponds structures have existed long before Chapter 343. The allocation of water from Waiahole Ditch is governed by the Water Code based on the public trust doctrine and the restoration of Hawaiian fishponds is protected under Hawaii's Constitution. Again, we not making policy in this measure, we are just trying legally to maneuver around existing laws to facilitate a permitting process.

"If it was this body's desire to establish a policy to support a new mode of inter-island transportation to our islands it was done lacking full disclosure and deliberative discussion to make an informed decision that would be done in the public's interest. Unfortunately, all legislative actions we have taken in this Special Session suggest that we have acted to support only one company, the special interests of the Hawaii Superferry in a political fix."

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Hermína M. Morita

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the ) DOCKET NO. 04-0180  
Application of )  
HAWAII SUPERFERRY, INC. ) VERIFIED COMPLAINT; EXHIBITS  
For a Certificate of Public ) "A"- "G"  
Convenience and Necessity to )  
Engage in Operations as a )  
Water Carrier. )

VERIFIED COMPLAINT

Hermína M. Morita for and as her Complainant against Respondent,  
Hawaii Superferry, Inc., upon information and belief, hereby  
states:

1. This Complaint is brought pursuant to HRS 271G-1, et. seq., HRS 269.1, et. seq., and HAR 6-61-67.
2. At all times material hereto, the Complainant, Hermína M. Morita was and is a resident of the County of Kauai, State of Hawaii, and a member of the Hawaii State House of Representatives,

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District 14, whose business mailing address is The State Capitol Building, Room 314, Honolulu, Hawaii 96813.

3. Respondent, Hawaii Superferry, Inc. is a for profit Hawaii corporation whose mailing address is 500 Ala Moana Boulevard, Honolulu, Hawaii 96813.

4. The Director of Commerce and Consumer Affairs, Division of Consumer Advocacy, whose mailing address is 335 Merchant Street, Suite 326, Honolulu, Hawaii 96813 is an ex officio party to any proceeding before the Commission.

5. Young Brothers, Ltd., whose mailing address is 1311 Nimitz Highway, Honolulu, Hawaii 96817 was granted status to participate in Hawaii Superferry, Inc.'s application proceedings for a Certificate of Public Convenience and Necessity as a water carrier of passengers and property.

6. On or about July 22, 2004, Hawaii Superferry, Inc. filed with the Public Utilities Commission (PUC) an application for a Certificate of Public Convenience and Necessity (CPCN) requesting authorization to operate as a water carrier of passengers and property between the Islands of Oahu and Kauai, Maui and Hawaii.

7. Pursuant to the PUC's Decision and Order No. 21524, filed December 30, 2004, the Hawaii Public Utilities Commission conditionally granted the Hawaii Superferry a Certificate of Public

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Convenience and Necessity (CPCN) to operate as a water carrier of passengers and property between the islands of Oahu and Kauai, Maui and Hawaii. (Exhibit "A"; PUC Docket No. 59).

8. In its Reply Statement of Position, filed with the PUC on December 8, 2004, Hawaii Superferry had stated:

D. Environmental review process.

1. Hawaii EIS Law (HRS Chapter 343)

Applicant has requested that DOT issue a declaration of exemption for the harbor use because this action falls within several defined categories of actions that are exempt from the Hawaii EIS Law under Hawaii Administrative Rules ("HAR") §11-200-8.

The question of whether the proposed harbor use would fall within the scope of the environmental review process prescribed in Hawaii EIS Law was discussed with high-level representatives of the DOT, the Attorney General and the State of Hawaii Office of Environmental Quality Control ("OEQC") during meetings held in November 2004. The indication conveyed to Applicant was that the harbor use is encompassed by one or more of the exemptions described above and in the DOT's Comprehensive Exemption List.

Applicant has requested confirmation from DOT that the harbor use falls within an exemption. A declaration of exemption or other confirmation will not be issued until the harbor alterations are definitively identified, such as in the LOI.

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Applicant will inform the Commission as to the DOT's determination regarding the exemption.

(Exhibit "B", at pages 3-4; PUC Docket No. 51).

9. In its Decision and Order No. 21524, the PUC recognized that "issues were raised by some at the public hearings about the impact of the proposed ferry system on the environment", and further recognized that the testimony of some at the public hearings suggested that an "environmental assessment be done on the proposed ferry services' effect on the surrounding environment". (Exhibit "A", at page 24).

10. Although the PUC believed the environmental issues raised by the public were "important issues that should be addressed", the PUC's Decision And Order deferred the review of the environmental issues. Specifically, with respect to the environmental issues, Decision and Order No. 21524 states:

... they need not be addressed in this particular decision and order, since the determination of whether the proposed ferry service and its effect on the harbors and surrounding areas require an environmental assessment is currently being reviewed and addressed by the DOT.

(Exhibit "A", at page 25; Emphasis added).

11. Decision and Order No. 21524, further states:

We find it necessary, however, to condition our authorization in this docket upon Applicant's showing, to the satisfaction of the Commission, that Applicant has complied with all applicable federal and state laws, rules and regulations, including, without limitation, matters relating to

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the Environmental Impact Statement Law ("EIS"), under Chapter 343, HRS, to the extent applicable to ensure that all such requirements are appropriately addressed.

(Exhibit "A", at page 25; Emphasis added).

12. In its Summary of Findings and Conclusions, the Commission further stated:

Accordingly, we conclude that Applicant's request for operating authority, a CPCN, as set forth in the Application, should be granted, subject to the conditions discussed herein, and more specifically, in the ordering paragraphs below.

(Exhibit "A", at page 27; Footnote omitted; emphasis added).

13. The Commission's Orders state the following:

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a CPCN to operate as a common carrier by water of passengers and property, between the islands of Oahu and Kauai, Maui and Hawaii, subject to the following conditions:

(f) Applicant shall provide evidence that it is in full compliance with all applicable EIS, NOAA, and the U.S. Coast Guard laws, rules, regulations and requirements, and any and all other applicable federal and state laws, rules and regulations and requirements that are necessary to operate its proposed ferry service within the State.

(Exhibit "A", pages 27-29; Emphasis added).

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14. On or about January 24, 2005, Hawaii Superferry entered into a letter agreement with the U.S. Department of Transportation, Maritime Administration (MARAD) with respect to Hawaii Superferry's application dated June 4, 2004. The Hawaii Superferry's June 4, 2004 application requested a loan guarantee for the construction and mortgage financing of two (2) 105 meter, high speed roll on-roll off passenger and vehicle ferries. (PUC Docket No. 62; Exhibit "B" to Status Report, dated April 29, 2005).

15. The January 24, 2005 letter agreement between the Hawaii Superferry and MARAD, at Paragraph X(iii) states:

X. Determined that the Closing shall be preconditioned on MARAD's finding that

(iii) the State has given all the governmental and environmental clearances (including a confirmation that there is no need for an environmental assessment of the port facilities) necessary to commence and complete the shoreside improvements, the leasing of equipment, the construction of the temporary passenger terminal facilities, and the operation of the ferries by HSF, and the periods of all applicable State and Federal statutes of limitation have run on the right of plaintiffs to block the project; (Emphasis added).

(PUC Docket No. 62; Exhibit "B" to Status Report, dated April 29, 2005).

16. The January 24, 2005 letter agreement between the Hawaii Superferry and MARAD, at paragraph XI states in part:

XI. Noted that a review under the National Environmental Policy Act of 1970 (NEPA) may be required pursuant to 40 C.F.R. Part 1500 and that MARAD will promptly make a decision as to the necessity for such review. If MARAD determines that a NEPA review is necessary, MARAD will promptly initiate such review (including an Environmental Assessment and Environmental Impact Statement, as appropriate) of the environmental impacts of this project. Any required NEPA review must be concluded prior to the occurrence of any Closing. Unless MARAD is satisfied that compliance with the requirements of NEPA is complete, MARAD is under no obligation to close on the Letter Commitment and may, in its sole discretion, cancel the Letter Commitment. Required that HSF pay for any NEPA review determined by MARAD to be necessary. (Emphasis added).

(PUC Docket No. 62; Exhibit "B" to Status Report, dated April 29, 2005).

17. In December 2004, prior to the execution of the January 24, 2005 letter agreement, the Hawaii Superferry's June 4, 2004 application to the U.S. Department of Transportation had been reviewed by MARAD's Office of Environmental Activities.

18. In the December 2004 environmental review, it was determined by MARAD, that the proposed action was considered a

"Major Federal Action" pursuant to 40 CFR 1508.18(a).

Specifically, MARAD stated:

The proposed action was reviewed by this office in December 2004 and it was determined that the action was considered a "Major Federal Action" pursuant to 40 CFR 1508.18(a) because 78.5% of the project would be funded Title XI loan guarantees totaling \$143.6 million. The proposed action is considered "Major" as it is partly funded, assisted, and approved by MARAD. (Emphasis added).

(Exhibit "C", at page 2).

19. On February 23, 2005, the Department of Transportation, State of Hawaii erroneously determined that the expenditure of \$40,000,000.00 in State funds for harbor improvements for the Hawaii Superferry, and the Hawaii Superferry's proposed operation at Honolulu Harbor, Kahului Harbor, Nawiliwili Harbor, and Kawaihau Harbor met the conditions that "permit exemption from environmental review at such location(s) based on the method of operation planned".

20. On or about March 28, 2005, based upon the State of Hawaii, Department of Transportation's February 23, 2005 erroneous determination that the "proposed action is exempt from further review", it appears that MARAD determined that notwithstanding its initial determination that the proposed action by Hawaii Superferry, Inc. was a "Major Federal Action", the proposed action

would be categorically excluded from the requirements of the National Environmental Protection Act. (Exhibit "C", at page 2).

21. MARAD's Record of Categorical Exclusion Determination, dated March 28, 2005, in discussing MARAD's December, 2004 environmental review, states in part:

Based on the information available at that time, there appeared to have been very little, if any, NEPA or state environmental work performed related to the proposed ferry service that would be adequate for MARAD's responsibilities under NEPA.

However, since that time, the State of Hawaii Department of Transportation completed a review of the proposed action pursuant to Chapter 343, Hawaii Revised Statutes, and Chapter 11-200, Hawaii Administrative Rules, and determined that the proposed action is exempt from further review.

Determination:

Based on our review of information conveyed to us and in our possession (or attached) concerning the proposed action as stated above, the NEPA Program Manager, has determined that the proposed action is categorically excluded from further NEPA review.

Recommendation:

MAR-820 recommends that the loan guarantee contract contains the requirement that Hawaiian High Speed Ferry (HSF) Corporation

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comply with all applicable environmental laws and regulations.

(Exhibit "C", at pages 2-3).

22. During the 2005 legislative session, the Hawaii State Legislature appropriated forty million dollars (\$40,000,000.00) in reimbursable general obligation bonds for the design and construction of harbor improvements to be used by the Hawaii Superferry. The Legislature appropriated the use of the forty million dollars over two fiscal years. The first twenty million dollars (\$20,000,000.00) could be obligated during the fiscal year 2005-2006, and the second twenty million dollars could be obligated during the fiscal year 2006-2007. The Governor signed the appropriation into law as Act 178, 2005 Session Laws.

23. In its Status Report to the PUC dated April 29, 2005, Hawaii Superferry stated:

While the legislative appropriation of funds for harbor equipment is not financing extended to Applicant, the approval by the Hawaii State Legislature of the \$40,000,000 reimbursable general obligation bonds for harbors equipment is essential to Applicant's progress. (Emphasis added).

(PUC Docket No. 62; Status Report dated April 29, 2005, at page 3).

24. On or about September 7, 2005, the State of Hawaii, Department of Transportation, and Hawaii Superferry, Inc. entered into a Harbors Operating Agreement. (PUC Docket No. 67, Status Report, dated December 27, 2005).

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25. The Harbors Operating Agreement, at page 21, paragraph IV.J.6. Compliance with Environmental Laws, states:

6. Compliance with Environmental Laws. In the event a governmental authority or a court of law determines that an environmental assessment or environmental impact statement is required regarding HSF's operations, HSF will comply with all applicable environmental laws, statutes, rules, regulations, ordinances, orders, directives, and guidelines, including the National Environmental Policy Act ("NEPA") and HRS Chapter 343 (HEPA). No part of this Agreement shall be construed as (a) an agreement or acknowledgment by HSF or the STATE that an environmental review under NEPA or HEPA is required or (b) a waiver of HSF's right to challenge or appeal any finding of a governmental authority or a court of law that an environmental assessment or environmental impact statement is required regarding HSF's operations. (Emphasis added).

(Exhibit "D", at pages 3-4).

26. By letter dated May 29, 2007, Hawaii Superferry requested that the Public Utilities Commission issue written confirmation pursuant to Decision and Order No. 21524 filed December 30, 2004 that "all requirements and conditions stated in D&O 21524 have been met to the satisfaction of the Commission and that HSF may commence operations as a water carrier." (PUC Docket No. 95).

27. In response to Hawaii Superferry's May 29, 2007 request, by letter dated June 12, 2007, Paul M. Nakayama, Research Assistant for the PUC wrote:

This is to confirm that, based on the representations made, and the information provided by the Superferry, the Commission understands that

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the Superferry has satisfied the requirements set forth by the Commission in Decision and Order No. 21524 and Order No. 22934.

(Exhibit "E"; PUC Docket No. 96).

28. On August 23, 2007, the Hawaii Supreme Court in Sierra Club et al. v. the Department of Transportation of the State of Hawaii, et al., Case No. 27407 issued an Order holding that the Hawaii Department of Transportation's determination that the improvements to the Kahului Harbor are exempt from the requirements of Chapter 343, Hawaii Revised Statutes was erroneous as a matter of law and mandated the preparation of an Environmental Assessment pursuant to HRS 343-1, et. seq. (Exhibit "F").

29. On August 27, 2007, in response to the PUC's request "to address the Order filed August 23, 2007 in Hawaii Supreme Court Appeal No. 27407," Hawaii Superferry replied:

HSF is in compliance with all applicable laws, rules, and regulations and the August 23, 2007 Order does not change that status. (Emphasis added).

(Exhibit "G"; PUC Docket No. 100).

30. On August 31, 2007, the Hawaii Supreme Court in the Sierra Club, et al. v. the Department of Transportation of the State of Hawaii, et al., Case No. 27407 issued its full Opinion on this matter, and concluded as follows:

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Contrary to the expressly stated purpose and intent of HEPA, the public was prevented from participating in an environmental review process for the Superferry project by DOT's grant of an exemption to the requirements of HRS chapter 343. The exemption was erroneously granted as DOT considered only the physical improvements to Kahului harbor in isolation and did not consider the secondary impacts on the environment that may result from the use of the Hawaii Superferry in conjunction with the harbor improvements. "All parties involved and society as a whole" would have benefitted had the public been allowed to participate in the review process of the Superferry project, as was envisioned by the legislature when it enacted the Hawaii Environmental Protection Act.

(Slip Opinion, at pages 102-103; Emphasis added).

31. A Temporary Restraining Order is currently in effect against the Hawaii Superferry for the use of Kahului Harbor.

32. On Sunday, August 26, 2007 and Monday, August 27, 2007, the Hawaii Superferry operated from Honolulu Harbor to Nawiliwili Harbor, Kauai in willful violation of HRS 343-1, et. seq. the Harbors Operating Agreement, and the PUC's Decision and Order No. 21524, condition 1(f) which provides that:

Applicant shall provide evidence that it is in full compliance with all applicable EIS, NOAA, and the U.S. Coast Guard laws, rules, regulations and requirements, and any and all other applicable

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federal and state laws, rules and regulations and requirements that are necessary to operate its proposed ferry service with the State;

(Exhibit "A", at page 29).

33. Effective August 28, 2007, the Hawaii Superferry temporarily suspended its operations to Kauai. Hawaii Superferry subsequently announced its intention to resume operations to Kauai on September 26, 2007. On September 21, 2007, Hawaii Superferry announced that it would indefinitely suspend service to and from Nawiliwili Harbor, Kauai.

34. On September 3, 2007, the State of Hawaii, Department of Transportation pursuant to the Hawaii Supreme Court's decision in Sjarra Club, supra, acknowledged that the agency will prepare a statewide environmental assessment. The Environmental Assessment should not only assess the effect of the \$40,000,000.00 in State funds expended for harbor improvements at the four (4) harbors, but the secondary and cumulative effects of the proposed action, including the effects of the operation of the Hawaii Superferry.

35. HRS 343-1, et. seq., Environmental Impact Statements commonly referred to as the "Hawaii Environmental Protection Act" (HEPA) contains the following definitions:

§ 343-2. Definitions.

As used in this chapter unless the context otherwise requires:

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"Action" means any program or project to be initiated by any agency or applicant.

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

"Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

36. HRS 343-5(a) (1) provides that an Environmental Assessment shall be required for actions that are not exempt, and which propose the use of state lands or state funds.

37. When an agency proposes an action that uses state lands or state funds that is not exempt pursuant to HRS 343-6, HRS 343-5(b) provides that "the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required". (Emphasis added).

38. When an applicant proposes an action that uses state lands or state funds and requires agency approval, HRS 343-5(c) provides that the agency shall prepare an environmental assessment

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for such action at the earliest practicable time to determine whether an environmental impact statement shall be required". (Emphasis added).

39. For an agency action, HRS 343-5(b) makes the acceptance of a final Environmental Impact Statement a "condition precedent to the implementation of the proposed action". Specifically, HRS 343-5(b) states in part:

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. (Emphasis added).

40. If based upon an Environmental Assessment, there is a finding of significant impact for an Applicant's proposed action, HRS 343-5(c) requires the preparation of a draft and final Environmental Impact Statement. HRS 343-5(c), states in part:

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. (Emphasis added).

