

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

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DIRECTOR

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IN REPLY REFER TO:

March 3, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1171, RELATING TO TRANSPORTATION.

COMMITTEE ON FINANCE

The Department of Transportation (DOT) **supports** this bill, which is an Administration Initiative. This bill will amend Section 18 of Act 2, Second Special Session Laws of Hawaii 2007, by changing the repeal date in paragraph (1) from "2009" to "2010."

The intent of Act 2, in large part, was to enable a large capacity ferry vessel to operate under certain conditions while an Environmental Impact Statement (EIS) was prepared in accordance with Act 2. DOT competitively selected Belt Collins, Hawaii, Ltd. to prepare the Act 2 EIS on behalf of DOT; and the draft EIS was published on January 8, 2009 with written comments due on or before February 23, 2009. Following receipt of the written comments, DOT will process and respond to the written comments in accordance with Act 2; and a final Act 2 EIS will be prepared and submitted to the Office of Environmental Quality Control (OEQC), the Act 2 designated final accepting authority.

While DOT anticipates that the final Act 2 EIS will be submitted to OEQC, processed, and accepted on or before the forty-fifth day, excluding Saturdays, Sundays, and holidays, following adjournment sine die of the regular session of 2009, DOT supports a one-year extension of the repeal date, to 2010.

First, in the unlikely event that the final Act 2 EIS was to be non-accepted by OEQC and further revisions required of the DOT, a repeal date of 2010 would give the DOT ample time to incorporate OEQC's comments and submit a revised final Act 2 EIS back to OEQC before Act 2 was repealed.

Second, Act 2, Part II, Section 4(a) sets forth certain conditions for the operation of the large capacity ferry vessel. These conditions benefit the public and the public is well-served by the extension of these conditions until 2010.

## HOUSE BILL NO. 1171, RELATING TO TRANSPORTATION.

March 3, 2009

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Third, Act 2, Part IV, Section 13 established a temporary Hawaii inter-island ferry oversight task force (OTF), which met for 13 months and submitted its final report dated December 29, 2008 to the Legislature at the end of December 2008. On page 25 of its Final Report, paragraph c., the OTF wrote:

In order to ensure that there is a comprehensive public comment period and the Act 2 EIS is completed, the OTF recommends that the repeal date of Act 2 be repealed.

Extending the Act 2 repeal date from 2009 to 2010 is consistent with the recommendations of the OTF that public comments and the response thereto be "comprehensive" and that the Act 2 EIS be completed before Act 2 is repealed.

In summary, as set forth above, there are many reasons why the extension of the Act 2 repeal date from 2009 to 2010 makes sense. In essence, the goal is to remain consistent with the intent of Act 2 while ensuring that a comprehensive EIS document is prepared, submitted, and ultimately accepted by OEQC. Accordingly, we respectfully request that this bill be passed out of committee.

Thank you for the opportunity to testify on this matter.



One Waterfront Plaza  
500 Ala Moana Blvd, Suite 300,  
Honolulu, HI 96813

March 2, 2009

**Committee:**

House Committee on Finance  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
Hearing Date: Tuesday, March 3, 2009  
Time: 6:00 p.m.  
Place: Conference Room 308, State Capitol

RE: Testimony in support of HB1171 Relating to Transportation

Dear Chair Oshiro and members of the House Committee on Finance,

Hawaii Superferry, Inc. respectfully offers this testimony in support of HB1171, which would extend the sunset date of Act 2, Second Special Session Laws of Hawaii 2007 ("Act 2"), by up to one year, until the earlier of the acceptance of the final environmental impact statement as provided in Act 2 or the forty-fifth day following the adjournment sine die of the Regular Session of 2010.

We understand that the Department of Transportation Harbors Division and its consultant are currently reviewing and evaluating comments received from the public on the draft environmental impact statement that was distributed earlier this year and are in the process of responding to the comments. We also understand that Harbors Division anticipates completion of the final environmental impact statement, acceptance by the Office of Environmental Quality Control ("OEQC") and notice of such to occur before the repeal date currently set forth in Act 2.

Given the fact that approximately four months remain before the Act 2 repeal date takes effect, Hawaii Superferry believes that it would be prudent to extend the repeal date as currently proposed in HB1171 so that a complete environmental impact statement may be submitted to OEQC in a timely and responsible fashion.

Sincerely,

A handwritten signature in cursive script that reads "John L. Garibaldi".

