



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:
H.B. NO. 1171, RELATING TO TRANSPORTATION.

LATE TESTIMONY

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, March 3, 2009 TIME: 6:00 PM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Lisa M. Ginoza, First Deputy Attorney General,
or Allan Chock, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this measure.

This bill would extend by one year the date on which Act 2 of the Second Special Session of 2007 would sunset.

During the Second Special Session of 2007 when Act 2 was passed, it was anticipated that there could be a need for the Legislature to revisit the requirements under the Act, after the Legislature had had an opportunity to thoroughly review the report of the Oversight Task Force created by the Act, and information gathered through the Act 2 Environmental Impact Statement process.

Currently, the Act 2 draft environmental impact statement has been distributed to the public. The process is currently in the 45-day comment period provided by the Act. The comment period ended on February 23, 2009. Thereafter, responses to the written comments will be made and revisions to the draft, if any, will be incorporated into the Act 2 FEIS.

The present schedule that the Department of Transportation Harbors Division and its consultant have set anticipates that the Act 2 FEIS, with all comments and responses thereto, will be distributed around May 22, 2009. It is further anticipated that acceptance by the Office of

Environmental Quality Control will occur between May 25, 2009, and June 19, 2009, followed by the publication of the notice of the Act 2 Final EIS by June 30, 2009.

This schedule is dependent upon the number of comments received. Under this schedule, the Legislature will be unable to fully review the Act 2 FEIS and the public comments and responses and then be able to consider any further action during this legislative session. Based on the task force report and on the Act 2 FEIS, the Legislature may want to consider other conditions or requirements. However, the Legislature would not be able to act accordingly, unless the repeal date is extended.

The Legislature may also decide to consider the effect of the repeal of the Act.

Section 18, second paragraph (1), of the Act provides that "The final environmental impact statement by the department of transportation that is accepted by the office of environmental quality control under this Act shall be and remain effective for all purposes under the laws of this state, notwithstanding the repeals of this Act;"

Notwithstanding the foregoing explicit language of the Act, and while we do not agree with such a point, opponents to the Act argue that upon the repeal of the Act, the requirements of chapter 343, Hawaii Revised Statutes, would have to be met before any high-speed or high-capacity ferry operations could operate.

The Legislature should have the opportunity to look at the possibility of other legislation to ensure that the Act 2 FEIS will have complied with all statutory requirements imposed by the Legislature.

Finally, the Committee may wish to consider having a specific repeal date, such as forty-five days after adjournment sine die of the 2010 Legislature (excluding weekends and holidays), rather than alternative repeal dates. This will allow the Legislature to consider

the final EIS as well as the report of the oversight task force in addressing mitigation matters.

We respectfully request passage of this measure.