41. Until the environmental assessment is completed, the operation of the Hawaii Superferry as a water carrier of passengers and property, including the use of the harbor improvements at any of the four (4) harbors by the Hawaii Superferry is precluded by HRS 343-5(b), as the "acceptance of the requested final statement shall be a condition precedent to implementation of the proposed

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action". The preparation of the Environmental Assessment is a mandatory condition precedent to the lawful operation of the Hawaii Superferry as a water carrier, including the use of the harbors and the harbor improvements.

42. Until the environmental assessment and review process mandated by the Hawaii Supreme Court is completed, the operation of the Hawaii Superferry as a water carrier of passengers and property, including the use by Hawaii Superferry of the harbor improvements at any of the four (4) harbors is a willful violation of the Commission's Decision and Order No. 21524, and HRS 271G-1, et. seq., as well as HRS 343-1, et. seq., and the Harbors Operating Agreement.

43. The declared policy of HRS 271G-1 states in part that:

... the transportation of persons and of property for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest.

44. Until such time that the Environmental Assessment is completed, and a determination is made whether or not an Environmental Impact Statement is required, it does not serve the public's interest to allow the Hawaii Superferry to operate as a water carrier pursuant to HRS 271G-1, et. seq.

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45. Hawaii Superferry's application pursuant to HRS 271G-10, filed with the PUC on July 22, 2004 constituted an "action" within the meaning of HRS 343-2 and Hawaii Superferry, Inc. was the "Applicant" within the meaning of HRS 343-2.

46. Hawaii Superferry has not complied with the applicable laws and/or the PUC's conditional Decision and Order No. 21524, and/or the Harbors Operating Agreement, as the Hawaii Superferry, Inc. intends to operate prior to the preparation of the Environmental Assessment, and if necessary, the preparation of an Environmental Impact Statement.

47. HRS 343-1, et seq., is clear in its mandatory requirements. The legislative intent is not in question. The plain and unambiguous language of HRS 343 prohibits the proposed action, i.e. the use of the harbor improvements, and the operation of the Hawaii Superferry, until the Environmental Assessment is completed, or if required, the final Environmental Impact Statement is accepted by the appropriate authority in accordance with HRS 343-5(b) and (c).

48. Pursuant to the September 7, 2005 Harbors Operating Agreement between Hawaii Superferry and the State of Hawaii, Department of Transportation, the Hawaii Superferry agreed if "a court of law determines that an environmental assessment or

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environmental impact statement is required regarding HSF's operations, HSF will comply with all applicable environmental laws," including "HRS Chapter 343". Specifically, the Harbors Operating Agreement states as follows:

6. Compliance with Environmental Laws. In the event a governmental authority or a court of law determines that an environmental assessment or environmental impact statement is required regarding HSF's operations, HSF will comply with all applicable environmental laws, statutes, rules, regulations, ordinances, orders, directives, and guidelines, including, the National Environmental Policy Act ("NEPA") and HRS Chapter 343 ("HEPA"). (Emphasis added).

(Exhibit "D" at pages 3-4; PUC Docket No. 67, Status Report dated December 27, 2005).

49. The Hawaii Superferry has willfully failed to comply with the PUC's Decision and Order No. 21524, conditionally granting to it a CPCN and authorizing it to operate as a water carrier of passengers and property pursuant to HRS 271G-10, and has willfully failed to comply with HRS 343-1, et seq., and the Harbors Operating Agreement dated September 7, 2005.

Wherefore, the Complainant, Hermina M. Morita, respectfully requests that the Public Utilities Commission grant the following relief:

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A. Enter an Order pursuant to HAR 6-61-67(e) requiring the Respondent to Answer the Verified Complaint within ten (10) days from receipt thereof;

B. Enter an Order declaring that Hawaii Superferry, Inc. is in willful violation of 1) the PUC's Decision and Order No. 21524, 2) HRS 343-1, et seq., and/or 3) the Harbors Operating Agreement dated September 7, 2005, and the Hawaii Superferry's Certificate of Public Convenience and Necessity shall be suspended and/or held in inactive status until compliance therewith;

C. Enter an Order that until an Environmental Assessment as mandated by the Hawaii Supreme Court in Sierra Club, et. al. v. The Department of Transportation of the State of Hawaii, et al., Case No. 27407 is completed, and if necessary, a final Environmental Impact Statement is accepted, the Hawaii Superferry's Certificate of Public Convenience and Necessity shall be suspended and/or held in inactive status for willful violation of 1) the PUC's Decision and Order No. 21524, 2) HRS 343-1, et seq., and/or 3) the Harbors Operating Agreement dated September 7, 2005;

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D. Enter an Order that until an Environmental Assessment as mandated by the Hawaii Supreme Court in Sierra Club, et. al. v. The Department of Transportation of the State of Hawaii, et al., Case No. 27407 is completed, and if necessary, a final Environmental Impact Statement is accepted, the operation of the Hawaii Superferry as a water carrier of passengers and property between the Islands of Oahu and Kauai, Maui and Hawaii is not in the public's interest, and the Hawaii Superferry's Certificate of Public Convenience and Necessity shall be suspended and/or held in inactive status until the environmental assessment is completed, and if necessary a final Environmental Impact Statement is accepted;

E. Such other and further relief the Public Utilities Commission deems appropriate under the circumstances.

DATED: Lihue, Hawaii, September 26, 2007.

  
HAROLD BRONSTEIN  
Attorney for Complainant  
Hermina M. Morita

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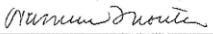
BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the ) DOCKET NO. 04-0180  
Application of )  
HAWAII SUPERFERRY, INC. ) VERIFICATION  
)  
For a Certificate of Public )  
Convenience and Necessity to )  
Engage in Operations as a )  
Water Carrier. )

VERIFICATION

I, Hermina Morita, hereby declare under penalty of law that  
upon information and belief the foregoing is true and correct.

DATED: Lihue, Hawaii, September 26, 2007.

  
HERMINA MORITA

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SEP-26-2007 02:12PM FAX:808 245 8929 ID:REP MORITA PAGE:024 R:974

Representative Morita also submitted the following editorial:

"The case for judicial independence"

Sensational Massie trial illustrates the need for unfettered  
judiciary that won't bend to political pressure

Bar association's plan could compromise fairness

Editor's note: The following is excerpted from a paper presented to  
the Social Science Association in Honolulu on June 1, 1998.

By Ronald T. Y. Moon  
Special to the Star-Bulletin

HISTORICALLY, in this country, there has always been a certain  
level of criticism of the judiciary, which, in a free society, is  
inevitable. Recently, however, there have been unprecedented attacks  
upon judicial institutions and judges at both federal and state levels  
by politicians, the media and others, because of the court's unpopular  
decisions, emotional reactions to those decisions, or both.

Such attacks create suspicion and mistrust of judges and of our  
judicial system, which, in turn, undermines judicial independence  
and threatens the delicate balance of power necessary to maintain our  
democratic form of government.

Unfortunately, the concept of judicial independence and the  
importance of preserving it are often mystifying and/or  
misunderstood by the public.

Just what is judicial independence? It means that judges must be free  
to make their decisions without fear of reprisal. In other words, a  
decision must be based solely on the legal merits of a case -- not on  
popular opinion polls or surveys, the views of special interest groups  
or even a judge's personal preference.

When judges are perceived as formulating their decisions in response  
to political pressure or the perceived majority opinion of the moment,  
our system of government is placed in serious jeopardy.

Unfortunately, judges are easy targets for those who are intent on  
tainting them and their rulings with unwarranted, misleading and  
unjustified criticisms. But who cares?

By attacking the integrity and independence of the judiciary,  
politicians, the media, special interest groups and the like threaten to  
undermine the delicate balance of power, which, left unchecked, has  
the great potential of essentially transforming our three branches of  
government into two.

Should this occur, the nation would be left vulnerable to the passing  
whims of partisan politics that now dominate the executive and  
legislative branches.

Although such an unthinkable result may seem impossible, the events  
surrounding two famous cases tried in Hawaii over a half century ago  
demonstrate that such a result could have occurred but for the  
independence exhibited by a young territorial judiciary.

"The Ala Moana Case" and "The Massie Case," as they have been  
commonly referred to, were tried in an atmosphere highly charged  
with racial overtones and chauvinistic class distinctions.

However, despite extreme external pressures, the manner in which  
these two cases were handled nearly 67 years ago is indeed a  
testament to the ideals and importance of judicial independence.

In the early morning hours of Sept. 12, 1931, Thalia Massie, the  
young wife of a Pearl Harbor Navy lieutenant found along a secluded  
area of Ala Moana Road, claimed she had been repeatedly beaten and  
raped by five local youths.

Thalia was the daughter of Maj. Granville Fortescue, a retired Army  
officer, who had served as an aide to President Theodore Roosevelt  
and who was once one of his Rough Riders. Her mother, Grace  
Fortescue, was the niece of Alexander Graham Bell and was well-  
known in Washington's influential social circle.

Eventually, five young men -- two Hawaiians, two Japanese and one  
Hawaiian-Chinese -- were arrested and charged with rape.

When news of the alleged crime reached Rear Adm. Yates Stirling  
Jr., commander of the Navy in Hawaii, he reportedly exerted  
continuous pressure upon then-Gov. Lawrence M. Judd to have the  
case vigorously prosecuted without delay. In those days, the military,  
especially the Navy, had powerful influence in the community.

Within two months of the alleged rape, the Ala Moana case  
proceeded to a jury trial. After three weeks of conflicting testimony  
and four days of deliberation, the jury was unable to reach a verdict.  
A mistrial was declared, and the defendants were released, pending  
retrial.

News of the mistrial spread quickly, both locally and throughout the  
mainland. Criticisms were bitter and fraught with charges similar to  
those of Admiral Stirling, who blamed the mistrial on racial bias.

Many, locally and on the mainland, shared Stirling's sentiments that  
the mistrial was a travesty of justice. A prime example -- the General  
Assembly of Kentucky, the Massies' home state, adopted a resolution  
calling upon President Hoover to exercise his power as commander-  
in-chief to demand the conviction of the five Hawaiians or,  
alternatively, to declare martial law in Hawaii.

**Outside investigations**

The attacks on the territory's justice system flowing from the mistrial  
resulted in two formal investigations.

Pursuant to a resolution adopted by the U.S. Senate on Jan. 11, 1932, the first was conducted by a team appointed by U.S. Attorney General William Mitchell, and headed by his assistant, Seth Richardson.

The resolution called for the AG to report to the Senate regarding the administration and enforcement of the criminal laws of the Territory of Hawaii and to make recommendations, if any, as to any changes in the Organic Law of the territory that were deemed desirable for the prompt and effective enforcement of justice in Hawaii.

The Organic Act, passed by the Congress in 1900 after the annexation of Hawaii, was the basis upon which the territory's self-government had been established.

The second investigation was conducted by Pinkerton's National Detective Agency Inc. of New York at the request of Governor Judd, who hoped to combat the misinformation being circulated on the mainland about the Ala Moana case.

#### **Reports rule out racism**

The Richardson Report clearly destroyed Admiral Stirling's evaluation and conclusion that the mistrial was racially based.

The report stated that "the jury panel...was thoroughly investigated and found to be fair-minded, of intelligence, honest, and utterly lacking in any trace of racial bias."

The report pointed out that, although the jury consisted primarily of men of mixed and Oriental blood, most voted to convict the local defendants. The most revealing factor in the report indicated that "the only white man on the jury voted to acquit."

The Pinkerton Report confirmed that the evidence -- or the lack of it -- raised serious questions regarding Thalia's credibility and whether the defendants were even near the scene at the time of the alleged offense.

Calling into question the fact that Mrs. Massie was unable to recite details regarding the attack immediately after the alleged offense, but was able to do so at the time of trial, the Pinkerton Report concluded in part that "we can only assume that ...she did not possess (the details) at the time she was questioned by those she came in contact with immediately after the alleged offense."

After investigating the defendants' alibi defense, the Pinkerton Report concluded that "the movements of the accused on the night of the alleged assault remain precisely as they were originally accounted for," that is, that they were nowhere near the scene of the alleged offense. Unfortunately, the Richardson and Pinkerton Reports were not published until several months after the mistrial.

It appears that the misinformation and misleading conclusions that surfaced soon after the Ala Moana case created such an atmosphere of suspicion, mistrust and lack of confidence in the territory's justice system that, on Jan. 8, 1932, 31 days after the mistrial was declared, Thalia's husband, Thomas, and her mother, Grace Fortescue, with the help of two Navy enlisted men, kidnapped Joseph Kahahawai, one of the defendants in the Ala Moana case.

While the kidnapers allegedly attempted to coerce a confession from him, Kahahawai was shot and killed. Thomas and his mother-in-law, along with the two Navy men, were eventually arrested.

#### **Judge showed courage**

A number of books have been written and even a movie titled "The Black Orchid" was produced about the Ala Moana and Massie cases. However, I do not believe that much, if anything, was written or depicted about one aspect of the case which revealed that but, for judicial independence exercised by a judge, the defendants in the Massie case may never have been brought to trial.

I refer to the grand jury proceedings that began on Jan. 21, 1932. After two days of presentation, the grand jury was asked to return indictments of murder and kidnapping.

After deliberating for 90 minutes, the 21-member grand jury panel -- 19 of whom had Caucasian last names, one Hawaiian and the other a Chinese last name -- reported to Territorial Circuit Judge Albert Cristy that they could take no action on the matter.

Ordinarily, the proceedings would have ended there, and the defendants set free. However, greatly disturbed by the grand jury's message, Cristy, in an unusual action that could have been criticized as interference with the grand jury process, addressed the jurors, reminding them to lay aside all racial prejudices and to apply themselves coolly and impartially to the question presented to them. The grand jury later returned indictments for murder in the second degree as to each defendant.

The Massie defendants retained the services of Clarence Darrow, who was then 75 years old and in the twilight of his legal career. At trial, Darrow advanced the theory that Thomas became temporarily insane at the moment he allegedly heard Kahahawai exclaim, "Yes, we done it."

Although the defendants were charged with second-degree murder, the jury eventually returned a verdict of manslaughter, with a recommendation for leniency as to each defendant.

Immediately after the verdict was issued, Governor Judd began receiving pressure from Washington, D.C., to pardon the convicted defendants. A telegram, sent by Henry Rainey and B.H. Snell, majority and minority leaders, respectively, of the House of Representatives read, "We, as members of Congress deeply concerned with the welfare of Hawaii, believe that the prompt and unconditional pardon of Lieutenant Massie and his associates will serve that welfare and the ends of substantial justice. We, therefore, most earnestly urge that such pardon be granted."

#### **Martial law was feared**

Governor Judd, who also received an identically worded telegram sent by 103 members of the House of Representatives, believed that these telegrams strongly intimated that the future of self-government in Hawaii would be in jeopardy unless he pardoned the four convicted defendants. These "threats" by Congress to make Hawaii a military outpost appeared real, and Hawaii was seemingly at its mercy.

About a week later, despite the jury's recommendation and the high-level pressures on the judge to be lenient, judicial independence once again prevailed as the judge, Charles Davis, sentenced each of the defendants to a 10-year term of imprisonment at hard labor.

The sentence, however, was immediately commuted by Governor Judd to one hour in custody, which effectively also terminated the Ala Moana rape case. Three days after the governor's commutation, Thalia Massie, along with her husband and mother, returned to the mainland, leaving the prosecution without a complaining witness.

#### **Judiciary withstood the test**

In a University of Hawaii Law Review article, revisiting the Ala Moana and Massie cases, retired Associate Justice Masaji Marumoto underscored the triumph of judicial independence, stating:

"The judicial system in a young territory far removed from the nation's capital operated strictly in accordance with the mandate of Congress as expressed in the Organic Act which provided that the Constitution...of the United States...shall have the same force and effect within the said territory as elsewhere in the United States. To its everlasting credit, the judicial system in Hawaii did not deviate from that mandate, despite pressure from higher authorities to do so."

I hope that I have helped foster an understanding of why every individual in our society should care about preserving and maintaining judicial independence. Be mindful that judicial independence is not, as some may believe, for the protection of judges.

It is for the protection of our society against those who commit crimes, the protection of our free enterprise system, and the protection of the rights that every citizen is guaranteed under our state and federal Constitutions."

*Honolulu Star-Bulletin  
Editorial Special  
Saturday, July 24, 1999*

Representative Ward rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support of this measure. First, Mr. Speaker, I wanted to disclose I am a former member of the Merchant Marine and do I have to disclose a conflict," and the Chair ruled "no conflict."

Representative Ward continued, stating:

"I didn't think so. It's been too long ago. But I have been on the sea is my point.

"Secondly, I'd like to thank the Governor for calling us to this Special Session today. It took a determination to do the right thing. And it took a determination in the face of all the negative factors that we're faced with today. And I'd also like to thank the Chair of Transportation who gave unwavering support as his speech earlier indicated. That this is the right thing to do at the right time to do it.

"But I'd also like to thank the Chair of the Finance Committee. In fact I'd like to apologize to the Chair of the Finance Committee. In my nine years on this floor Mr. Speaker, in all the Committee hearings I've been to, I've never had to request that the Chair silence a member during questioning. I am a member of the *waha nui* Minority. I know what it's like to be silenced. And for the first time in history in this body, I asked the Chair of Transportation to silence the speaker who is the Chair of Finance questioning the Governor. So my apologies.

"Lastly, I'd like to thank each Representative for coming here and to thank the people of Hawaii who sent us these 5,000 emails. As my good colleague Sam Slom indicated in the Senate, these are the for, these are the against, 9 to 1, consistently across the State of Hawaii.

"Next Mr. Speaker, I'd like to straighten the record a bit as this is the last day to really say our piece why we've come here and what we are doing here. I'd like to start with the Committee Report as I did in my earlier speech. I think the Committee Report is not fair, is not balanced. It makes the Executive Branch look culpable and nefarious. It follows the rude pattern however of the questioning of the Governor, but with civil methods by some of the Committee Members whose sole purpose was to embarrass the Administration. And I think the Representative from Kauai has read some of the excerpts from the Committee Report which totally askew the perspective.