John L. Garibaldi  
Vice Chairman

Committee on Finance  
Hearing  
Tuesday, February 3, 2009, 6:00 p.m.  
Conference Room 308



Representative Marcus R. Oshiro, Chair

**Testimony on HB1171**

Dear Chair Oshiro and Members of the Committee:

My testimony is in STRONG SUPPORT of HB1171. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai. I was one of the Kauai members of the Temporary Hawaii Inter-Island Ferry Oversight Task Force.

In the Final Report to the Legislature from the Temporary Hawaii Inter-Island Ferry Oversight Task Force, dated December 29, 2008, the task force recommended that the Act 2 not be repealed. The task force only had the Rapid Risk Assessment for comment and for recommendations during our tenure. The draft EIS was issued after we had completed our report and this left minimal public comment time before the final EIS could be issued and comply with the repeal date for Act 2. We strongly felt that the requirements of Act 2 should continue until the draft EIS had an adequate public comment period. Extending the repeal date to 2010 would accomplish this.

I humbly ask for your consideration for SUPPORT of HB1171. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink, appearing to read "Lynn P. McCrory", written in a cursive style.

Lynn P. McCrory  
President

**Sandra Herndon**  
**4433 Panihi Street, Kapaa, HI 96746**  
**(808) 821-2101 (808) 635-4545**

Testimony for FIN 3/3/2009 6:00:00 PM HB1171  
Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Sandra Herndon  
Organization: Individual  
Address: Kapaa, HI 96746  
E-mail: pb1wahine@gmail.com  
Submitted on: 3/2/2009

Comments:

Honorable Committee Members:

My testimony in this matter addresses several issues, which might have been answered adequately and in a timely manner by an independent agency report. It would appear that much time and effort has been used to justify the HSF project already, and contrary to the DOT's position, it does NOT serve the public to extend the deadline for comment on "Act 2 EIS". Speaking of comments, where are the recommendations of The Oversight Taskforce in this bill? It appears that the Lingle Administration is again endeavoring to manipulate the Legislature to gain support in this immoral, if not illegal project.

It is appalling to me the taxpayer cost for this project continues to rise, unchecked and unfunded- approaching \$10,000,000.00!- when so many of our essential state programs are being cut due to the present economic situation. The Keiki are the ones who are paying for this travesty!

And for what? HSF has actually already proven not to be viable and will never be so because the vessel's operational design is not properly matched to the distances and conditions between the Hawaiian Islands. Nor, I believe, was the original intent of this vessel ever to serve as a public passenger conveyance. We are getting into very deep water in this issue, and there is much danger in terms of the environment, the cultural and community impact to the neighbor islands, as well as the fiscal risk, none of which has been addressed appropriately by Belt-Collins.

With deep respect and sincere appreciation for the time and commitment that is given in this committee, I must nevertheless say, the time has come for the legislature to stand up for what is Pono, and allow this privately owned, publicly financed fiasco to float (or sink) on its own, without the "bail-out" of Governor Lingle. Please reject HB1171!

Mahalo nui loa,  
Sandra Herndon

**Sandra Herndon**  
**4433 Panihi Street, Kapaa, HI 96746**  
**(808) 821-2101 (808) 635-4545**

Date: Mon, 2 Mar 2009

Subject: Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308

Testifier position: oppose

Testifier will be present: No

Submitted by: Jeffrey Parker

Organization: Individual

Address: P.O. Box 170, Haiku, HI 96708

E-mail: [jeffy3@earthlink.net](mailto:jeffy3@earthlink.net)

Submitted on: 3/2/2009

Dear Chairman Oshiro and Members of the House FIN Committee,

I am writing to you as an individual to voice my opposition to HB1171, a Bill to extend the sunset date of Act 2. The Performance Audit of Act 2 by the State Auditor, which was required by yourselves concludes:

**“We also found that the legislation on behalf of the Hawaii Superferry compromised the State’s environmental laws and set a worrisome precedent for future government accommodation that puts the interest of a single business before the State’s environmental, fiduciary, and public safety responsibilities.”**

The entire way in which the Hawaii Superferry project was allowed to circumvent environmental review under HEPA has undercut and weakened our State's excellent environmental laws. The Pseudo-EIS required by Act 2 does not comply with HEPA, does not accomplish the recognized purposes of environmental review, and weakens environmental protection in Hawaii.