"There's such a thing as definition of a situation, that's a sociological term that those who have the advantage of defining the situation have the leg up on what's going on. So for historical purposes I want to go on record that the Committee Report is very biased. Not only because it is biased against the Administration, it never mentions what the \$40 million is used for; for the harbors. It never mentions "b" word. The barges, the three barges, are the bulk of those \$40 million. It never mentions barges. Are we afraid to let the people of Hawaii know that all bought were barges and ramps? Or do we want to give the impression that we were having pillars

piled into the ground with all kinds of species and all kinds of environmental harm was being done? The Committee Report leaves that unsaid.

"It also leaves out the fact that there's a \$140 million guarantee from the federal government not just the people of Hawaii with the \$40 million, but the federal government is giving a loan guarantee. The Committee Report fails to mention that.

"One brief statement now regarding the constitutionality of this bill and the Special Session. We have acted under extraordinary circumstances with a simple choice, either we come and meet, or the ferry goes away. It's very simple. We're making big rocket science out of something very simple. The ferry wouldn't be here today Mr. Speaker if we weren't here today. It would have gone. And either we left it to the Supreme Court's legislation from the bench or to elected members. I think we being here have decided that we're going to do it because like similar events in the past, if we would have left it to those on the bench, we would have same-sex marriage, the H-3 still wouldn't be built, Waihole water assets would not be exempted, etc. Would we have allowed the judges to say same-sex marriage is the law of the land? I think we all know the answer to that because we all know what happened. Have we said to the people of Hawaii we want the ferry kicked out of Hawaii? No, because we're here. And that's why Mr. Speaker, I think all of us are for this bill and will remain so up until the vote.

"Was there collusion between the Governor and the Superferry? How many transportation hearings were there? How many were required? There were 12 required. The DOT had 22 hearings to hear the people of Hawaii speak on this. They went throughout the State of Hawaii. They went before two judges. There were two court cases that said you can't exempt it."

Representative Awana rose to yield her time, and the Chair, "so ordered."

Representative Ward continued, stating:

"Thank you, Representative Awana. Two courts gave their blessing to the exemption. This is not a body or Neighborhood Board, these are two courts that said, 'You guys are doing the right thing.' If that's not a sign for a go ahead. Then when it was appealed to the Supreme Court, a year and a half later and few days before this ferry was fit to ship out, we get a reinterpretation of Chapter 343.

"Many of you know I rarely have ever quote a congressman. Many of you know, rarely would I probably every quote Representative Abercrombie. The Representative from Maui probably knows that. But I want you to know that on radio with Mike Buck, he said that the Supreme Court waited a year and half before it put this issue to bed or to rest. And I can't paraphrase him correctly, but basically he was upset with us saying we the Legislature should probably put limitations on when a Supreme Court has a case before it, what timeframe it should have to complete it. That was Representative Abercrombie's suggestion.

"What we have then is their new interpretation of Chapter 343 that says regarding secondary impact even if you get any exemption, you got to do a secondary impact. Heretofore, there was never such a consideration. If you were exempt, you were exempt. If you had EA or EIS, you had to do a secondary impact. Now the Court comes in because of the inability of this body in 1974, 1997 to make it clear or with rulemaking in OEQC that if you're exempt, you don't do secondary impacts. Mr. Speaker, I would submit that unless in 2008 in January we come back and fix that, we are going to have such things as the Honolulu Marathon, the new ditch going in across the street to put utilities in, we have to do EAs all over the place. We're going to have EAs up to our ears if we let the present Supreme Court standing stand.

"Mr. Speaker, all of us know as the representatives of the people that the hallmark of the American justice is equality under the law and equality of opportunity. It became so blatant in the 22 hours of hearing that we went through in the Finance and Transportation Committees that we can't put regulations on one large ... What are we calling it? The large ferry vessel, and not on others who ply the waters between the islands. We cannot treat the Superferry one way, and Matson and Young Brothers in another way.

"There's a thing about being pennywise and pound foolish. The Department of Agriculture said there are 500,000 containers that come into the State of Hawaii from the Mainland and overseas. And not one of them Mr. Speaker, not one I repeat, is inspected. Is this pennywise and pound foolish, we go and we look in every nook and cranny in the Superferry, yet we let 500,000 containers in?

"We better do a better job, not only on the Superferry, we've got to do a better job on protecting the people of Hawaii vis-à-vis 500,000 containers. This is not to mention the tens of thousands of Christmas trees which have all kinds of spiders and other invasive species riding on their backs, in their limbs, etc. And we inspect no Christmas trees, Mr. Speaker. This is pennywise and pound foolish. But as Americans committed to justice, we must be fair, we must be consistent. What's good for the goose, is good for the gander. What's good for the Superferry, is good for Young Brothers. Particularly when they had no EA required for them for a 330-foot barge that carries 520 cars. No EA, no EIS. And that brings me to one of the last ironies.

"Heretofore, and this is to my colleagues who wanted the EIS earlier. Heretofore, DOT would do an EI, EA or an EIS and they would look at the area of impact, i.e. the dock, the staging, etc. They would not look at the vessel themselves. They've never done that. Mr. Speaker, what we've got here in the bill today is superior to what ever would have been done. Exactly superior. If you say, 'Well we would have caught up because EAs and EISs specify secondary conditions later on through environmental lawsuits,' of course. Anyway we're going to court and we'd still be in a Special Session as we are today."

Representative Brower rose, stating:

"Mr. Speaker, I yield 30 seconds of my time."

Representative Ward continued, stating:

"Right on. The gentleman from Waikiki damns me with faint praise. Mr. Speaker, I want to bring one more structural reality to the attention of this body if I may. Kauai has 1.18 million tourists every year. The State of Hawaii has 7.5 million tourists. Maui has 2.4 million tourists. Big Island has 1.6 million tourists. That is the structure of our economy. The reality is, if you live on a volcano, you can't complain about earthquakes. If you want to have an island as isolated and as pristine and without interference from the outside, our good neighbors on Kauai can't tolerate 1.18 million tourists, they can't tolerate on Maui, 2.5 million tourists. It's unspeakable.

"Let me conclude now with the lessons that we've learned. And I think the good Chair of Transportation has mentioned, we have to learn to get along together. We have to lower the decibels of incivility and raise the decibels of civility. We need to be conscious of what we say and the things that we say because those hereafter, after this bill is passed if it passes today, people are going to be watching us in what we say.

"And I hope we will remember the example of what General MacArthur and Harry Truman had as they met on Guam. And this after a series of snubs from MacArthur to President Truman. And while Truman was on the ground in Guam and MacArthur purposely circled and landed so he could keep the President waiting. MacArthur very proudly slankered up to the President, and Harry

Truman said, 'General, I don't give a damn what you think of Harry Truman, but this is your President and you'll respect him.'

"Regardless of what took place on Kauai, the Governor is the Governor of the State of Hawaii. That is the institution that should not have profanities put towards it. We should not have a lower level of civility in our hearings. And I'm very grateful that we did have civility on all the hearings on Oahu, but I hope we here would set an example. And I must say that I was so chagrined and shocked when I heard one of the County Councilmen from the Neighbor Island say, 'I promise you, things will get worse.'"

Representative Ching rose to yield her time, and the Chair, "so ordered."

Representative Ward continued, stating:

"Thank you, Representative. Mr. Speaker, my point is we need to promote civility. And as the Chair of Transportation said, we need to think united. We are one Hawaii. We are one people. We need to think like Kamehameha and unite these islands. And as state legislators, I think if there's any time to call upon us to macro think, it's now. To think like state legislators.

"Of course the blame game will go on, but Mr. Speaker, I would appeal to this body, particularly to the Representatives from the Neighbor Islands, if they could promote a civility, a peacekeeping, a peacemaking, a sense of we have accomplished something because now we have given an alternate service between the islands of Hawaii. We've given people an option. The people with disabilities, the aged, those people with cannot with oxygen tanks get on airplanes, those small business, those farmers, all of the many beneficial people who will be benefited by this. I think we have done the right thing at the right time.

"And finally Mr. Speaker, we fulfilled one of the great matters of democracy. We've heard the arguments, we're going to take the votes. We've done the people's business in the people's House, and God willing we will do the right thing right up to the last vote which we are to take shortly. Thank you for your indulgence. Thank you, Mr. Speaker."

Representative McKelvey rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. In support. But I am rising to express my profound reservations with the measure before this body. This issue has torn me personally and my community I think, more than anything which is kind of ironic because if somebody were to ask me back in 2006 what the big issues of the State were, I would never have said the Superferry.

"But the thing about it is I think the words really captures the conflict was summed up best by the *Honolulu Advertiser* in the Editorial of October 29, which I'd like to submit into the record with your permission," and the Chair "so ordered."

Representative McKelvey continued, stating:

"I'd just like to touch upon some of the highlights of it. First of all, the editorial really points out that this Senate Bill is a vast improvement over the House Bill that we passed earlier. There are provisions in there like the incidental take permit which will help reduce the threat to the humpback whale which didn't exist in the House version. An there's also unpermitted transport of soil, sand, or rocks requiring biological cargo to be declared and vehicles to be inspected, and to post signs to warn passengers about all of the above which was also not in the House version.

"And further the Governor has the authority to add further conditions which they point out, and I agree is a needed backstop position. But as they point out and I feel is really unfortunate that we

had to bend the environmental laws to fix this mess. It is not unprecedented as the good speaker from Hawaii Kai noted. This body has done so in Waihole ditch which exempted things from EISs. As have been pointed out, the Congress has acted in the litigation ruling to allow the project of the H-3 to proceed.

"But you know Mr. Speaker, at the end of day, I guess what made my decision talking to my community, most people, and this is something they support the ferry, but what they said to me and what I have to applaud the Governor and her Director of Department of Business, Economic Development, is that by allowing this ferry to operate, we are not guarantying that it will be financial successful. I say that one more time to the people of Hawaii, *caveat emptor*. This is not a guarantee that this will be financially successful. This is not a guarantee that this ferry service will be around for a long time. That being said, because of what has happened, they are being denied the opportunity to basically do their business or at least given the opportunity to try and make a go of it. Because of the fact that they detrimentally relied on the assurances of the State that they wouldn't even do certain things.

"Be that as it may, Mr. Speaker, I think the final thing to me was the headline yesterday as we finished the session which said, 'Mesa ordered to pay \$80 million to Hawaiian Airlines for unfair business practices'. As you know, we've been enjoying a plethora of cheap, inexpensive inter-island airfare. But this court case to me signals that this is going to end real soon. Mesa may be gone. We may be looking at the time a few years ago when we had \$100 to \$150 tickets. I come from an area which knows what's like to be stranded and isolated, to be cutoff by a single accident or anything. I know what it's like to see families who can't get to the other islands because they can't afford \$150 to \$200.

"And I think at the end of the day, especially given this ruling from the federal courts that the Superferry will provide alternate transportation to the people in the Neighbor Islands, and in time of emergency allow people to be able to get to and from certain areas. That is where I think the public good outweighs the concerns that I and many others have expressed to me before.

"Another thing that I think should be noted is that this is not the end. I mean this is not the end of time. It's not like when we take this vote, this is it. This Body will be reconvening in a couple of months and we can revisit this issue. And we will see what the operations have brought and what are exactly the impacts. Some that were brought up may not exist but there may be others that we don't know about.

"I think work needs to be done. I think that there's omissions from the taskforce both for the supporters of the Superferry, and not having somebody in the shipping industry sitting on there with the knowledge of the practices of the shipping industry, as well as towards those who have concerns. OHA, the ceded lands upon which the harbors are built and have a constitutional mandate are also not included. So this is by far, far a perfect measure. It's a very imperfect measure.

"But in the end I guess, the local people, the people who I care about, the people who I grew up and were born and raised with and at the end of the day, I will be with. They deserve the right to be able to get to the Neighbor Islands to enjoy the Superferry while it is in operation. They paid for this. They should be able to utilize this service. It's not an easy decision Mr. Speaker, and I'll probably be torn on this for a long time to come. But I remain committed to try, and hopefully be a part of, the bringing together of both sides so that we can have a service the people can feel good about and won't open the door for monopolies or perhaps other things that could degrade our environment in the future.

"So again, Mr. Speaker, I do support the measure, but I have my reservations. In the end I hope that this body, the people, and everyone can come together and continue to work to make sure that

this is truly a situation where we can look back and see it wasn't easy, it wasn't nice, but we managed to come through with the right thing. Thank you, Mr. Speaker."

Representative McKelvey submitted the following editorial:

"Posted on: Monday, October 29, 2007  
Editorial  
Ferry compromise can salvage useful service

After months of rancor and upheaval over the Hawaii Superferry, there's hope at last that a rational middle course can be charted.

That hope emerged late last week in the state Senate deliberations over a bill aimed at carving out a temporary legal path that would enable the ferry service to run while the court-ordered environmental assessment is prepared.

The Senate draft of the bill is a clear improvement on the original legislation, which included an unacceptably ironclad shield from liability for the state. Officials have worried about Superferry suing the state because the requirements suddenly changed, but the current amendment, in which the ferry operators would waive only those claims related to the environmental review, is more reasonable.

Most importantly, the Senate has added requirements for an "incidental-take permit" that should add operating conditions reducing the threat to the endangered humpback whales that traverse waters around Maui. The bill also now includes a request for an observer from the National Marine Fisheries Service observer to be onboard on trips through the whale sanctuary.

There were other critical revisions, too. The Senate would crack down on the unpermitted transport of soil, sand or rocks, require biological cargo to be declared and vehicles to be inspected and post signs to warn passengers about all of the above.

The governor also has the authority to add further conditions she finds necessary — a needed backstop provision. The compromise deserves serious consideration from the House; any further revisions should be limited to changes that strike a fair balance between environmental safeguards and enabling a sustainable ferry operation.

It is unfortunate, but not unprecedented, that environmental laws had to be bent to arrive at a solution that best serves state interests, and it is in the state's interest to have this transportation option.

Die-hard opponents of the ferry, and those who can't abide the notion of lawmaking in the face of a court ruling, can follow their conscience and vote against this bill. But the law itself should be written as a means to enable the service, not to punish the ferry executives or state officials now working to salvage something worthwhile."

*The Honolulu Advertiser  
October 29, 2007*

Representative Green rose to speak in support of the measure with reservations, stating:

"Thank you Mr. Speaker. I rise in support with some pretty grave personal reservations. May I submit my speech which is lengthy and then just speak for one minute?

"Thank you, Mr. Speaker. I want to say just something to every member of the State and to the Governor who is with us today. First, be safe. Some of the issues are unresolved around the ferry. Please be safe as it begins, if and when it begins its service. There's been enough hurt. And I don't want to see anyone killed or injured especially during the first few weeks until we know exactly how it will operate. And I have confidence it will operate safely.

"Secondly, please be kind to one another. I think some apologies are due to the Governor. But I think that the Governor owes some of the Neighbor Islanders an apology as well. I don't want to be presumptuous about that, but this issue should have never gone to the point where it became so divisive. I have the utmost respect for the Governor, but I do think that some apologies are in order because this should have been an issue that could unite the islands like Speaker Emeritus said, bringing people together and some people feel divided. So I have confidence that some people will apologize to the Governor and vice versa and we'll move on and heal.

"Finally, as an ER doc, I can tell you that after trauma and this has been a trauma, it does take some time to heal and I hope we'll spend time because we're only 11 weeks away from our Regular Session, to heal to the point where we can take up issues I feel are actually important, far more important than the Superferry. I think we have health and education issues to take up and we have to be healed amongst ourselves and with the Governor and the communities if we're going to be serious about legislation next year. So please Members, let's go back to communities, do what we can to heal the bruises and bleeding that's occurred, and move on. Thank you, Mr. Speaker."

Representative Green submitted the following letter:

"Dear Friends,

After receiving 100s of letters and calls from the people of West Hawaii, I worked hard to bring 8 State Senators to our community on October 23rd to hold a public hearing on the proposed Superferry bill. Over 800 of our citizens attended the hearing, over 300 of whom were able to express their views and concerns to the Senators for more than 5 hours.

The testimony from across West Hawaii was compelling.

The Mayor's office pointed out the ferry's potential importance to the neighbor islands for emergency transportation and disaster relief, a position which as Chairman of the House Health Committee, I agreed with. In later testimony at the capitol, members of the disabled community made a valuable contribution to the debate by describing the welcome transportation option the ferry represents for them. But many people expressed reservations that the bill did not take strong enough measures to protect our environment.

I was very proud and gratified that the testimony from West Hawaii helped persuade the Senators to revise and amend the bill to make it better reflect the will of the people. The amended bill will ensure far greater environmental protection, including the involvement of the federal agency NOAA, as well as close oversight by the legislature on the operation of the ferry, and monthly reports on potential impacts to the environment and local communities. The amended bill also mandates an Environmental Impact Statement to ensure the safety and sustainability of our marine habitats.

Along with many other people in West Hawaii, I was very concerned that the original version of the bill did not go far enough to protect our environment and give oversight powers to the people's representatives in the legislature. Because of OUR concerns I pressed for the Senate hearing to be held in West Hawaii at a time and place where as many people as possible could attend and contribute to the process. I also had the privilege of working with the Senators on the revision of the bill, and I fought hard for the greatest possible protections and safeguards to our environment.

In the next 2 years, before the ferry begins service to the Big Island, I will continue working to ensure that West Hawaii's roads and facilities are ready to handle any potential increased use. I will

keep fighting for State resources to invest in our highways, harbors, local roads, law enforcement, and parks so that West Hawaii maintains its high quality of life and clean environment as our economy grows.

I would like to thank the people of West Hawaii for participating in this process and expressing their views on this legislation, and also to thank everyone who attended the public hearings or submitted testimony. Your input was extremely helpful.

Sincerely,

Josh"

Representative Pine rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I sat through all the hearings in the past week. I am in favor, I'm sorry. I was really disturbed by the testimony from the Councilwoman from Kauai. Her first statement was that it was the Superferry and the Governor that has divided our islands. I was really sad that I couldn't ask her questions because she had to leave and our hearing went so late. Because I wanted to tell her what the people of Ewa Beach were saying that divided them. We've long known about the Governor's position on the Superferry. We've long known that this Legislature has supported the Superferry. But what divided my community with the community of Kauai was the vision of our local people going to see their aunts and uncles with their children inside their cars, and people beating their cars. It was words like, 'You people. You Oahu people. We don't want you here.' That's what divided us. Not the Governor.

"It was difficult to listen to the Councilwoman speak as she talked about how residents of Ewa Beach, my district, or the residents of Oahu, would bring disease and species that would pillage their *aina*. It was difficult to hear her seemingly imply that people of my district lacked the intelligence to know that there was wild, live mongoose in their car.

"The Councilwoman said that the key thing for her in her Council was the fact that the Superferry was a drive on and drive off, that's it. I got an email from my residents that were watching live at that time. And one of the most respectful principals in my district asked, 'What is the difference between my brother who sent their car, who drove their car to one of the other ships. They drove it onto the ship, they went to the Big Island, drove it off to the Big Island, and he drove to his new location, his new home?' I said, 'Principal, there is no difference.'

"Through this process, a process that I wasn't sure I wanted to be a part of, a process that I felt that perhaps we could handle in another Session, a process that in heart I wondered if this was legal, if this was right. I became very disturbed by some of the language and implications that if you were for this bill, that you're against the environment, that you're un-Hawaiian, and that you're not like a local person.

"Those are the very reasons, the reasons supporting the environment, supporting our family, supporting our Hawaiianess, our localness, that my district is for this bill. They don't know about all these laws and these rules and this EIS. And for once we can afford to visit our family in Kauai, or Maui, or Big Island. And we can all afford to see them on a regular basis.

"The Governor spoke for the first time so passionately about her memories of living in Molokai and how so many of the families felt imprisoned by these \$200 airfares that prevented them from seeing their families in other islands.

"I'm very disturbed by what I've seen and experienced in the testimony of this selective environmentalism, hence our selective treatment of business.

"A pastor also emailed me and he said, 'What if my cousin from Kauai came over, we went hiking and there was invasive species in his shoe? And he got on an airplane and he went back home. What is the difference?' And I said, 'Pastor, there is no difference.'

"I was really disturbed to find out that 25% of the whales that are hit in Hawaii are the whale-watching ships. The same members of the industry that are totally against the Superferry. They said that they're going to kill whales. They're going to bump into whales. They're going to hurt whales. It seems illogical to me if it is statistically proven that 25% of whales are hit in Hawaii by whale watchers then why aren't the environmentalists saying we must stop this whale-watching business if we so love the whales, and we have proof that they are being hurt?

"I also discovered from my district that these types of exemptions are very ordinary and it has been repeated in the past. But no one from the environmental community complained about some of those exemptions. They never brought them to court. I mean if it's not true, then what is the difference here?

"I have just a couple of more sentences, Mr. Speaker.

"There's an implication saying that the Governor and people for the Superferry did not respect the EIS process and law. Coming from the district in Ewa Beach where an EIS was written many, many, many years ago, and given to the same legislators that were here many years ago, saying you cannot build all those homes without funding and building the roads. For twenty years people of my district said that the EIS said we're going to have traffic. You have to build roads. And for those twenty years, this same Legislature denied us those roads despite the EIS saying that it's going to hurt us. And so for anyone here that was here at those times to say that they are 'holier than thou', and they would follow all the environmental processes, I have to say for my district that that is very hypocritical. Thank you."

Representative Thielen rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I'm rising to speak in support of the bill. Mr. Speaker, I represented the Sierra Club, Life of the Land, the Stop H-3 Association, the Pig Hunters Association, and numerous other environmental groups in the Stop H-3 litigation. In the early days of the litigation, we stopped the project because the Department of Transportation did not prepare an Environmental Impact Statement. DOT did then prepare the EIS. Didn't make any changes whatsoever to the H-3 project and moved right ahead. Ultimately we prevailed under the federal law protecting park lands and stopped the H-3 project.

"Senator Dan Inouye introduced a bill in the Senate exempting H-3 from all environmental laws. That bill passed. Senator Dan Inouye and his colleagues in Congress did not put any protections into that bill ..."

Representative Souki rose to a point of information, stating:

"Mr. Speaker, point of information. May I ask a question of the Representative from Kailua?"

The Chair then stated:

"Representative Thielen, will you yield to a question?"

Representative Thielen: "I will after this speech, Mr. Speaker."

Temporary Chair B. Oshiro: "Representative Souki, she will yield to your question when she's done."

Representative Souki: "After the speech is over. Well, I would like to have her answer the question now, but I yield to the Chair."

Representative Thielen: "Senator Dan Inouye and his colleagues in Congress did not put any protections into that law. They did not modify the project at all. They simply said, 'Build it, all environmental laws notwithstanding.'

"We have a bill before us today, which does far more than an environmental impact statement would do. And my colleague from Ewa Beach made that very clear. A twenty year-old EIS that said well you need to improve the road structure in Ewa before you build all these houses. Nothing happened. Instead what we have before us today is a bill that, passed over to them.

"There are whale encounter protections, there are invasive species protections. An EIS would not do that. An EIS is merely a disclosure document. It discloses the impacts to the environment for a decision maker to make a decision on whether or not to go ahead with the project or modify it. There is absolutely no legal requirement in that EIS that says you have to modify that project because for example with Ewa, you're going to have a transportation problem, so therefore before you build the houses, you have to build the roads. The EIS does not do that.

"So because I want more than a simple disclosure document, because I want some mandated environmental protections, I can support this bill. Sometimes you have to take a practical approach to what you're going to do. We did that with the Kaho'olawe case where we obtained more protection, more access to the Island by a consent decree than we ever would have done in the litigation against the United States Navy. So sometimes you have step back and say, 'Is our real objective to provide environmental protections?' If it is, the Senate Bill before us does that. An EIS would not gain us those protections, and therefore I can support this bill, Mr. Speaker."

The Chair then stated:

"Representative Souki, would you like to pose your question?"

Representative Souki rose, stating:

"Thank you very much. Inasmuch as the H-3 was mentioned and the Senator from Washington, I wanted to ask the question to the Representative: Does she drive on the H-3 presently?"

Representative Thielen responded, stating:

"Mr. Speaker, I thought that the Speaker Emeritus from Maui might ask me that question. Probably five days a week I drive on a portion of H-3, yes. But I think what happened with that, I'm responding to his question. We won the land use battle during that intervening time.

"We were going to have a deep draft harbor on the Windward side. All of Kailua Beach was going to be the second Waikiki. So during that intervening time when H-3 was stopped, the land use battle was won by the different people that wanted to keep the Windward side much more rural. So I give a lot of credit to people like former Senator Bob Nakata and others that stepped up to the plate in those beginning years, because we kept the Windward side, Windward. And it's a much better place because of that."

Representative Souki: "That answers my question. I'm glad that the Representative is enjoying H-3. Thank you very much."

Representative Sagum rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I stand in support of this bill, Senate Bill 1, SD 1, for all the reason mentioned here on the floor today. I would also like the words from the Representative from West Maui

included in the Journal as my own," and the Chair "so ordered." (By reference only.)

Representative Sagum continued, stating:

"This last Session I had the opportunity as a member of the EEP Committee, to vote on whether an EIS was required. And I did vote yes because that is what my constituents had asked me to do. So I did.

"But over the last few months, I've had the opportunity to actually meet with my constituents from West Kauai, both business and individual residents. And overwhelmingly as evidenced by the number of emails, that they really want a large capacity ferry system in Hawaii. And it's for that as their Representative that I come here today to voice my support for the Superferry in this instance.

"Government's role is to manage and operate our State, as difficult as it may be. There's people on both sides, and difficult decisions to be made. But I think our job is to come here and make those tough decisions. And I came to this Special Session to do my job and I'm here to support again, Senate Bill 1, SD 1. Thank you."

Representative Finnegan rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure. Thank you, Mr. Speaker. It's really interesting because there's so much that I could talk about in regards to supporting this piece of legislation. But I did want to address some of the concerns that have been put forth. There was a situation where we were talking about, the Representative from Hanalei was talking about public interest and separation of powers. And I was thinking to myself, our Legislative Branch, basically the House and the Senate, we are the closest to the people. If we don't take a look at polls, if we don't take a look at the majority of the overwhelming and healthy participation in support of this bill, then are we doing our job? I consider that as a part of our job.

"Mr. Speaker, she also talks about the rule of law, as if this is moved forward in a totalitarianism type of way. So we'll take important lessons that we learned from this history, our history in regards to the Superferry. And how Chapter 343 has interpreted and also practiced. And where did we? One of the things we talked about, one of the things I remembered, my mom and dad teaching me way long a time ago when I was a kid, is that if you point your finger at someone, make sure that you're looking at the three fingers that are pointed back at you. So let's take a look at that.

"In 2000, State lawmakers and the prior Administration approved approximately \$44.5 million in harbor improvements specifically linked to an inter-island ferry. It is not completed until July 2003, still under the previous Administration. This particular Pier 19, an inter-island ferry terminal was completed. It was funded by federal funds and issued a category exemption from NEPA, but also the project was exempted from the Oahu Harbor Master Plan EIS. This is our history on how we've done this before. Concurrence by the OEQC. No secondary impact analysis was considered in granting these exemptions. So we didn't think about a possible ferry boat that may be traveling amongst whale areas in our oceans. Not at all.

"We go forward and we look at how we again, we as lawmakers, March 2004, and I know you have heard about this. We express and urge, we encouraged the DOT to assist in expeditious planning and implementation of a fast ferry service, very specific fast ferry service at this point in time. We knew that that was the Hawaii Superferry, and we passed that. Okay, well some people say, 'Well yeah we thought it was good at that time.'

"Then we go forward and we look at what could have done. In January of 2006, Kauai County Council Resolution calling for an EIS. In that year, you have different counties calling for an EIS.

What did we do? At the end of Legislative Session in 2005, we don't pass legislation calling for an EIS. We passed appropriations of \$44 million for harbor infrastructure improvements for the Hawaii Superferry. And the Legislature knows at that point in time that the DOT has exempted the project from the EA/EIS requirements or process.

"Moving forward, 2006. During the 2006 Legislative Session, we amend the appropriations to include requirements to conduct site surveys and informational briefings, but no requirement or request for an EIS. And the DOT complies with those site surveys and informational briefings throughout the State.

"End of 2007 Legislative Session, the OEQC comes back and changes their mind. The Executive Director comes forth and basically says, 'We agree with you DOT'. And the Senator from Kauai comes back and urges them to take a look at it again. The OEQC then has a majority vote that the DOT made a mistake by exempting the project. The end of the 2007 Legislative Session, we don't pass anything. We don't pass anything that says, 'Let's do an environmental review.'

"Let's look at some other examples, Mr. Speaker."

Representative Meyer rose stating:

"I'll yield a minute of my time."

Representative Finnegan continued, stating:

"Thank you Representative. I would also like to just say whatever examples have we created as a legislative body in the past? So that we can say, what is it that DOT should be moving forward? In the practicing and interpretation of the law, what is it that we have?

"We have in 1998, the Waiahole ditch that the Legislature passed. The objective was to purchase assets to be able to control water distribution. Were the environmental or secondary impacts considered? After granting the exemption, was there anything in there? No. Arguably there were direct environmental and secondary environmental impacts with that decision.

"The second situation is 1995 with the fish ponds. And there were very good objectives. Encourage native Hawaiian cultural fishing practices. Did we consider direct or secondary environmental impacts? Well what we did do is allow for fish ponds under certain conditions and an environmental review would not be triggered unless operating outside of those conditions. What are we doing in this? We create in this bill that we're talking about, we create a process that says here are the conditions, and you still have to get an EIS. That particular example, you didn't have to get an environmental review as long as you operated within the conditions.

"So I have to say, when we as body, a legislative body, say to expedite this and we have examples of how we chose to use exemptions to expedite something or move something forward, and then the DOT basically and previously DOTs not just this Administration's DOT, followed that interpretation, then we can't go and point the finger at this particular Administration for following those processes, those practices.

"I actually read through this environmental guidebook of the Office of Environmental Quality Control. I read through all of these reports having to do with collisions, with whales, and studies that were to me, funded by environmental or whale-protection groups. And I look at that and by far, the Hawaii Superferry has tried to meet as many conditions as they could far exceeding any other vessel out there in regards to whale avoidance, in regards to invasive species. And they even went as far as to do some of their own studies on traffic.



"Mr. Speaker, we are here, we were brought in, not only because the Governor asked us to, but because we are representing the public's interest. We could not be here without overwhelming agreement of coming and fixing this so that we could have this service. Thank you, Mr. Speaker."

Representative Takamine rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Takamine's written remarks are as follows:

"Mr. Speaker, I rise to speak against S.B. 1 S.D. 1.

"I had wanted to support this measure on behalf of my Big Island constituents. If having the Superferry meant that more families would be able to afford to travel and take their families to the other islands, I would have wanted to support this bill.

"If the Superferry meant that Neighbor Island travel was more accessible or that Neighbor Island farmers could better transport their produce to market faster, I would have wanted to support this bill. However, I regret that I am compelled to vote against the measure before us today.

"Mr. Speaker, we teach our children to "follow the rules" and to obey the laws. If they disagree with the law, then they have a right to try to change it. However, the law should apply to everyone in the same manner. This is an important principle we teach our children to live by.

"When we change the law for one person or for one company, Superferry, we undermine this very important principle. When we do this because of the money it makes our action even worse. This kind of action undermines the public's faith and trust in government, which we should be strengthening as elected representatives.

"Knowing what I have learned from the public hearings that were held makes it even harder to support the action we take today. The Superferry people were warned as early as 2004 that they would have to follow all of the environmental laws. This situation brings back memories of Hokulia and the lessons that any large business should have learned from that example. Given the scope and size of this project, it is just plain common sense that precautions should have been taken, even if Superferry claims that it was misled.

"Mr. Speaker, I also have difficulty dismissing the Superferry's actions of moving up the start date of their service immediately following the adverse Supreme Court's ruling and trying to reduce the fare at that time to \$5.00. These actions though misguided, suggests arrogance on the part of the very company that would benefit from this legislation.

"In addition, a Special Session limits the democratic process and the opportunities for the public to meaningfully participate in the legislative process, because it lasts, in this case, only one week. Under the timetable for a Regular Legislative Session, people generally would have over 3 full months to be able to provide input and discuss with legislators the pros and cons of any legislation before it is passed. The general public did not have and will not have these opportunities regarding this legislation and that is why the action we are taking becomes more questionable.

"Mr. Speaker, I realize that I have supported the Superferry in the past including voting for \$40,000,000 in the budget to allow equipment that would support only the Superferry craft. I also appreciate the safeguards that have been included in the legislation to create a better balance. The environmental safeguards, as well as the taskforce, and the audit improve the bill before us.

"Moreover, I realize that hardly anyone would disagree with providing the people of our State with a Superferry mode of

transportation. It is really the procedure that has taken place and the process that we are following that have raised so many questions and sparked the Superferry debate that is occurring throughout our community.

"Mr. Speaker, I am aware that given the votes that have been counted and the commitments that have been made, my vote will be part of the minority votes that are cast today. Yet, given the points that have been raised and the principles involved in this case, I will not be able to go along and support this measure. Therefore, I am casting a "no" vote.

"Thank you, for allowing me to explain my position."

Representative Takai rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure. Thank you. By the way, Happy Thanksgiving. I mean Happy Halloween. Merry Christmas and Happy New Year.

"Mr. Speaker, I think much has been said regarding the merits and demerits of the Superferry and in particular the bill in front of us. I just wanted to add just a few things. First of all, I appreciate what the Senate has done in its efforts to visit the Neighbor Islands to get feedback and testimony from people on the Neighbor Islands. And I also appreciate the opportunity to have public hearings here at the Capitol.

"I think this Senate draft in front of us reflects some of the suggestions that came by way of those public hearings on the Neighbor Islands and here at the Capitol. And I appreciate that because I think that as we reflect back at the process these past six days, this Senate Bill, Senate Draft 1, is a much better bill than the one that we started with just six days ago.

"My concern though is this: I'm not too concerned about our political futures or the difficulties that we as elected officials face day in and day out on measures just like this. I'm really concerned about what the future is for our State on how then the Superferry reacts in the next few days.

"And I did have an opportunity to talk with Mr. Garibaldi yesterday. And I implored and asked him to consider working with the Administration, the Governor, and the Department of Transportation and others to work out some solution as they embark on these visits between the islands because I don't think it's over, not by a long shot. The fact that we're passing this bill today, sending it up to the Governor and hopefully she'll sign this, does not signify a victory or the end. Actually I believe this signifies the beginning of many more days of challenges.

"And I just don't want as other Representatives have said on the Floor today, I just don't want to see people hurt. I just want to see us come together and work together to resolve some of the challenges facing us. I don't have the answers. I don't know what it will take. In fact as I looked back on my 13 years here on the floor, there's never been an issue like this. So it's going to take a lot of work and a lot of patience and a lot of understanding throughout this State.

"And I just ask once again publicly to the Superferry officials, and to the Administration, that they take pause before moving forward and assess the situation so that we can work together to resolve some of the difficulties that lie ahead. Thank you, Mr. Speaker.