- a. “No Action Alternative” is meaningless; non-implementation clause of Chapter 343 is gutted.
- b. Act 2 EIS attempts to restrict challenges; Act 2 does not discuss the public’s right to challenge the adequacy of the “EIS”, depriving the public of their ability to assure compliance with the “mandates” of Act 2. In normal environmental review, members of the public have vested rights to the judicial review of the adequacy of any EIS. It is this right to judicial review that assures the integrity of the environmental process.
- c. Mitigation Measures in Act 2 EIS are meaningless; because the Superferry is allowed to go ahead and operate, there is no incentive for the

DOT or HSF to actually implement any mitigation measures. I can not find any legal requirement in Act 2 for mitigation to actually be implemented. The current situation is further exacerbated by the ongoing economic crises. Even if additional mitigation is identified in this ACT 2 "EIS", where would the funds for implementation come from?

In the Biological Assessment done for the Act 2 Pseudo-EIS, Dr. Howarth, et al. state:

"Operation of the LCIF provides significant new pathways for the inter-island transport of invasive species by facilitating efficient rapid high-volume transportation of passengers, their cars, and personal effects."

"The ability to drive contaminated vehicles and material directly from infested habitats on one island to the LCF and within a few hours drive directly to similar un-invaded habitats on another island poses a special risk."

"Such a service (LCIF) adds to the existing risk of movement of harmful invasive species to new islands.

**Chairman Oshiro, by leaving the issue of the transport of alien species inter-island as an "unresolved issue" (in the DEIS), it means that DOT and DOA are not going to do anything and they are going to allow the Superferry to spread alien species all over the State.**

Those of us in Hawaii who care about environmental protection have had to endure almost a full year of unmitigated risks and had to endure the attack on our judiciary and the separation of powers caused by Act 2.

Let us also not forget, the \$40 Million dollars wasted on completely unnecessary barges (Superferry now says it will install Stern Quarter ramps for unloading).

Hawaii Superferry, a mainland-based corporation, has been given every possible break, and still their ridership is so low that their gross revenues per voyage only barely cover their fuel costs.

Enough is enough. It is time for the Superferry to stand on its on two feet. If Hawaii Superferry is a viable business, they will survive - without further intervention from the Legislature. I urge you to take no action on extending the sunset date of Act 2.

Thank you and sincerely,  
Jeffrey Parker

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 5:23 PM  
**To:** FINTestimony  
**Cc:** holter@maui.net  
**Subject:** Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Lance Holter  
Organization: Hawaii Democratic party  
Address: PO Box 790656 Paia, HI 96779  
Phone: 808-579-9442  
E-mail: holter@maui.net  
Submitted on: 3/2/2009

**Comments:**

We are not in support of special legislation meant to benefit one class of beneficiary or special interest. Contrary to DOT's testimony, this bill does NOT add to the public's time to comment on the Act 2 'EIS.' In fact, the public comment has already been closed February 23, 2009. Further, the EIS developed as a response to Act 2 is after the fact, flawed, a special interest law and does not respect the circuit court ruling that the super ferry poses "irreparable harm" and in violation of HRS 343.

The Hawaii Democratic party at the 2008 State convention passed in the Environmental committee the Resolution Enviro 08-10 Seeking a Proper Environmental Review of the superferry, therefore making this a part of the Hawaii Democratic party platform.  
Lance Holter, Chairman Maui Democratic party

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**ent:** Monday, March 02, 2009 10:06 PM  
**To:** FINTestimony  
**Cc:** leetepley@earthlink.net  
**Subject:** Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Lee Tepley  
Organization: Individual  
Address: 73.1132 Ahikawa Street Kalua Kona, Hawaii  
Phone: 808 325 0710  
E-mail: leetepley@earthlink.net  
Submitted on: 3/2/2009

**Comments:**

To all members of the House FIN committee.

Please do not pass bill HB1171. It is just one more example of the way that Governor Lingle and her administration has been engaged in a corrupt operation to favor a single company at the expense of the taxpayers.

Act 2 is obviously illegal and unconstitutional. If the Supreme Court should rule otherwise, I believe that it would cast doubt on the reputability of the court.

In addition, the Superferry seems to have no interest in becoming commercially successful. It clearly seems to be a prototype for a military version for which Lehman has already obtained a multi-billion dollar contract. So HSF has been using and will continue to exploit - and perhaps bribe - the corrupt Lingle administration -and the public be damned

It all comes down to Hawaii acting like a banana republic with no interest in growing up to be a real democracy.