"One more thing, I'd like additional words inserted into the Journal. Thank you. A few days ago, the *LA Times* wrote an article about this issue, I would like to insert that article into the Journal," and the Chair "so ordered."

Representative Takai submitted the following article:

"Superferry sets off the battle of Kauai  
Longtime residents of the Hawaiian island have found a focus for their resentment of nonstop development and tourism.

By Tomas Alex Tizon, Los Angeles Times Staff Writer  
October 9, 2007

LIHUE, HAWAII -- The woman in the sun hat wants to crack someone in the jaw. It's been a bad day. Actually, for Kaiulani Huff, it's been a bad few decades.

She has watched as her home, the island of Kauai, changed from a wild garden of secret places to -- in her eyes -- an overcrowded amusement park for rich people.

"Welcome to Disneyland," she says one day while driving around the island. "See the natives. Watch us dance the hula. Clog up our roads. Buy up all the good land. And please, help yourselves to our beaches!"

Development on Kauai has been so unrelenting that Huff's sentiment has become widespread among longtime residents, although until recently it was a quiet simmering.

In late August, with the arrival of the Hawaii Superferry, the first inter-island car-carrying ferry, the simmering boiled over. Islanders, in the face of Coast Guard gunboats, formed a floating blockade at the harbor entrance and, after a three-hour standoff, forced the \$85-million ferry to turn back to Honolulu. The protest had turned into a citizen uprising.

The crowd represented a motley army of beach bums and businessmen, lawyers and ex-cops, dopers and doctors, and at least one college instructor -- many of whom discovered for the first time that they shared the same concerns. How many tourists and resorts and subdivisions can a little island take?

"The population is saying, 'Enough already,' " says Dennis Chun, 57, who with his surfboard had helped lead the human flotilla.

At the forefront of that protest was Huff, her face covered in war paint, like her Polynesian ancestors going into battle. Unlike her ancestors, she wore a bamboo sun hat.

Wearing the same hat this afternoon, she drives around the island's north shore in bumper-to-bumper traffic and ends up in another confrontation. She stops her pickup at what used to be a favorite secluded spot, now part of Ha'ena Beach Park. The lot overflows with cars, and the beach swarms with people she doesn't know. At one end, Huff spots an old-timer selling baskets made of coconut leaves. She pulls over to visit with him.

Within seconds, a young couple, cameras dangling, slip into their rental car. The driver backs up, but Huff's truck is blocking the way. The driver tells Huff to move her truck.

"Just cool it, brah," Huff tells him. "This isn't New York. This is Kauai. We'll be leaving in a few."

The driver backs up another several inches. He glares at Huff.

There was a time, when Huff was younger and rowdier, when she might have turned on the impatient driver. Instead she tells herself to breathe. She buys three baskets, moves her truck.

The couple speeds off.

Later in the drive, Huff says she wanted to ask the couple:

*Is your ohana from here? Did your family gather at this white-sand beach for generations, before it became a park, before the dune was paved over, before the signs warning of riptides went up? Did*

*your family swim in the warm blue salt water and then race across the road to the cold freshwater pond that formed from the river that flows down from Mt. Waialeale, and then plop down on the sand for hours on end -- with no one else around?*

"My family did," Huff says.

She is 45, a striking, pale-skinned, black-maned "island girl" (her label) and a jack-of-all-trades whose list of former occupations includes flight attendant, bank executive, hula dancer and helicopter refueler. Making a living on a tiny island often means taking whatever job comes along.

Now Huff spends most of her time at home, caring for her quadriplegic teenager son (injured in a diving accident), while her husband, a carpenter, works to support the family.

They live in a modest, oft-remodeled rambler inland of Kapaa (population about 10,000) on the east shore, next to a goat pasture. The house sits among other modest homes inhabited mostly by locals.

She's on her way to commiserate with a couple of friends whom she calls Auntie Nani and Auntie Cathy. All three grew up on the island. All remember when the only stoplight was in the middle of a cane field and the airport was a metal shack.

Kauai is the oldest geologically and the most isolated of the four main Hawaiian islands. It is 33 miles long and 25 miles across, and lies farther west than the rest, receiving the brunt of the eastern trade winds. The wind and rain over 5.8 million years carved up mountains more jagged and canyons more cavernous than on the other islands.

Old-timers will tell you nature roughed up Kauai but, to compensate, made it more stunningly beautiful.

The people who lived here tended to be scrappier and more independent by reputation. Kauai was the only island not conquered by Kamehameha the Great (he tried twice) during his campaign two centuries ago to unify the islands.

Kauai was a sleepy, rural, largely undiscovered place until Elvis made it famous in his 1961 movie "Blue Hawaii." Each successive tide after that brought more outsiders.

When Huff was born, a year after the movie, 29,000 people lived here in settlements connected by a single perimeter road.

Now, during parts of the year, there are almost that many visitors on the island each day. The tourists must share space with 60,000 residents. The main road system -- a two-lane perimeter highway -- has remained largely the same, including more than a dozen one-lane bridges.

Huff picks up her aunts, Puanani Rogers, 68, and Cathy Ham Young, 77. The three plan to eat lunch and catch up. Rogers and Ham Young remember the days before Hawaii became a state, and both have had run-ins with newcomers. Rogers has tried unsuccessfully for years to establish an islandwide moratorium on development.

Ham Young is in a legal fight with actor Pierce Brosnan, who owns property in Wainiha Valley on the north shore. Brosnan, according to Ham Young, owns several ponds that divert water from her family's generations-old taro farm. (Brosnan's attorney says the ponds are legal.)

The island roils with stories of the rich buying and closing off easy access to Kauai's prime spots, including long stretches of waterfront. Many of the old dirt roads and foot trails leading to

beaches no longer exist or have been legally blocked by new landowners.

All along Kauai's east shore, Huff, with her aunties in the back seat, slows her truck to point out beaches where she used to play and swim. "Private Property" and "No Trespassing" signs hang between swaying palm trees.

All three women lament the predicament of residents who can no longer afford to live here because wealthy transplants have priced them out of the market. According to a county assessment, the median household income of \$56,300 can buy a house valued at \$183,100. The median price for a single-family home on Kauai has risen to more than \$530,000.

"That's why our kids and grandkids have to leave," Rogers says.

On the island's south side, in the Lihue area, big-box stores such as Costco, Home Depot and Big Kmart have taken over immense swaths of land (Wal-Mart built on the other end of town).

On the west side, mini-cities of condos and houses have replaced small farms. Land still zoned for agriculture has been taken over by multi-acre estates and boutique ranches.

Across the island, more than a dozen major construction projects, totaling 4,500 residential units, are underway. Plans over the next two decades would add an additional 12,000 homes and condos; the population is projected to grow to more than 85,000 by 2025.

"Whenever something from the outside comes here, something on the island dies," says Mikala Shofner, 38, who helps run the local Boys & Girls Club.

All the percolating resentment, from all corners of the island, seemed to coalesce with the coming of the Superferry.

It was a natural enough idea for an island chain: a high-speed ferry that could transport people and their cars from Oahu to the outer islands and back at affordable fares.

A fisherman could drive his pickup onto the ferry in Oahu -- the ferry's home base -- and drive off on Kauai three hours later. A lei-maker on Kauai could sell the leis on heavily populated Oahu.

Families on Maui could visit relatives in Honolulu without spending a fortune on airfare and rental cars. More residents, especially those with flexible schedules, could commute shore to shore: Work on Oahu and live, say, on the Big Island.

The Superferry held the potential to transform the way of life in Hawaii, whose islands have each tried to maintain a separate identity and some autonomy.

The Superferry has only one boat for now -- a state-of-the-art aluminum catamaran, 350 feet long with a cruising speed of 35 knots (about 40 mph) -- but another is under construction.

John Garibaldi, chief executive of Hawaii Superferry Inc., says he envisions an initial fleet of three or four ships. If they're built like the first one, each will be capable of carrying 866 passengers and 286 cars per trip.

The plan was to make a daily Honolulu-to-Maui round trip in the morning and Honolulu-to-Kauai in the afternoon. A second ferry would add a daily run to the Big Island. The number of trips would increase as more vessels were added.

The ferry made only two successful trips -- to Maui and Kauai -- on Aug. 26. The next day, Kauai residents blocked the boat, and residents on Maui got a court order to keep the ferry away. Activists on the Big Island are considering similar actions.

"Change is a difficult item," says Garibaldi, 54, formerly chief financial officer of Hawaiian Airlines. His ferry company has powerful allies, among them Republican Gov. Linda Lingle and Democratic U.S. Sen. Daniel K. Inouye. Garibaldi says he believes he also has the support of a silent majority of residents.

On Kauai, where opposition has been most visceral, supporters -- often drowned out in public forums -- have started speaking up. The Kauai Chamber of Commerce put out a tepid statement calling for protesters to obey the law. A few residents have come out swinging.

"The ferry would be the best thing to ever happen to this island," says Jay Trennoche, 62, a retired chiropractor who has lived on Kauai for more than four decades. "From what I've seen of the protesters, they're like, 'Now that I'm on this beautiful rock, let's kick the ladder off so no one else can get on.' "

Trennoche, who plans to start up a hostel, correctly points out that Kauai, like the rest of the state, depends on tourism for revenue. According to Kauai County, the visitor industry generates one-third of the island's income. Hotels alone provide 14% of Kauai's employment.

Says Trennoche: "Whether we like outsiders or not -- and I personally think they've made a hellhole of the islands -- we need them to keep coming."

Rich Hoepfner sits on his lanai, feet up, coffee cup in hand, listening to the sounds of a family of doves outside. He hears it clearly. None of his windows have glass, and none of his doors have locks.

His home, a dodecagon -- a circular structure with 12 sides -- that he built out of redwood and cedar, sits at the edge of the Wailua River Valley, a place where wild pigs still roam.

He is 68, living the retired life he dreamed of during his decades of work as a police officer on the mainland. Imagine that, he says: an ex-cop living in a house with no locks.

"I know how burglars work," he says. "I guarantee you there are professional burglars on Oahu who would come here, find houses like mine, load up their trucks and take the next ferry back before anyone realizes their stuff is gone."

Drive around the island, he says. Check out all the pickups with surfboards piled high in the bed, unlocked and unsecured. "That way of life would be gone" with the Superferry, he says.

Chun, one of the surfers in the human blockade, says much of the passion against the Superferry comes from a larger fear that up until now had no focus. The ferry has become that focal point.

A number of groups have been holding secret meetings to plan for the next time the Superferry tries to dock here. Chun, Hoepfner and Huff all predict a larger protest the next time around.

At her house by the goat pasture, Huff goes about her daily chores, taking care of husband and son, feeding the dogs -- and keeping the war paint and sun hat ready.

Like other islanders, Huff frequently evokes Kauai's history of rebuffing invaders. "Never conquered," she says. "Never will be conquered."

Kauai's history, though, as with most stories that move beyond the merely patriotic, is more complicated. True, Kamehameha the Great never subjugated the Kingdom of Kauai.

But in the end, with time on Kamehameha's side and the threat of his warriors looming, the Kingdom of Kauai acquiesced on its own. The hardy islanders, for all their independence, could not stop the changing times."

*The Los Angeles Times*  
October 9, 2007  
tomas.alex.tizon@latimes.com

Representative Hanohano rose to speak in opposition to the measure, stating:

"Mahalo ka po'o ha'i 'ōlelo. Makemake au e komo ku'u koho, 'a'ole.

"'Ano'ai ke aloha mai ku'u one hanau 'o Puna. Mahalo ke Akua nō keia lā a me ka pomaika'i uā kākou apau. Mahalo nō keia 'ākoako ana mai no keia kau kūikawā a me ka ho'oponopono i'ā mai 'oia no ke kumu e pili ana ka moku e kapa i'ā 'o Alaka'i. I kekahi manawa o ka po'e e hana me na po'e e loa'a ke Alaka'i a'ole pono kō lākou hana. 'O keia pila nō ka 'Aha Kenekoa helu 'ekahi pila kīkolo 'ekahi a'ole pono. 'O ke kia'āina 'o Lingle wahine, nui nā hewa ana. He kūpono 'ole 'oia i kana hana. 'O keia hana e mahele ana nā po'e 'o Hawai'i nei. He hana lapuwale keia. 'O ke kia'āina a me nā po'o o ke aupuni 'o Hawai'i nei, 'a'ole lākou e ho'olohe i'ā nā po'e 'o Hawai'i nei. A'ole pono keia hana. He hane e pili no ka po'e kūikawā wale nō. He la kaumaha keia.

"E ke Akua e kala mai iā lākou nō kō lākou hewa. E mālama iā kākou 'āpau a e ho'olohe iā mākou nō kou alaka'i ana i nā mea pono.

"Makemake au e heluhelu ka pule nō ke Ali'i 'o Lili'uokalani, oia nō Ke Aloha 'O Ka Haku.

*Ke Aloha 'O Ka Haku*

'O kou aloha nō  
Aia i ka lani  
A 'o kou 'oia'i'o  
He hemolele ho'i.

Ko'u noho mihi 'ana  
A pa'ahao 'ia  
'O 'oe ku'u lama  
Kou nani, ko'u ko'o.

Mai nānā 'ino 'ino  
Nā hewa o kānaka  
Akā e huikala  
A ma'ema'e nō.

No laila e ka Haku  
Ma lalo o kou 'ē heu  
Ko mākou maluhia  
A mau loa aku nō.

'Amene.

"Mahalo iā 'oukou no kō'oukou hele mai ana a me kō 'oukou ho'olohe ana iā'u.

"Na ke Akua e ha'awi mai iā mākou ka 'ike a me ka na'auao, ka pomaika'i a me ka maluhia.

"E ho'omana'o iā kākou e lāhui ho'okahi kākou. E ka pae aku nā mana'o oko'a.

"Mahalo iā 'oukou no ko 'oukou lokomaika'i. E ho'ola kō mākou uhane a e holo mua me ka oia i'o. 'O ka po'e kanaka maoli ka po'e huaka'i holokai. E alu like kākou. Mahalo."

[Translation provided by Representative Hanohano:

"Thank you, Mr. Speaker. I would like to cast a no vote.

Greetings from my birthland of Puna. God, we thank you for today and for the blessings you have given us. Thank you for this Special Legislative Session and for bringing us together to correct the business of the Alaka'i (Superferry). Some of the employees of the Alaka'i (Superferry) are not being truthful. Their work is unacceptable. Senate Bill 1, draft 1 is unacceptable. Governor Lingle has created dissention. This legislation has created a division about the people of Hawaii. This is worthless legislation. The Governor and her Administration for the government of Hawai'i did not listen to the people of Hawai'i. This legislation is not correct. This Special Session legislation is only in the interest of the Superferry. This is a bad day.

God, please forgive them for their mistakes. Take care of us and guide us in the right direction.

I would like to read Queen Lili'uokalani's prayer entitled, The Queen's Prayer.

The Queen's Prayer

Oh Lord they loving mercy  
Is high as the heavens  
It tells us of thy truth  
And 'tis filled with holiness.

Whilst humbly meditating  
Within these walls imprisoned  
Thou art my light, my haven  
Thy glory my support.

Oh look not on their failings  
Nor on the sins of men  
Forgive with loving kindness  
That we might be made pure.

For Thy grace I beseech thee  
Bring us 'neath thy protection  
And peace will be our portion  
Now and forevermore.

Amen

Thank you for coming and listening to my testimony.

May God give us the wisdom, the blessings and protection.

Remember we are one race. Set aside our differences.

Thank you for your generosity. Heal our spirits and move forward in the right path. We are the voyagers. Let's work together. Thank you."]

Representative Bertram rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I rise in support with very strong reservations. Similarly to what my colleague from Lahaina had talked about that the divisiveness in his community that this whole issue has caused is quite distinct on Maui. Many of my friends are in the various groups that have actually opposed the ferry, and hopefully are still friends. So I support it because I've always supported alternative transportation, and I agree with the Governor that this is an excellent one. Just as the other Representatives have talked about is we do face a transportation crisis in this State. We have three shaky airlines and we need to have another way to get around including ways for us to get our goods, as well as handicap people to get around.

"I think though, the idea though, there's a lot of misinformation. And one of them is the idea that laws were broken. No laws were broken. As has been stated, this is just standard operating procedure. Many people don't like it. I didn't like it being on the Planning Commission and seeing this kind of standard operating procedure of rules being interpreted, or misinterpreted, or reinterpreted by administrators or lawyers, but that's the way it is going right now. People just have to accept and work to change it.

"The EIS and EA. People have put so much faith in these processes and it's disturbing to see folks come up to me and say they just have to get that done so we're protected. And it's so disturbing because I know that's not the truth. The truth is, and it's been expressed, that these are just guidelines. And they are just put out as ideas as mentioned. Even our EIS for the Kahului Airport which was ten years ago, and we're just now getting the invasive species sheds and the things needed to actually implement some of the suggestions from that EIS. So people really have to disabuse themselves of the idea that these are environmental protections. They are not. They are just suggestions.

"So it's really to me, a deeper issue. And it is people being very upset with number one, the type of development that we're getting in our State and what we've had for the last forty years. And people are finally sick of it. They're sick of the sprawl. They're sick of the traffic. They're sick of all these impacts that have yet to be address through a good planning process.

"And that's the other concern. The planning process we have is junk. It's so terrible and so incomprehensible that people don't know how to affect it. And they don't trust it. And that's the most important thing is trust. That's what we can do as a government; to actually come up with a development process that actually includes people, is open and transparent, and will then reintroduce trust because this is why people are mad. This is why people are banging on cars. Why they are jumping into these waters. Because they don't trust or they can't understand. So it's up to us really to take a hard look at the development process, at our EA/EIS process, and really make some real changes that really reflect transparency and real solutions.