Sincerely,

Lee Tepley, Ph.D, Physics.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**sent:** Tuesday, March 03, 2009 7:20 AM  
**To:** FINTestimony  
**Cc:** lokahipath2@live.com  
**Subject:** Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Hope Kallai  
Organization: Individual  
Address: POB 655 Kilauea HI  
Phone: 808-828-367  
E-mail: lokahipath2@live.com  
Submitted on: 3/3/2009

Comments:  
Aloha e Representatives:

I urge you to reject any consideration of extending Act 2 through HB 1171.

This act is seriously flawed and cannot be extended. Compromises cannot continue to be made in consideration of one private company over the interests of the people and environment of the state of Hawai'i.

The Hawaii Superferry has never been in compliance with Act 2. As previously submitted, in art,

1. A-1 No NMFS observers have been collecting whale data. No NMFS have ever been assigned to the Alakai. Act 2 A-1 requests that the NMFS observers currently reside in Hawaii. This geographic exclusivity is not a legal hiring criterion for federal hiring practices and is probably in violation of OSHA. The Alakai has posted 2 crew members as whale avoidance lookouts. These are not NMFS marine mammal observers, trained to record whale population dynamics and individuals, behaviors and other data design specifications. Whale avoidance observers are a welcome addition but do not take the place of NMFS marine mammal observers. Due to the scientific data collection criteria, these tasks are not appropriate for crew members to perform in excess of their duties. Act 2 requires Marine Mammal Observers. HSF has been operating in serious non-compliance with ACT 2 and NEPA.

2. A-2 The whales and waters of the Hawaiian Islands Humpback Whale National Marine Sanctuary have not been avoided. Master of the Vessel logs submitted to the legislature through the Oversight Task Force Minutes and Reports document some extremely close encounters with whales, one at 31 knots. Route decisions must include whale safety and honor the protection of the management objectives of the sanctuary. Perhaps better data review and/or aerial surveys would help avoid areas of high densities of whales, possibly incorporating whale watching boat and tourist helicopter sightings through sanctuary data collection.

3. A-3 In addition to whatever whale lookouts the company may post, two NMFS observers are required. Most able bodied seamen (AB) are not qualified wildlife biologists and cannot be expected to add data collection and statistical reports as part of their job duties.

4. A-4 The recommended 500 meter whale avoidance distance has not been honored. The HIHWNMS recommended 100 yard distance has been violated on many occasions. This whale harassment is in violation of NEPA and must be considered for the overall impact to a reproductive population of endangered species.

5. A-5 Radar is not being used. Bow mounted night vision glasses are being implemented because the crew members were getting tired. Un-tested technology is being relied upon during night time conditions. Whale avoidance mitigation measures are not successful, yet night and low-light trips are being allowed throughout protected waters. Perhaps if qualified wildlife biologists were being used, they would bring the appropriate field equipment.

6. A-6 Whale observers should be documenting whale behavior, not the Master of the Vessel (captain). Captain's reports should include vessel speed, weather, route, etc. NMFS whale observers' data should include on whale behavior, numbers, age class and other important biological data and the whale's response to the boat. The data must go to qualified marine mammal experts at NMFS and the HIHWNMS, not the Director of Transportation and the Chairperson of the Board of Natural Resources.

7. A-7 Most crew members are not avian biologists specializing in Endangered Species and Migratory Birds, their identification and the applicable laws. Perhaps NMFS observers can be used or USFWS observers. These are protected birds and must be given full consideration under federal and international laws.

8. B-1, B-2 The DEIS, as prepared, has conflicting information. Modifications of the second ship, A616, have changed the water source ability and the destination of the wastewater. Onboard wastewater treatment is a significant alteration of these criteria. These modifications need to be addressed in a Supplemental EIS.

9. C-3 Traffic alone cannot determine the timing of the Superferry departures. Wise and informed biological information must be considered, and the long-range priorities of the state.

10. D-1, D-2 A better security plan is required for the safety of passengers and the overall environment of the state. More security should be required than just off-duty cops controlling traffic. An integrated fire suppression plan needs to be developed.