"We need instead of an EIS, we need standards. Let's come up with a set of standards for each one of our harbors, our airports and all these things. Then we just say, 'Meet those standards and you get your permits.' It's the same with the way we build our cities and our towns. There should be standards that are very precise and distinct and have been made with everybody involved.

"So we had a good start. We have good start with the Hawaii 2050 Sustainability Plan. They've done a lot of public outreach already. Let's use that start and continue to reach out and build off those standards that they've already established, and create better ones and more and better laws that actually reflect what we want to see happen here. Not a set of rules and regulations and continuous interpretation, instead of actual good standards.

"So I ask for my friends on Maui to please understand why I'm doing this. And that we can move ahead in the upcoming Session to actually make some real changes, some well-deserved changes and long-overdue changes, to not only our environmental laws, but the way that we actually develop and grow. And I ask the rest of my colleagues to support this as well. Thank you."

At this time, the Chair announced:

"Thank you very much. Members we have been going on for about 80 minutes. So to the extent people want to submit comments, I would invite you to do so, unless you have something new to offer that hasn't already been debated or discussed."

Representative Meyer rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I believe I've got 4 minutes left here. I'm rising in strong support of this bill. I agree with just about everything that the last speaker said. I think that the EIS and the EA have been blown out of perspective as far as their importance. They are studies. They don't mandate that anybody must do anything, but it's a nice record of accumulation of data and information.

"I don't think there's any question that the majority of people in Hawaii want the Superferry. I believe so far today, the debate has been very constructive. I've learned a lot of things in the Committee hearings during the many, many hours that we were there.

"Some of the information, I questioned. The expert witness that was on the stand from Maui, I did have some problems with his credentials. We took the initiative in the Minority to call some other people that I would consider real experts. They looked at a study that was done by Dr. Adam Pack dealing with whale strikes. And there were some questions that he couldn't answer so this morning I talked to Dr. Marc Lammers who is with the Oceanic Science Institution and Hawaii Institute of Marine Biology to get additional information, on some of the habits. Actually I was trying get more information about what the scientists have found out about the hearing ability of whales. And they're really quite unknown.

"The one thing I came away with is that I think that this Special Session will go a long way in educating people a great deal more about the whale sanctuary, about the habits of the whales. How unique it is that Hawaii is probably home to more of the whales than any other part of the world, as far as the humpbacks and the Wright whales for both mating and for the birthing of their calves.

"The question I asked Dr. Lammers was the way the population is increasing, about 7% a year, we have to look down the road where this is going to become a much greater problem. I asked him about stewardship. We know the problems on the mainland with deer and places where they don't hunt them anymore. If these species they grow so great in numbers, they create new problems for us. And he said, 'Yeah, absolutely. They're thinking in terms of that. There's a carrying capacity.' The Coast Guard considers floating debris as a hazard to navigation. And we could be looking in the future where these whales are a hazard to navigation because regardless of whether we fly freight or take it by boat, we have to take things between the islands.

"So I think this has been an excellent use of time. And there's no question in my mind that we're not doing something we're meant to do. We write the laws, we can change the laws.

"Someone worried about whether the Superferry will be financially viable. This is not State money. These are individual investors that have enough belief in this endeavor that they put up their own money. And I hope that they will be successful because this will bring our families together. This connects the islands in a way we haven't seen it in my lifetime. We know that the Hawaiians used the canoes to go between the islands, but you couldn't take a lot of people at a time. I think this is going to be very positive for the State of Hawaii and I truly hope that it will be a success.

"I hadn't thought about was the disabled community. So many of them came forward. It's very difficult for them to fly. Some people with ear problems cannot fly. This is going to allow them to visit the Neighbor Islands when they never have. The others that would benefit will be small businesses, people with medical problems where now they must fly on very expensive planes. Many of them will have the opportunity to use the ferry to come to Hawaii to get specialized medical attention. And of course, this is a boat that's big enough that can be used if we have any large disaster like a hurricane, or we need to get a large amount of things to another island.

"So I thank everybody for the arguments here today. If there was anything that bothered me in this whole Session was a lack of ... I've never been as uncomfortable as I was in one of the hearings when some of my colleagues, I felt, treated the Governor with disrespect. I think when we look at our ethics and our demeanor, we should take more time to address that and make sure that our fellow legislators don't behave that way. Thank you, Mr. Speaker."

Representative Carroll rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition. First, I'd like to thank all the people who submitted testimony and came here even from the Neighbor Islands to express themselves. Earlier we heard comments that there were testifiers who may have said derogatory comments, but I don't want to dismiss that because they came to express what's on their heart. *Malama ka uhone*. We must take care of our spirit because at the end of the day, it's only us in ourselves and we have to look deep in ourselves, are we doing the right thing.

"I felt the need to stand up today to also remind and put on the record that I am the Representative for East Maui, including Hana, Molokai, Lanai, Kahoolawe. In my district, there's an overwhelming amount of people who are not supporting what happened, the process; who are supporting Judge Cardoza's ruling. I listened very carefully in the hearings as a member of the Finance Committee and I tried to be very open. But I want to thank the Chairs for actually having that hearing because I learned so much more. It only convinced me more to be in opposition.

"But my message today is, I hope we can move forward and like our many colleagues have expressed, with aloha. We need to *malama ka uhone*, our spirit and bring our communities together. Because as I can see, there's an overwhelming support for this legislation and I hope that we do address the environmental concerns because my district has many natural resources and people there live on those resources. It is a way of life. And we're trying to protect that.

"So I just want to thank my colleagues who I have great respect for. And I don't want to dismiss how people feel because that's why we have a democracy. That's why we have opportunities for them to participate at public hearings. So with that I just say thank you. And today I wear black because I think about my beloved queen, Queen Liliuokalani, and how she felt with the overthrow. That's where my heart is today. Thank you."

Representative Tokioka rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. Mr. Speaker, in opposition.

"For me, this issue was never about one company. It was and has always been about the process. Two years and ten months ago, the Kauai County Council followed by Maui County and Hawaii County sent resolutions to the Governor, the Department of Transportation, the Superferry asking for an EIS to be completed prior to the Superferry sailing in the State. Twenty-four of the twenty-five Neighbor Island County Council members voted in support of these resolutions. To my colleagues here, and my former colleagues on the Council, that's not something that is very common when you have an issue like this and there is that much support from the Neighbor Island counties. There were many red flags about this issue not only from the County Council members, but from many people in the community.

"Mr. Speaker, our communities have been divided and we need to come to a place of healing, we need to come to a place that is *pono*. And no matter what happens here today, that is the message that I want to send to all of us. We sit here and every single one of us will walk out of this Chamber today feeling like we did the right thing,

we made the right vote. But everyone will come from a different place and everyone will probably have a different reason for voting.

"Mr. Speaker, I think what is important is that going forward on this issue, I want to ask you, Mr. Speaker, and the Members of this body, I want to ask Madame President and the Members of the Senate, the Superferry executives, the Governor, to come to the people and ask for the process of healing. We need to do that. This State has been divided by this issue and it's unfortunate. And we all need to get together and stand up, because we all had a part in the process. Thank you, Mr. Speaker, for the time and I hope we can do that to all of our communities and do what is right, do what is *pono*. Mahalo, Mr. Speaker."

Representative Yamane rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I stand in support. I would like to make some comments however. I will not argue the need for an alternative mode of transportation. The Chair of Transportation has done that very well. And it is very obvious that there are environmental concerns as evidenced by the statements by our Chair of Environmental Protection. However, I do want to make some comments regarding Section 14, asking the Auditor to conduct a performance audit because that was brought up earlier, regarding why it is needed. Well, I offer this body this: the need for this is because of the impact of this issue on the people of the State of Hawaii. How it has divided our State. Island fighting island. People fighting people. And actually, friends arguing with friends. And it was very evident to me how important and needed it is for all of us here to perform, do good due diligence which I learned during the session conducted by the Chair of Finance.

"But before I continue since people use the word 'due diligence' quite cavalierly here, let me offer you a definition of due diligence. 'Due diligence' is diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation as evidenced in this book, Black's Law Dictionary. However, that question came up because of the 5-0 ruling by the courts indicating that there was some question about that.

"Mr. Speaker, there is a need to conduct a performance audit because of the basic issue of trust. Trust is one of the most valuable economic assets noted and is hard to create, but easily destroyed. This is also a crucial factor in our State's social capital.

"It is also noted that when there was a lack of trust, people spent more on monitoring others. People may become less open and inflexible. This can actually increase the businesses possibility of having market failure. It is noted Mr. Speaker, in Matthew Bishop's book Essential Economics, countries can overcome some of the problems of lack of trust by passing laws requiring good behavior, but only to the extent that people trust that the laws will be enforced.

"So on that note Mr. Speaker, I support this bill because it moves forward. And I hope that our Executive Branch and our Auditor will not break the trust of the people and work openly in participation with making sure that this kind of situation never repeats itself. Thank you."

Representative Brower rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. Like many legislators in this room, I had the great opportunity to travel to Neighbor Islands, visiting Kauai, Maui, and the Big Island all within the last two months. We met with county and State officials. The development challenges on those islands, I believe, are much greater and have much greater intensity than the Superferry will bring to them.

"In addition, sometimes we on Oahu need to be careful of what we wish for because there may be unintended consequences and challenges that we on Oahu must face with the Superferry. For example, some invasive species are more prevalent on Neighbor Islands than Oahu. But I look forward to that challenge. We have a time now when the Superferry, I believe, will operate, and operate under a microscope. And all of us will meet back in two and half months and re-evaluate the performance.

"And for me personally, healing doesn't need to take place because I never took offense to anyone's feelings. And I enjoyed and appreciated the passion that this brought. And it showed us what a true democracy must live up to. And although we're deciding the fate of the Superferry on Halloween, it's not April Fool's Day. Mr. Speaker I'd like the words of the freshman Representative from the West Maui to be inserted into the Journal as if they were my own. And I would like to welcome and hope for the best in his community's Halloween celebration, the second biggest celebration of Halloween in the State after Waikiki. Thank you."

Representative Takumi rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Takumi's written remarks are as follows:

"Mr. Speaker, I rise in opposition to the measure before us.

"First, let me state without equivocation that I support a ferry system for Hawaii. I believe that as an island state, a ferry system provides a transportation option for our residents. However, I cannot support this bill because I am troubled about the process and how we got here. After all, if the process is flawed, then it's indicative of a systemic failure rather than a policy call on a single bill.

"In all my years in office, I've never experienced the volume of emails as has been generated by the Superferry issue. I'd say there were over 4000 emails, the vast majority in favor with many being generated by the Superferry website. However, as with most issues, it's a bit more complicated than just saying, "I support the Superferry because I want another way to go to the Neighbor Islands" which is the gist of many of the emails in support.

"It seems that few are raising the larger question of does the current situation necessitates convening a Special Session so that we can remedy what has happened? In other words, what's so special about this bill? Here are my thoughts on this question.

"Some, including the Governor, say that the majority of the people in Hawaii support the Superferry. But, Mr. Speaker, laws are made not just for the majority, but also to protect the minority. Otherwise, we still might have segregated schools if the majority in a community opposed it. So while it's important to note that many people support this bill, it should not be the major reason to pass it.

"Some, including the Governor, say that the issue is not about one company, but about the future economic health of our State and to provide transportation options. Well, actually, it is about one company and we have survived with our current transportation system. Indeed, we've seen the entry of another airline into the State that you could argue has benefited consumers.

"Furthermore, even if the Superferry leaves as they are threatening to do, it doesn't mean there will never be another ferry system in Hawaii.

"Some, including the Governor, say that a Special Session is needed to balance the court's interpretation of the law. Well, I believe that there's balance and then there's circumventing the court's decision to benefit one company. And why does it require a Special Session? Look at the same-gender marriage issue. In 1993, the court ruled that the State did not show a compelling State interest

in denying marriage to same-gender couples based upon our Constitution.

"What did the legislature do? It passed a constitutional amendment that was put on the ballot and all this was done during a Regular Session where you could have hearings, testimonies, and full debate.

"Also, if you look at the history of Special Sessions, it was never used as a tool to deal with one company. It was always used to deal either with a number of issues in the case of veto overrides or an emergency like 9/11, or a flawed bill that needed to be fixed such as the medical privacy law back in 2001.

"Some, including the Governor, say that this issue has only reinforced Hawaii's anti-business image. I believe that the court's decision was neither anti- nor pro-business, but an affirmation of our system of checks and balances. It is entirely appropriate in our system of laws for the courts to rule that serious errors were made and now the Superferry needs to do an environmental review.

"Otherwise, you could argue that the message is if you come to Hawaii with a proposal that employs hundreds of people and involves hundreds of millions of dollars, you can rely on the Legislature to bail you out if a court decision goes against you. Is this the kind of reputation we want to foster? Furthermore, what kind of message does this send to small, locally owned businesses? Would we be willing to come back into a Special Session to help a small business?

"But the overarching concern I have is the implied message we are sending. A Special Session denies the public the ability to impact and influence the legislation. The bill before us went through many drafts, but this was done behind closed doors with no input from the public. Yes, there were public hearings held, but time constraints inherent in a Special Session did not permit full and deep discussions of the range of relevant issues on a measure of this complexity.

"Adlai E. Stevenson once said, "Public confidence in the integrity of government is indispensable to faith in democracy."

"I share this belief. It really doesn't matter what your position is on the bill. What does matter is that this entire process has been flawed and compounded by convening a Special Session to fast track a measure that benefits one company.

"I do not think this increases the public's confidence and faith in government; quite the contrary.

"So while those who want the ferry to sail will gain in the short-term, I believe we lose in the long-term. People will be even more disillusioned and cynical about government and their faith and confidence in the process will sink even lower.

"This to me is the tragic outcome of this whole debacle. And this is why I cannot support this bill. Thank you."

Representative Berg rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition and ask that the words of the Representatives from Kauai and Puna be entered as my own. In addition, I have just a few more comments.

"Thank you. I take umbrage to the comment that we came together in Session to embarrass the Governor. It was very clear by the Majority Leader on the third day of Session that we convened to help the Superferry operate. And although some of us were a little concerned about that whole purpose, we worked very diligently and seriously to see how we could make a piece of legislation be most meaningful and most appropriate to our State.

"I think we need to be truthful on this last day of Session that we came to fix something that already had a life of its own before we entered here. This Special Session is not about the Superferry as mode of transportation. I have the interesting coincidence of being able to ride the Superferry in the Canary Islands in May. And what I noted was that in the middle of the Atlantic Ocean, they have very different conditions than we do here. I know we've been comparing the Superferry to many other ferries around the country and around the world, but the conditions that we have in Hawaii are very, very special. They are very different. And so if we can really take a look at the fact that we're not talking about saving the Superferry, that's my concern about this particular bill. We're here to 'save face', and enable one company to succeed. And enable one company to have their way with Hawaii. It is about money. And it's about lots of money. One of the issues we need to be able to have our communities understand is that this Session really was about helping the Superferry succeed. As the Representative from Lahaina has shared, there's no guarantee that that will happen.

"I am reminded continually as I sit here and I listen and watch you in action as well, with the seal in front of you. *Ua mau ka ea oka aina i ka pono*. May the life of the land be perpetuated in righteousness, or rightness.

"I was happy that the Governor was here a little while ago. I'm hoping that she is watching at the moment because I think that it is time that we call upon the Administration of this State and the leadership of this Legislature to actively work toward bringing *pono* into our communities, as many of my colleagues have stated. The basic principles of reconciliation apply here. And if you will allow me so that I can anchor them for myself because I need to go into my community who is divided, thinking that this is about the Superferry.

"We need to begin by telling the truth. Not what our truth is, but the truth, the facts, and acknowledge that it is the truth. We need to also accept responsibilities wherever that lies and have *kuleana*. We need to apologize with humility. *Ha'a ha'a* means to be able to sincerely acknowledge that we have a hand, whoever the 'we' is, in what's about to happen or what is happening now. To ask for forgiveness, *e kala mai*. And to act with sincerity, *me ke aloha*. These actions are not just our responsibility. And if I can call upon the Governor to demonstrate that leadership and to be a role model, as Ghandi said, 'To be the change we need to see in the world', I will feel much better about the results of the consequences of this bill.

"I hope that now that the issue has been addressed in this House and in this body, that the Governor can return her attention to the business of the State. That the CIP requests will be released. That the 2006 budget hold ups will be released, particularly the \$400,000 that's in the fund for parent participation programs for our schools. The cost of this Session has been thousands of dollars. The cost of the EIS, million. The cost of healing our communities is priceless.

"We're not deciding the fate of the Superferry here today, Mr. Speaker. We're deciding part of the fate of Hawaii. And once we lose whatever it is that we are about to lose, we can never get it back. So I hope, as some of my colleagues have also expressed, that as we go forward, as the Administration goes forward, that we take a look at discerning ways from here on out, that we will take care of our environment, our children, our people, and our economy, and not put money first. *Ua mau ka ea oka aina i ka pono*. Thank you."

The Chair then stated:

"Representative Ching, you have already yielded your time. Did you want to submit comments?"

Representative Ching responded, stating:

"Thank you, Mr. Speaker. I was going to ask, I believe that my colleague spoke only two minutes and if I could use the other two minutes of my time."

Temporary Chair B. Oshiro: "No. You've yielded your five minutes and it was used."

Representative Ching: "Then I would like to state my vote with reservations, and submit written comments."

Representative Ward rose to a point of order, stating:

"Mr. Speaker, point of order. I was at the conclusion of my speech when she yielded her time. I could not have taken more than two minutes."

Temporary Chair B. Oshiro: "I will check, but I believe that most of the time was used up."

Representative Sonson rose, stating:

"Thank you very much. I would like to thank Speaker Say for allowing the Members of this body to speak their mind, and always offered us an opportunity to speak the truth and be true to ourselves."

The Chair addressed Representative Sonson, stating:

"Representative Sonson, excuse me. Are you in support or in opposition?"