11. E-1, E-2 Agricultural screenings have never been 100%. Screening still allowed dirty truck transport. Screeners can only request to check luggage, coolers and vehicles, not the person. Anything that can be carried on the body, in pockets, can be brought on the ship and transported to another island. DLNR/DoA screeners need to be present every voyage, like at the airport.

12. E-4 Advance notification will only affect a certain percentage of the population. Notification is not prevention, nor does it obviate the kuleana.

13. E-5 Dirty is in the eye of the beholder and is subjective. Dark and low-light inspections will not reveal the same as day light inspections. Many invasive species cautions are extremely small and will not be visibly found at an inspection.

14. E-6 The living plants and propagative plant parts and roots criteria is confusing. Can ginger root be transported? Bought ginger and olena? How about Kahili ginger (an invasive species seriously affecting Koke'e habitats)? Would the employee be able to tell the difference? The intention is understandable, but application and enforcement is confusing.

15. E-16 Disposal of confiscated pests and plants needs to be addressed.

16. E-18 This criteria needs to include federal authorities, officials, agents or contractors. This serious omission needs immediate correction to facilitate accountability of the HSF to the US Coast Guard.

17. F-2, F-3 Transportation of any live aquatic or marine organism needs serious consideration. Freshwater Tahitian prawns are suspected as being able to host the rat lungworm nematode and extremely cautionary measures need to be taken to prevent the spread of this potentially deadly meningitis disease.

18. F-4, F-6 Perhaps the state or counties are not the appropriate ones to make cultural recommendations. These criteria might be more respectful if a culturally appropriate person or organization provided the information, not a government agency.

19. Does the non transport of logs and limbs refer to cultural objects such as kala'au or lomi sticks?

20. G-1 Are special agricultural transport rates or tariffs allowable over a non-Jones Act compliant vessel (loading barge Manaiakalani)? Is this really in the public need and consistent with the stated objectives of the company? Would this take re-application to the PUC?

21. G-2 This company is not in compliance with the Rapid Risk Assessment. This company has not made information available on a timely basis as stated in the Auditor's Report and as mandated by the Marine Mammal Protection Act. They have not applied for the Incidental Take Permit (ITP) and Habitat Conservation Plan (HCP) as stated in the DEIS. They are not in compliance and must not be treated as such.

The barges and ramps used to offload the Alakai were built in China and are a violation of the Jones Act subject to fines of \$200 per passenger. The Auditor found in Performance Audit on the State Administration's Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai'i Environmental Impact Statements Law beginning on page 33, that the barges are considered a foreign made vessel and if not necessary for the HSF, they cannot be sold in the US. If they cannot be sold in the US, they can not be used the waters of the US (without being subject to fines). Liability of the state through their usage must be determined. They were not

engineered to be used with tug boats and such usage exceeds warranty and passenger safety limitations. How can the state allow the Manaiakalani ramp to be used in Kahului Harbor? Maintenance issues and financial obligations raised in the auditor's report must be addressed. In Phase II Ms. Higa continued:

y Providing Unusual Accommodations to a Single Business, State Sets a Troubling Precedent

With the Arrival of Hawai'i Superferry, the DOT Reversed a Long-standing Policy of Not Providing Additional Pier-side Equipment for Harbor Users

Department Technical Staff Implemented the Only Harbor Improvement System That Could Meet Their Time Horizon

Recent Legal and Legislative Actions Blur the State's Environmental Obligations

For nearly two months after the December 2004 decision, DOT technical staff continued to pursue plans for permanent harbor improvements

In pursuit of interim harbor improvements, the department failed to recognize its responsibility to conduct an environmental review of Hawai'i Superferry operations

The second ferry's onboard ramp eliminates the need for DOT pier improvements at Kawaihae and N&#228;wiliwili Harbors

The state needs to be held accountable for these actions and not continue to extend decisions based upon flawed exemption process

\* Coast Guard Certificate of Inspections rate the Alakai as only able to carry passengers in 6 meter waves. This safety envelope has been exceeded many times. This act cannot be extended allowing unsafe operations without consequences.

\* Recommendations of every federal environmental agency have been overlooked. US FWS recommended a sterilization procedure to prevent the spread of invasive species yet HSF doesn't even check every vehicle. Act 2 has no penalties for non-compliance. Considerations of federal agencies must be honored. Substantial federal monies have been spent directly and indirectly on this project subjecting it to NEPA review. NEPA review will happen soon and the actions of the state will be scrutinized.

\* Actions of the Attorney General's office during the records request of the audit should be evaluated. The Department of Transportation/Harbors needs to be held accountable for its actions and decisions.

\* Legal fees are mounting and are unpredictable. Time to stop repeating the mistakes of the past and take a hard look at this project. It is not financially viable. It is not safe. Its' operations are not legal. Ramp usage is not safe or legal. One private company cannot monopolize our ports, prohibiting bulk container deliveries and fuel deliveries.

\* Whale/vessel strikes are expected and predicted to be 100% fatal to the whale. What happens to an aluminum ship cannot be predicted.

\* Responses and recommendations of the Oversight Task Force have not been honored.

\* To protect public health, SB2526 2008 (the Bunker Fuel Bill) needs to include operations of any large capacity vessel burning dirty diesel in our ports, including the Hawai` Superferry. While in port and within 5 miles of shore, ultra low sulfur diesel must be used (as mandated by the EPA by 2012). Pasha has recently converted their car carrying barges to ULSD without any significant loss of fuel economy.

\* There are huge security issues that have not been discussed: presently there are no checks of what passengers carry in their pockets and on their person (only coolers, luggage and vehicles can be asked to be opened). Any contraband, weapons or drugs that can be concealed on the person is being carried interisland. This cannot be allowed. There are no security measures to prevent bombs or other terrorist actions. We should be worried potential terrorist actions to our islands, harbors and even military infrastructure not worried about surfers requesting an EIS. There is no way to protect our children from the spread of interisland child predators. No TSA type security measures are implemented, as ther state ferry have.

\* The Act 2 required DEIS, as submitted, is horribly incomplete and inaccurate. Many responses have been submitted and must be given full consideration. Act 2 cannot be extended to consider such an incomplete document. The DEIS has no inclusion for the on-board ramp alternative consideration constructed for Hull A616 which makes harbor

improvements unusable. Other alterations to the second hull allegedly include onboard wastewater and overboard disposal options, in direct contradiction to the DEIS. Act 2 cannot be extended until there is honesty and accountability concerning this project.

\* Inspection costs must be borne by the company, which will be passed on to the assenger. The cost of airline agricultural inspections has been factored into each ticket. The cost of interisland ferry transport of invasive species inspections must be borne by the interisland ferry. The status of the PUC permit must be re-evaluated considering the safety issues, non-compliance and failure to adhere to environmental laws.

Serious lobby efforts have been invested in support of this project. Many decisions have been forced before there was adequate consideration of scientific facts. The state's system of environmental checks and balances has been compromised. No more actions expediting the operation of this company can be allowed to continue. It is time to take a hard look at the actions of the state and certain departments and think of our children's future, not one company's present demands. Do not allow further revision of our environmental checks and balances for one company. Our ports can not be monopolized by unsafe and unwise usage. Recommendations of the OTF must be considered. Impacts to our endangered species must not be expedited. With more endangered species per square mile than any other place on this planet, we do not need to hurry up more extinctions. Thank you in advance for unanimously rejecting the extension of this flawed act.

Auditor Marion M. Higa summarized the Hawai'i Superferry situation in Performance Audit on the State Administration's Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai'i Environmental Impact Statements Law : We conducted the second phase of this performance audit in response to Act 2, Second Special Session Laws of Hawai'i 2007. The audit examines the state administration's actions against the requirements of the Hawai'i Environmental Impact Statements (EIS) law, Chapter 343, Hawai'i Revised Statutes. The audit reviewed the State's actions in not considering potential secondary environmental impacts of the harbor improvements prior to granting the exemption from these requirements.

The Phase I report, Report No. 08-09, was issued in April 2008. We found that with the impending arrival of Hawai'i Superferry, Inc., the Department of Transportation (DOT) in 2004 and 2005 reversed a long-standing policy of not providing additional pier-side equipment for harbor users. State officials ignored

the recommendations of their technical staff, setting off a chain of events that culminated in the selection of inadequate harbor improvement systems. Moreover, the DOT's passive approach to the issue of addressing secondary or cumulative effects was made possible by a combination of flawed or unclear EIS laws and rules. Saddled with a deadline imposed by Hawai'i Superferry and supported by administration officials, DOT technical staff implemented the only harbor improvement system that could meet their time horizon, a combination of barges and ramps, which was not their preferred choice. The state-funded \$38.5 million harbor improvement system has proved to be problematic, best exemplified by

Kahului Harbor's barge, which is continually battered by high winds and waves. Not only have the barge and pier incurred more than \$3 million in damages (the liability of which has yet to be determined), the barge also requires the services of a tug boat to secure it to the pier during ferry operations. Like the barge and pier damage, responsibility for this significant extra expense has yet to be determined.