Representative Sonson: "I will get to that, Mr. Speaker."

Temporary Chair B. Oshiro: "You're actually required to state your position up front before you proceed."

Representative Sonson: "Thank you very much. That is why I am voting no. I would like to proceed by first thanking Speaker Emeritus for being so idealistic, although he has been here for a long, long time. He believes that with this particular vehicle that goes from island to island, we can connect the islands and we'd be one huge, happy family.

"But you know, that is being idealistic. Because if I drew a line from here to the other side of the room, we can't even be one big, happy family all of the time.

"I thank Councilwoman JoAnn Yukimura for coming here and opening my eyes. I asked her to give live examples on the reasons why Kauai is worried that Oahu is trying to be one big, happy family with the islands of Maui, Kauai and the Big Island. And it applies to all three jurisdictions. Why can't my mother-in-law go and visit? Why can't your mother-in-law visit you on Kauai? 'There's nothing wrong with that', she said. 'It's just that I want to be prepared for the negative impacts of the visit.' That is what the issue is for a lot of people on Kauai, Maui and the Big Island.

"What is the best interest of Hawaii in this case? How can we decide without a complete understanding of the negative impacts of the question before us; the operation of the Superferry? The first of its kind built specifically for the islands of Hawaii. Is it in the best interest of Hawaii as a whole for us to craft public policy just because the concept is so popular? Is it also for this body to shift our policy to say that the voices of the counties who have unanimously stated that they are opposed to this concept, this project? Maybe we can set them aside and say that we just want to be one big, happy family. Everybody wants this. We should support the Superferry. We don't believe anymore in homerule. From the top to the bottom, I've heard this since I joined the Legislature; that we should respect those who are closest to the issue at hand.

"This is not about exclusion. This is about the people of Hawaii. This is not about a ship; a beautiful one, very comfortable with two dining rooms, a bar with wine and beer, where you can go outside and pay \$20 extra and look out from the bow and look at the beautiful ocean as you go by. This is about the people of Hawaii.



This is about crafting good public policy. We are setting bad precedent by this legislation. I'm not going to discuss the legality of what we are doing because I know there are ways to craft legislation in such a way so that it can pass constitutional muster. But can we be true to ourselves by putting 'large capacity ferry vessel', and say 'Now I feel better. We're not legislating for a specific company, the Hawaii Superferry.'

"The executives for the Superferry, are renown people of business. I didn't even know who Tig Krekel was when he introduced himself to me. After I introduced myself first, I said, 'I'm Representative Sonson.' He said, 'I'm Tig Krekel.' I looked at him and said, 'Excuse me?' I didn't know his name. And he said, 'I own the Superferry. I am the Superferry.' I thought it was actually owned by Mr. Garibaldi, but I know better now because I 'Googled' him. He was a prominent businessman who owns a lot of companies. He is a graduate from Stanford Business School. He has an MBA. I hope they teach corporate social responsibility there. I hope they teach business ethics there. Maybe he graduated before they took up that program.

"Because, you know, it is not enough to just follow the law. For companies today to succeed, they must not only look at the three stools that they usually do a long, long time ago, where you just look at the interest of the stockholders. You just look at the interest of the customers. And you look at the interest of the employees."

Representative Ward rose, stating:

"Mr. Speaker, is the speaker on the subject of the bill? Or on the person and the people behind the Superferry, or whatever he's trying to use as an odd homonym?"

The Chair responded, stating:

"I will find out. Representative Sonson, your five minutes are up. Can you please start confining your remarks to the bill itself. Will you be concluding soon?"

Representative Sonson: "I wish that someone would give me some of their time."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative Sonson continued, stating:

"Thank you very much. This speech is not about Mr. Tig Krekel. This speech is about this body helping Tig Krekel, a very powerful millionaire. He is a Co-Chairman of Lehman and Company, the primary investor in this case. If we start on this path, where we specifically save a company, shall we stop here? Or are we actually opening the door for more? Haven't we heard what has just happened to the *go!* Airlines, a very popular alternative to the ones we have now. What if it's also a very popular idea to have low prices? We all benefit in the short run when there is competition, albeit it was found to be maybe unfair and in violation of anti-trust laws. But we enjoy these, and we're going to miss *go!* if they go. I hope that we are not going to be setting bad precedent, but I think that we are.

"Now the Governor, I am happy that she was here. I am happy that she attended our hearings. I am happy that she is now a part of the bill. She has denied direct responsibility for the wrongful, illegal exemption of the Superferry from our environmental laws. It is illegal. It is wrongful because the Supreme Court has decided so after a year and a half of studying it; after a year and a half of waiting. As we said, it was too long. But nevertheless, the process was followed. They have made their decision, and I think they were in a better position than we are with only a couple of days that we had to hear this bill. They know that this was indeed, an illegal and wrongful thing to do; to exempt the Superferry from our laws.

"Yes, we are here to correct this. And Governor, you have now been made a part of this measure under Section 3(c). You Governor, now have the power that is vested in you, and with additionally the power vested in you by this measure, you have the opportunity to create conditions, protocols, reach out to those people who have been termed to be the minority. Reach out to those people who think are not represented in the general media and who are not holding the most popular view of the day. But nevertheless, we also as the Legislature, have made sure that we have a way to interact with the things that may happen between now and next Session. However I would not want to be responsible for things that may happen from now or in between.

"I do not like being a part of a process that discriminates against those who are less vocal; the minorities. I do not like going along with the popular view in this particular case. I think that we are looking at the Superferry and have agreed with ourselves and the people out there, that they will leave and we will not ever have another opportunity to have such a vessel again. This idea of having such a vessel is new. It is only found in other small areas of the United States. It's being tested. As I said, this is a unique vessel made for Hawaii. The WestPac Express which is used by the Marines in Okinawa is awesome. It's great. It can move a whole army in two to three days instead of weeks by the conventional process of using C-17s and C-130s. It is new, but it is not the end.

"Mr. Garibaldi himself has stated that this market is an opportunity for business. It is nice. It is a great market with a technology that this offers. Why are we going to rush into it then? Why can't we wait? We just take just their word that they are going to leave? We take the words of those who have taken the risk and failed in taking a business decision and failed, and we are going to reverse that for them.

"I have a lot more to say, but I think if I do, I will take up a lot of your time. I would like to request to have the words of the Chair of EEP to be inserted into the Journal as if they were my own, and may I please have an opportunity to add to my comments and insert them into the Journal. Thank you very much."

Representative Sonson's written remarks are as follows:

"Mr. Speaker, thank you Speaker Say for allowing your members to freely express their views even if they conflict with your leadership's position. I am in opposition to the bill before us for the following reasons.

"First, I believe that the "best interest" of the people of Hawaii can not be determined by this body until the result of the EA and EIS is received. We know for certain what the promised benefits are, but we are uncertain of the gravity of the negative impacts that may result from the operation of the Superferry between our islands. Let us err on the side of caution Mr. Speaker. It was undue haste that stopped the Superferry from operating. It should not now be also their salvation at the cost of sacrificing a time tested public policy on the environment.

"Second, opinion polls have indicated to us that a majority of people support the Superferry when asked, "Do you support the Superferry?" However, I believe that a majority of people in Hawaii will also agree that the Superferry should obey all State and federal laws before they start operations.

"Third, I believe that "government for the people" is for all people, and not just for the majority of people. We are turning a deaf ear to our island neighbors as we force our will upon them in the spirit of "One Hawaii." They are concerned about the secondary impact of a vessel that can carry 900 people and 250 cars in a single trip to their islands. As this legislative body historically protected the windward side of the islands from development in order to keep it rural, we can not now disregard the voices of our Neighbor Islands. Also

remember that our neighbors are not saying, 'Don't come.' They are saying, 'Please allow a study to help us prepare for your coming. If there will be severe negative impacts, then we will know how to mitigate them.'

"Fourth, I believe that we are making a huge policy shift by not allowing the Neighbor Island councils to determine their own destiny. The Neighbor Island councils do not support us.

"Fifth, I believe that we are circumventing the law in order to help a single business entity that is manipulating the political system to their benefit at our expense.

"Lastly, we have given the Governor extraordinary powers to create conditions and protocol to protect the environment. This will be her opportunity to assume unfettered leadership of substance, instead of the usual photo op of the day, in overcoming the remaining concerns of all stakeholders. In this, I am hopeful that she will succeed for the benefit of all Hawaii."

Representative Finnegan rose, stating:

"Thank you, Mr. Speaker. Just a point of personal privilege. I was waiting until the speaker finished. As a member of this body, he accused this body or those who would vote in favor of this as helping one millionaire that he met. That is not my intention."

Representative Ching rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I have been informed that I have 40 seconds of my time left.

"Thank you. I am still in support with reservations. I just wanted to rebut and respond to comments made on the floor by the former speaker from Waipahu, as well as the Representative from Aina Haina. In all due respect, I am not here because of a fix. I think that when we put ourselves all in one group, that's just not fair to all of us. I am here because I represent my district. I am their Representative. They have their wishes and they have made them known. The will of my people of my district have made their position known via emails, via phone calls, via sometimes in person, and I am their Representative. And while this is not perfect, and that is why I go with reservations.

This is an unfortunate situation. And I would like to continue on with that metaphor of Halloween. I was at my daughter's preschool this morning and they paraded around in their costumes. And like today is Halloween, the costumes come off. They are temporary. And underneath is revealed people, children, persons with feelings, human beings. And I think that's what this is all about. It's about the people that we represent in our districts, and their wishes.

"So I would like to remind everyone that this day will end and the costumes will come off. I'd like to just ask that we remind ourselves that we are here for the people, and the people have spoken. Thank you."

Representative Awana rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Awana's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support. The fact remains that the State of Hawaii has a golden opportunity to open the gates to an ocean highway which will benefit many groups for the following reasons.

"Families who reside on other islands will have an affordable and alternate mode of transportation.

"Due to either physical or medical restrictions, individuals will now be able to access Neighbor Islands.

"Full-time and part-time jobs will now be available to persons who are in need of additional income to sustain their families.

"Small businesses will be able to transport their goods and services in a shorter amount of time and at cheaper cost to Neighbor Island consumers.

"I believe everyone is deeply concerned about our environment – those who are for this measure, as well as those against this measure. At this point, finger pointing will not address the cards that have been dealt to us.

"We are at the midnight hour and a decision must be made. We can choose to refuse this measure which means the ferry service will leave the islands, or we can choose to support this measure in which case everyone will benefit. First and foremost, I see that this measure elevates the existing and any future standards of ocean transportation. Jobs will be made available. Residents and visitors alike will be able to see the beauty of our islands from a view only few were previously afforded. Healthy competition between the airlines and ferry will lower the cost for consumers. In the past, consumers were held hostage to the monopolies that existed.

"This bill before us has evoked input from over 6,000 residents, prior residents, visitors, travel agents, and those contemplating on coming to our State.

"Mr. Speaker, before I close, I would like to thank everyone for their emails, phone calls, letters, faxes and face to face conversations. Whether you are an opponent or supporter of this bill, your contributions were greatly appreciated and needed in helping legislators see perspectives from many angles. My hope is that many stay in touch with the legislative process. I received testimony from Christie Wagner who provided a quote from Nelson Mandela. I would like to share this quote which I find particularly befitting for this occasion. "There's nothing enlightened about shrinking so that other people won't feel insecure around you...and as we let our light shine, we unconsciously give other people permission to do the same."

"Thank you, Mr. Speaker."

Representative Evans rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support. I was compelled by our Representative from Kalihi Kai by his invocation today. What he said was to reflect on what the will of the people is. To come here today and give our *mana* and vote for the people. I truly believe that this is true policy making. I have been feeling so very privileged to be here through this process, and believe that democracy is working at its best. When there are really hard issues before us, that is when policy makers have to rise to the occasion and vote. It is very, very difficult for many people.

"Having said that, I would like the words of all four Maui Representatives who have spoken to be in the Journal as my own. As you know, two of the Maui Representatives voted for the measure with reservations; one aye; and one no. And I believe the Maui delegation has truly shown us the reflection of what is going on in our community and their thoughts and the thinking and the emotions behind this. I'd like to think that the children in our schools, and the parents sitting around the table are talking about the Superferry. And the children are hearing this debate and are truly seeing that this is a debate.

"This is what democracy is all about. It's all about having that discussion. It's about listening to people who don't believe what we might do is right, and the ones who are thinking that yes, they are

right. It's truly about teaching our children about developing their arguments, and critical thinking skills.

"I truly am proud to be a part of it. There isn't one legislator that I have heard today that I felt in their own heart, really represented good critical thinking, good arguments, good thoughts about the Superferry issue. I know that after the hearing that I sat on with the Committees on Transportation and Finance, after the vote to pass the bill out, I was walking in the hallway and I met two of the Senators who had voted no on the bill. They were still the same. They were still good people with good thoughts. I didn't think any differently of them. I respected them for their opinions.

"I also ran into some of the Superferry folks and I walked up and said, 'I hope you were listening, because the will of people in my perspective and my district, the will of the people is that they think the Superferry should operate, but they are very concerned about the environment. They want us to rise up and make sure that the environment is not compromised by this.' I said, 'Did you really hear that?', and they said that they did. Well the proof will be if they do something which the public will see. They are going to watch them under a magnifying glass. Everyone is going to be watching them. They are going to be watching the Department of Transportation. They are going to be watching the enforcement officers at DLNR. They're going to be watching the Governor. I'm telling you, this isn't going away because people are saying that the environment is important.

"I actually am so excited. This next Legislative Session is going to be awesome; awesome for the environment. Because I think that if the legislators in this body do not rise to the occasion and address the environmental concerns that the public expressed through this whole process, then we weren't listening. That's really what people were saying. They love Hawaii. They love the environment. And even people from around the world. I got email from other counties, other states. It wasn't just from people from Hawaii. They were saying how much they love Hawaii, and how they love the environment and they would hate to see something negative really happen for us.

"So I am really hoping that there is good legislation. I even told the Chair of Agriculture, I think, he's got his work cut out for him this upcoming Session because invasive species was on people's minds constantly. Every discussion: invasive species, the whales, the mammals, not enough enforcement officers. It kept coming up over and over again. So I think for me, personally, the will is to move it forward, but we better be addressing the environment and we better not ignore the people because they'll hold us accountable if we don't. Thank you."

Representative Har rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I rise in support with reservations. Mr. Speaker, I support a large capacity ferry vessel such as the Superferry because I am a proponent of alternative modes of transportation. Paramount here is that this measure is in the public interest for the State of Hawaii for a multitude of reasons. First, the operation of a large capacity ferry vessel such as the Superferry capable of transporting large numbers of people, cargo and motor vehicles between the Neighbor Islands is in the public interest by the very fact that it is an alternative to transporting people, cargo and vehicles between the Neighbor Islands.

"The second reason why the passage of this bill is in the public interest is because a large capacity ferry vessel such as the Superferry has the ability to transport large quantities of cargo between the islands in a short period of time, thus benefiting our local agricultural products and giving you a higher quality fresh food product at a lower cost for all the residents of the State of Hawaii.

"This second reason inevitably leads to the third reason why passage of this bill is in the public interest. It encourages the

growing of products on the Neighbor Islands. The operation of a large capacity ferry vessel company would foster diversified agriculture, helping the State of Hawaii in meeting one of its constitutional mandates.

"A fourth reason this bill is in the public interest is that in times of natural or other disasters, a large capacity ferry vessel could rapidly deploy disaster relief personnel, equipment and supplies between the Neighbor Islands.

"There is one provision in this measure however, that is not in the public interest, and that is Section 16, the release and indemnity provision in this bill. The release and indemnity is not in the public interest as it stands in this measure because a large capacity ferry vessel such as the Superferry can now sue the State for future claims as it relates to the Superferry operations within the State, or it allows a third party to sue the State in connection with the Superferry's operations.

"For the non-lawyers in this room, bear with me. As a general rule, a release and indemnity protects a party from past, present and future claims. This measure does not protect the State from future claims. Anytime a lawsuit is filed against the State of Hawaii, who bears the cost? It is the taxpayers of our great State; our constituents. The release and indemnity as it is written in this measure is not in the public interest because it does not protect the State, and ultimately our constituents, the taxpayers, from potential liability that may be brought in connection with the Superferry's operations. For this sole reason Mr. Speaker, I rise with strong reservations. Thank you."

Representative Manahan rose in support of the measure with reservations, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Manahan's written remarks are as follows:

"Most everyone in my district supports the concept of the Superferry. I've been to the open markets, the churches, to the Neighborhood Board, spoken to community leaders and elders, as well as gone door to door to ask the residents how they feel on this issue.

"I myself support the concept of an inter-island ferry system, however, in light of our hearing Monday, and the concerns that were raised by the Committees, especially towards the Governor and the representative from the State Attorney General's Office, I feel there are still many questions that have been left unanswered. Questions that should be answered.

"And given the sensibility this Administration has shown us thus far on this issue, I am not confident in their ability to properly address the concerns of the environment. The consequences of which, our children will have to face.

"For these reasons, I will be voting with reservations."

Representative Belatti rose in support of the measure with reservations, and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Belatti's written remarks are as follows:

"Mr. Speaker, I rise in support, but I would like to again register my serious reservations to the legislation before us.

"This is a sad day for those in our State who sought to hold their government to the highest standards and to uphold the values of environmental protection that we proclaim in our State Constitution. This is a sad day for me, professionally as a legislator and a lawyer, because what we have all been witness to and party to is the contortion of our political process to come to one particular result, one particular end that will benefit one company and its investors.

"I would concur with the comments made yesterday by the Representative of Hawaii Kai that there may be some benefits to the people of this State ancillary to this outcome. Yes, an alternative mode of transportation may have been preserved for a short time for the people of our State, but only time will tell and market forces will determine if this particular company will survive in our waters as a service for our people.