But the State has a larger and more expensive challenge over the horizon. Last summer, Hawai'i Superferry officials announced that they will be outfitting their second ship with an onboard ramp, a feature that eliminates the need for the \$10 million barge-and-ramp system at Kawaihae Harbor and the \$2.5 million ramp at Niihau Harbor, both built to accommodate Hawai'i Superferry and no other

users. If company officials choose to retrofit their first ship, the Alakai, with a loading ramp, the State's entire \$38.5 million barge-and-ramp system would quickly become unnecessary. Because the barges were designed specifically for Hawai'i Superferry

use, they cannot be repurposed in their present configuration by other harbor users. In addition, since they were built in China and are therefore

prohibited from transporting cargo within U.S. waters, the barges may have little use for potential buyers. This situation would have been avoided if state officials had required Hawai'i Superferry to carry an onboard ramp in the first place. We also found that the legislation on behalf of Hawai'i Superferry compromised the State's environmental laws and set a worrisome precedent for future government accommodation that puts the interests of a single business before the State's environmental, fiduciary, and public safety responsibilities.

Our recommendations are designed to address the flawed or unclear EIS law and rules.

1. The Office of Environmental Quality Control in the Department of Health should establish guidelines, including a checklist for agencies to ensure that all of the steps required by the rules have been properly addressed and documented before according an exemption.

2. The Environmental Council should establish a process to provide guidance to agencies in determining whether an action is projected to have a significant environmental impact which would make an exemption inapplicable;

3. amend the EIS rules to ensure the OEQC provides training to state and county agencies;

4. clarify the agency consultation process regarding proposed exempted actions; and

5. establish clear definitions of cumulative and secondary impacts in regards to water carrier operations and the scope of their coverage.

6. Finally, we recommend the DOT Harbors Division investigate options for a new barge mooring and fender system for the Kahului pier, determine responsibility for barge maintenance, and resolve financial liability issues over damage and unplanned expenses such as tug services. The DOT response sidesteps many of the issues and challenges some wording. But most of the language came from documents from the department. The department disagreed that on-board loading ramps would render the State's \$38.5 million barge-and-ramp system unnecessary. Yet, the ferries' shipbuilder as well as ferry officials have declared that on-board ramps would avoid the use of the problematic barges.

This second phase of the performance audit concerned the state administration's actions exempting certain harbor improvements to facilitate large capacity ferry vessels from the requirements of the Hawai'i Environmental Impact Statement Law was conducted in response to Act 2, Second Special Session Laws of Hawai'i 2007. Our audit focused on the state administration's actions that exempted certain harbor improvements from an environmental review, including why secondary impacts were not considered. It also focused on the effects of the State's decision to implement barges as an interim solution.

Phase II continued:

By Providing Unusual Accommodations to a Single Business, State Sets a Troubling Precedent

\* With the Arrival of Hawai'i Superferry, the DOT Reversed a Long-standing Policy of Not Providing Additional Pier-side Equipment for Harbor Users

\* Department Technical Staff Implemented the Only Harbor Improvement System That Could Meet Their Time Horizon

\* Recent Legal and Legislative Actions Blur the State's Environmental Obligations

\* For nearly two months after the December 2004 decision, DOT technical staff continued to pursue plans for permanent harbor improvements

\* In pursuit of interim harbor improvements, the department failed to recognize its responsibility to conduct an environmental review of Hawai'i Superferry operations

\* The second ferry's onboard ramp eliminates the need for DOT pier improvements at Kawaihae and Niihau Harbors

Marion M. Higa

State Auditor

I agree with Marion Higa. The state must answer to its actions concerning the superferry before any further consideration of operating outside of environmental safeguards.

The state needs to seriously consider exemption decisions based in error.

Thank you for rejecting the extension of HB 1171

Hope Kallai

## Maui Tomorrow

**From:** Irene Bowie [huladog1@earthlink.net]  
**Sent:** Tuesday, March 03, 2009 1:25 PM  
**To:** 'repmoshiro@Capitol.hawaii.gov'  
**Subject:** Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Subject:  
Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Irene Bowie  
Organization: Maui Tomorrow Foundation, Inc.  
Address: P.O. Box 299, Makawao, HI 96768  
E-mail: director@maui-tomorrow.org  
Submitted on: 3/3/2009

Dear Chairman Oshiro and Members of the House FIN Committee,  
I am writing to you to voice Maui Tomorrow Foundation's opposition to HB1171, a Bill to extend the sunset date of Act 2. The Performance Audit of Act 2 by State Auditor, Marion Higa, required by the Legislature, concludes: **"We also found that the legislation on behalf of the Hawaii Superferry compromised the State's environmental laws and set a worrisome precedent for future government accommodation that puts the interest of a single business before the State's environmental, fiduciary, and public safety responsibilities."** The State Auditor's report finds that the entire process for allowing Hawaii Superferry to begin operations before a completed environmental review was against the better judgment of Dept. of Transportation staff and circumvented Hawaii's environmental law. I would like to believe that if the Legislature had known all the details now found in the auditor's report earlier in the process this Act would have never been passed. Please do not allow this travesty to continue by extending the sunset date for Act 2. Stand firm for the integrity of the environment and the legislative process.

Mahalo,  
Irene Bowie  
Executive Director  
Maui Tomorrow Foundation, Inc.  
P.O. Box 299, Makawao, HI 96768  
Phone: 808-268-0303

3/3/2009

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 2:04 PM  
**To:** FINTestimony  
**Cc:** mauibrad@hotmail.com  
**Subject:** Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Brad Parsons  
Organization: Individual  
Address: Hanalei, HI 96722  
Phone:  
E-mail: mauibrad@hotmail.com  
Submitted on: 3/2/2009

Comments:  
Honorable Committee Members:

This proposal to extend the sunset date of Act 2 by a year is not entirely unexpected as it was mentioned in the final report of the Lingle-DOT controlled Oversight Taskforce Committee. But, why are not any of the other recommendations of the OTF Final Report included in this bill for which the Lingle Administration is again lobbying the Legislature?

Consistent with the 'closed class of one' nature of Act 2 and DOT's exclusive operating agreement with HSF, this measure changes the playing field in mid-course to benefit one company to the detriment of any other potential 'large capacity ferry vessel' company, just so DOT can have the convenience of more time to finish the Act 2 'EIS.' Contrary to DOT's testimony, this bill does NOT add to the public's time to comment on the Act 2 'EIS.'

The saga and tangled web that they weave continues to develop. Meanwhile the unfunded expenses of this total project are quickly approaching \$10 million dollars overbudget, at the same time that Hawaii schoolkids are asked to do with less in the schools. By the way, where are the rest of the Lingle Administration's budget cut proposals that the Legislature asked of her more than a month ago?

HSF has actually already proven itself unviable and will continue to be so because the vessel's operational design is not properly matched to the distances and conditions between the Hawaiian Islands.

Enough is enough. The Legislature should stop assisting the Lingle Administration with this private concession boondoggle. The Lingle Administration has already been given everything they need for this project to succeed or not on it's own.

We call upon the Representatives to make a statement of righteousness and reject this unnecessary bill HB 1171. We respectfully request that you take no further action on HB 1171.

Mahalo,  
Brad Parsons  
Hanalei, HI

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 3:18 PM  
**To:** FINTestimony  
**Cc:** hemplaw@hawaii.rr.com  
**Subject:** Testimony for HB1171 on 3/3/2009 6:00:00 PM

Testimony for FIN 3/3/2009 6:00:00 PM HB1171

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Daniel Hempey  
Organization: Individual  
Address: 3175 Elua St, Suite C Lihue, HI 96766  
Phone: (808) 635-4367  
E-mail: hemplaw@hawaii.rr.com  
Submitted on: 3/2/2009

**Comments:**

Dear Representative:

I oppose HB1171, and the concept of giving Hawaii Superferry Inc. an extension to complete the Act 2 Environmental Impact Statement.

First, any such legislation is constitutionally infirm, as the State is required to only pass general laws - and not laws that only benefit a single company.

The State has spent far too much money on this venture, and the Superferry presents an ecological disaster in both lack of fuel economy and unmitigated impacts on the neighbor islands. Moreover, the Superferry corporation should be held to the various timelines/promises it has made in the past.

Again, please count one against HB1171. Mahalo.