"If it was not made clear enough already by the comments we have heard today or by the comments made by some of our Senate counterparts, this legislation is for the benefit of one company. I state the obvious today because there will be those that follow us who will cleverly say that the law makes no mention of one specific company and that this bill is not special legislation. Let us be honest with one another, no matter how well crafted this bill is at not naming the Hawaii Superferry, the testimony during this Special Session, the vetting of this legislation with the company that will benefit from this measure, and the agreements and negotiations that were made behind closed doors over the contents of this bill are all evidence that this is special legislation.

"Assuming that what we are doing does not violate our State Constitution, I support this bill because of the framework it has adopted: allowing the Hawaii Superferry to operate with conditions imposed by the Legislature and the Governor while an Environmental Impact Statement is being conducted.

"I have reservations about this bill because I do not believe it is the best that we could have come up with. Evidence of an even better bill and better policy framework is that which was offered earlier by the Representative from Hanalei. Could we have hammered out better conditions that would allow the Superferry to operate? Sure, we could have if we, as the People's House, were willing to take the time to deliberate and compromise on amended language, just as our Senate counterparts did to arrive at the Senate Draft that is before us now.

"By moving this bill along and not taking on the hard work of determining real and meaningful conditions, we have passed the buck to the very person and her Administration that some among us have been bitterly hostile towards, while not accepting or even acknowledging the consequences of our own actions, or inactions.

"Although the conditions do not go far enough, I hope the Governor holds true to her statement that she will impose conditions that the Hawaii Superferry is not happy with. For example, I hope she will impose a condition that includes a reduced speed in specified areas where all the experts agree are sensitive whale calving areas.

"In closing Mr. Speaker, I have one last comment on the audit of the State Administration that is in the bill before us. This is a critical first step in understanding how the events of the past few years unfolded. However, I hope, this analytical approach does not stop simply with the State Administration. Although there is no mechanism in this bill to conduct an analysis of our actions as the Legislature, and recognizing that we find it difficult to collectively police and regulate ourselves, I hope that we as legislators, and those legislators who follow us, will take away from this experience lessons about how we should conduct ourselves more openly and confront the tough issues earlier, rather than stifle the debate until the problem is simply too huge to ignore. This may seem too optimistic and unrealistic of a hope to have at this time, but if we, as leaders, do not expect better of ourselves, then how can we expect our neighbors, our friends, the people of this State to continue to have faith in their own government?"

Representative Waters rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Mizuno rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I am in support with reservations. Thank you. First and foremost, a viable transportation alternative is important. Actually, it's essential for the Hawaiian Islands. Mr. Speaker, the Representative from Lahaina mentioned that the Mesa Airlines was hit with a federal bankruptcy judgment of \$80 million. If the other legislators in this body looked at both the *Advertiser* and today's *Star-Bulletin*, both on the front page, it's important to know that because I don't think we're going to that third airlines here much longer. It's kind of funny because the *Advertiser* had indicated that an analyst had predicted that. An analyst had predicted that we were going to lose *go!* Airlines. I don't think you have to be an analyst to know that.

"This is a big concern. In fact, the Representative from West Kauai had mentioned to me that he paid approximately \$250 round trip when *go!* was not running. I'm very concerned because an alternative mode of transportation is needed for the islands of our State.

"Mr. Speaker, I certainly do support this viable transportation for Hawaii, but it's with reservations. I am unable to mention in intricate detail all of my concerns. But, for starters, I do have environmental concerns. On the Finance and Transportation Committees, we heard hours and hours of testimony. There were concerns of lack of safeguards and adverse impact on our environment and sea life, and a lack of respect for our culture. And that's just the tip of the iceberg, Mr. Speaker.

"In addition, I also have concerns about the question that was brought up a number of times not only from our colleagues, but also from many of our testifiers. Are we making an exception for one company, the Superferry? Are we doing this decision in this regard to our judicial system? Are we doing this in respect to separation of powers? These are questions that still go through my mind, Mr. Speaker.

"In addition, Mr. Speaker, I do have concerns about the Administration. It's with complete respect that I bring up what I believe that I heard from the Representative from Laie. She mentioned that an EIS or an EA is not a big deal. Mr. Speaker, it is a big deal. If they did an EIS or an EA, we might not be here today. I'm very concerned Mr. Speaker, because a number of our colleagues had excellent questions during the hearing, and the Transportation Director could not answer them. Point blank questions: 'Why could you not perform the EIS? Or at least an EA?' To which he stated, attorney-client privilege. In fact, even the Attorney General said the same. This concerned me, as well as a number of the other members.

"Mr. Speaker, we do have a couple of months before we start our 2008 Legislative Session and we do have something to look forward to. In addition, one of our other speakers brought up the performance audit in the Senate bill we're considering today."

Representative Meyer rose, stating:

"Mr. Speaker, I'm rising on a point of personal privilege. The present speaker referred to comments attributed to me and actually, I was just paraphrasing and agreeing with comments made by the speaker from Maui."

The Chair responded, stating:

"I don't believe that it's actually undermined your role as a Representative. That's not a point of personal privilege. You can rebut that on rebuttal arguments. Please proceed, Representative Mizuno. Your time is nearly complete. Will you be concluding soon?"

Representative Mizuno continued, stating:

"Absolutely, maybe 30 more seconds. Thank you very much. Finally, I would like to applaud all the Committee members. There were outstanding questions by a number of them, and actually all 51 Representatives. Whether we agreed or disagreed, this was an outstanding job of the democratic process. Thank you Mr. Speaker."

The Chair then stated:

"Members, we've been going on for over two hours. At this point, is there anyone who has not risen yet that wishes to say anything new or novel, or something that has not already been discussed? Seeing none, Representative Souki."

Representative Souki rose to respond, stating:

"Thank you. This is a quick rebuttal in favor. I think this is an important point that the Members need to understand. Back in 1997 or 1998, we had the first State of the Judiciary by the Chief Justice. He concluded his speech by saying that this body, the Legislature, has the 'trump card'. What he meant is that any decision that the Supreme Court comes up with could be trumped by us, of course with good reason. So what we are doing is not unprecedented as may have been mentioned by a previous speaker. It does not impinge upon the Supreme Court. But if I can put it in a humorous way, we're just following the recommendation of the Chief Justice that we can in fact, trump the Supreme Court."

"I would also like to say, and I need to say this otherwise I would be remiss. I want to thank the Finance Committee and Transportation Committee members for two long hearings; one for 12 hours, and one for 9 hours. They were very patient. They were tired. They asked good questions. Thank you all. I thank the leadership. Thanks to everyone for their participation in this democratic process."

Representative Caldwell rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. A few closing observations. First is a thanks to all Members of the House, the 51 Members and the staff for working so hard during this Special Session. Yes, I am in support."

"Thank you. Also the staff at the House Majority Staff Office, Linda Oamilda who is in charge of that office; and of course Rich Dvovich and Mr. Funaki for working so hard on the legislation in the early days. The Speaker's staff who worked very, very hard. The Chief Clerk's Office who assisted with these marathon hearings, feeding people, and making sure everything ran very smoothly. I want to thank them. The Sergeant-at-Arms staff for coming in on special duty and helping out. The House Finance staff for helping the Sergeant-at-Arms staff, and also for staffing the Committee. And of course the Transportation Committee staff. All of them have helped contribute to making sure that voices were heard and that things moved smoothly."

"We also want to thank the public and the Administration who participated in making this the best bill possible. And finally, the people of this State, including our harshest critics on both sides of the issue. We owe them thanks too. Not one of us is completely comfortable with what we're doing here today, Mr. Speaker. A Special Session should be reserved for unique situations. It's a last option. This is not the most optimum way to do the public's business, but we were dealt a certain hand of cards and we've worked with that very well, I think and we should all be appreciative for what we've done."

"Many of you may have noticed that the title of the *Honolulu Star-Bulletin's* editorial today is titled, "Superferry legislation makes the best of a bad situation." I would agree, and I think most all of us would agree with that title. Through focused leadership, the House supported a carefully crafted measure that set a firm foundation putting the burden on the Administration, no amendments. And it

was balanced and provided protection for the environment. In the end Mr. Speaker, it provided a platform, a basis, a structure for the Senate to come back with some clearly defined amendments to protect the environment and cultural resources, and it allows the ferry to sail. I think in the end, these are all actions we can accept."

"The bottom line is that it allows the ferry to sail so long as it meets certain conditions and until a full EIS is completed. No more and no less in the end. In our lengthy joint Committee hearing Monday, we received a commitment from the Governor, and I think this was significant, under questioning from the Finance Chair. That the protocols and conditions she adds will be more than the Superferry would like, and less than the critics desire. Perhaps that's the most we can ask for, and maybe that shows a balanced approach to this issue."

"Our measure also calls for an audit to determine how and why the exemption for an Environmental Assessment was granted. People might say that this is about politics. No, Mr. Speaker. Really, the reason is simple. We need to know what went wrong before we try to fix it legislatively or we could do more harm than good. Is Chapter 343 flawed? Or is the process flawed? There is a huge difference, Mr. Speaker. A huge difference between a flaw in the law, and a flaw in the administration of the law. Which one is it? I think many Members on the floor today have different theories as to where the flaw lies. This audit will get to it. We are expecting full and complete cooperation from the Executive Branch to complete this review so that we can prevent something like this from happening again."

"I offer some food for thought for all of us, beyond the Superferry operations that we are talking about today. The first concerns the Supreme Court decision – a significant, significant decision. We need to look beyond the Superferry at how the court decision and the social experience that resulted from that will change the way we do business and the way we interact with each other in our State going forward. There are two big takeaways from the Supreme Court decision:

"First, you have to look at secondary impacts. Proposed projects cannot just look at the primary impact anymore. Secondary impacts are important and paramount under this court's decision."

"Second, the court underscored the importance of public participation in the review process of an EA and EIS and felt that because it was not present, it was defective. If we don't heed that going forward, we're all going to be in trouble."

"Government and the private sector, in laying out plans, need to work from those assumptions, rather than playing 'chicken' or 'hide the ball' with the law or the court, and hope that it will be ignored. It didn't work with Hokulia. It didn't work with the Superferry. And it won't work in the future. In fact, I think there'll be even bigger problems."

"The other important thing is community sentiment. We've heard a lot about that today. In a relatively compressed period when you think about it. It was a week and a half. We heard a lot from community on this issue. But something that really resonated with a lot of us I think, who were listening to the hearing the other day before the Transportation and Finance Committees, was something from Maui Council Chair Riki Hokama."

"I am almost done, if someone would be willing to yield their time."

Representative Rhoads rose to yield his time, and the Chair "so ordered."

Representative Caldwell continued, stating:

"Thank you, Representative. Council Chair Riki Hokama summed it up this way. He had two questions he asked the Committee, and they were hard questions to answer. The first one is: 'When are we saying enough is enough?' When is enough, enough?"

"The second one, and harder one is: 'Who are we building for?' Whatever it is that we are building, who are we building for?"

"I think those words resound with everyone on this Chamber floor. In the future they must be asked and answered, before any concrete is laid, before the new technology is introduced, and before the building goes up. Question: Are we building for quality rather than volume? Question: Are we creating self-contained communities where people can live, work and enjoy life without continually burning away hours having to leave and travel elsewhere? Question: Are we using the remarkable resources of our home, of this great State, in respectful stewardship? These are important questions that we have to ask for all of ourselves.

"For those who say those questions are too much to ask, wait until there is a project that comes along in your community and impacts you. See how you feel if it is planned entirely behind closed doors. This has to change for all of our sakes.

"Working within these assumptions and in a community that is demanding increased transparency, we must Mr. Speaker, still strive for progress and excellence in this State and not slide into 'backwaterism'. We've heard that term used recently in editorials. But it really is striving for excellence. It's not just about getting by. This is what I think. I believe this is what many of us think. This is why we supported the Superferry legislation in this Special Session.

"Again, I would like to thank everyone for their cooperation, their hard work, their patience, and for working together. Thank you very much, Mr. Speaker."

Representative Morita rose to respond, stating:

"Thank you, Mr. Speaker. I am still in opposition. I just wanted to add a caveat to the statement made by the Chair of Transportation. The Legislature may hold trump card, but that trump card has to be consistent with the Constitution of the United States, and the Constitution of the State of Hawaii. That's the parameters we have to operate within. And the actions that we have taken may not fall within that parameter. Thank you."

Representative Luke rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

At 2:31 o'clock p.m., Representative Karamatsu requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 2:32 o'clock p.m.

Representative Yamashita rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support. I just have one comment to make. As I went through my district and met with different people, received phone calls, emails, different things like that, one thing stood out to me. One is that some people said, most people support the Superferry as I do, as an alternative means of transportation. But they said to do the EIS first. They said they wished it had been done first. Do an EA first. Most people believe that we need to protect the environment. In fact, when I spoke to most people, that was the one common thread. Everybody believes that we need to protect our environment.

"So it is my wish, or my request to this body and the people of this State, that if it is true that we all want to protect our environment, that we should self-police ourselves. We should take responsibility

in inspecting our own vehicles, our own packages, our own things that we ship, not only through the Superferry, but Young Brothers and other means. We might want to implement a program like a neighborhood watch where we watch each other. I just offer that as a thought. Thank you."

The motion was put to vote by the Chair and carried, and S.B. No. 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Third Reading by a vote of 39 ayes, to 11 noes, with Representatives Berg, Carroll, Hanohano, Morita, M. Oshiro, Saiki, Shimabukuro, Sonson, Takamine, Takumi and Tokioka voting no, and with Representative Marumoto being excused.

At 2:35 o'clock p.m., the Chair noted that S.B. No. 1, SD 1, passed Third Reading.

At this time, Temporary Chair B. Oshiro called upon Representative Say to assume the rostrum, stating:

"At this time Speaker Say, I would like to return the gavel and the rostrum to you."

Speaker Say assumed the rostrum, stating:

"Members of House, how about giving Representative Blake Oshiro a standing ovation for a job well done."

#### INTRODUCTION OF RESOLUTIONS

The following resolutions (H.R. Nos. 1 and 2) were announced by the Clerk and the following action taken:

H.R. No. 1, entitled: "HOUSE RESOLUTION RELATING TO THE JOURNAL OF THE HOUSE OF REPRESENTATIVES, SECOND SPECIAL SESSION OF 2007," was offered by Representatives Caldwell and Finnegan.

On motion by Representative Caldwell, seconded by Representative Finnegan and carried, H.R. No. 1, was adopted with Representative Marumoto being excused.

H.R. No. 2, entitled: "HOUSE RESOLUTION INFORMING THE SENATE AND THE GOVERNOR THAT THE HOUSE OF REPRESENTATIVES IS READY TO ADJOURN SINE DIE," was offered by Representatives Say and Caldwell.

On motion by Representative Caldwell, seconded by Representative Finnegan and carried, H.R. No. 2, was adopted with Representatives Marumoto being excused.

#### ANNOUNCEMENTS

Representative Berg: "Thank you, Mr. Speaker. Welcome back. On a lighter note, today is the Leader for a Day celebration and recognition. If you recall, years ago the Representative from Aiea/Pearl City initiated an essay contest for statewide solicitation of essays from students in high school. We've extended that this year to include middle school. The question posed to all public school students was, 'If you could participate as an elected official and improve the quality of life in Hawaii, what is one issue you would address, and what is the solution?'"

"Today we acknowledge fourteen selectees who are going to shadow the Governor, Lt. Governor, the four mayors, and the State Superintendent. They had a ceremony on the Fifth Floor and celebrated with their families and teachers at a luncheon for youth and advocates at Washington Place. I mention this because the essay

program has extended this year and we will now have 76 more selected essayists who are interested in shadowing us. So during Session, probably on Human Rights Day in March, there will be an opportunity for all of you to have a young person who demonstrated an interest in civic responsibility shadow you. Information will be forthcoming. Thank you."

Representative Caldwell: "Mr. Speaker, this is not so much of an announcement as it is a 'thank you.' The Minority Leader, Lynn Finnegan gave all of us some trick-or-treat candy. I looked over to her and I held it up. I ate it, and now I don't feel so good. My symptoms are that I'm feeling like I'm kind of leaning toward the right. But anyway, thank you from all the Members of the House for the trick-or-treat candy. Thank you."

Representative Luke: "Mr. Speaker, thank you. You know I wanted to thank you, the leadership and everybody for having a pretty smooth sailing. And I also wanted to especially thank the good, now Floor Leader. I know Mr. Speaker that you thanked him, but he rose up to the challenge when he knew it was going to be a difficult issue. There was going to be a lot of debate and a lot of challenges. He pretty much took on the responsibility, and took the rostrum like a pro. The thing is he's only been there for six days. I just realized that. And the reason why we just didn't notice is because he was so good.

"And if I could just make a request to you Mr. Speaker. You know, next Session, when you feel tired, can you just turn it over to him? Because I know we would have been here until 6:00 if he wasn't up there. So thank you again.

"And you know, I for one am really glad that everybody is back in their row so that when I rise up and insult the Majority Leader, he knows exactly who I'm talking about. So thank you very much."

#### ADJOURNMENT

Representative Caldwell moved that the House of Representatives of the Twenty-Fourth Legislature of the State of Hawaii, Second Special Session of 2007, adjourn sine die, seconded by Representative Finnegan.

The motion was put to vote by the Chair and carried, and at 2:41 o'clock p.m., the Speaker rapped his gavel and declared the House of Representatives of the State of Hawaii, Second Special Session of 2007, adjourned sine die. (Representatives Marumoto, M. Oshiro and Takamine were excused.)

#### SENATE COMMUNICATION

The following communication was received by the Clerk and was placed on file:

Sen. Com. No. 3, transmitting S.R. No. 3, informing the House that the Senate is ready to adjourn Sine Die, which was adopted in the Senate on October 31, 2007.