

## ACT 2

S.B. NO. 1

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

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

The legislature finds that the existing circumstances, specifically the construction and completion of harbor improvements and the subsequent operation of a large capacity ferry vessel company for a limited period of time, present a unique situation. Seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court approximately two years earlier. Such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised Statutes, and is not consistent with the intent of the legislature. As such, the policy that applies under law should be amended and clarified.

The legislature further finds that the operation of a large capacity ferry vessel company, specifically, using a new class of large capacity ferry vessels capable of transporting large numbers of people, motor vehicles, and cargo with ease, is in the public interest in that it provides a real and innovative alternative to existing modes of transporting people, motor vehicles, and cargo between the islands of the state. With its ability to transport large quantities of cargo between islands in a very short period of time, agricultural produce would suffer less heat damage in transit, resulting in higher quality produce and fresh food products at a lower cost for all residents of the state. By encouraging the growing of products on the islands of Kauai, Maui, and Hawaii for the Oahu market, the operations of a large capacity ferry vessel company would foster diversified agriculture, helping the State of Hawaii to meet one of its constitutional mandates. Further, in times of natural or other disasters, a large capacity ferry vessel company could provide the means to rapidly deploy disaster relief personnel, equipment, and supplies.

The legislature also finds that it is clearly in the public interest that a large capacity ferry vessel service should commence as soon as possible, and that harbor improvements continue to be constructed and be allowed to be used, while any environmental studies, including any environmental assessments or environmental impact statements, are conducted.

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

The legislature further finds that it would be appropriate for:

- (1) An oversight task force to study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company

as a whole, and the impact of any existing or proposed large capacity ferry vessel operations, and to report its findings to the legislature and governor; and

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

(b) This Act adopts a new policy, and further clarifies and amends existing law, with respect to this new type of inter-island ferry service to provide that, during the period in which any required environmental review and studies, including environmental assessments or environmental impact statements, are prepared, and also following their completion:

- (1) A large capacity ferry vessel company and large capacity ferry vessels may operate subject to the employment of measures to mitigate significant environmental effects;
- (2) Agreements with respect to the operations of a large capacity ferry vessel company, including a large capacity ferry vessel company operating agreement, entered into between the State and a large capacity ferry vessel company, may be enforced as written or as executed or re-executed; and
- (3) Related harbor improvements may be constructed and used by the State, by a large capacity ferry vessel company, and by others,

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

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

- (1) Due to the unique nature and critical importance of the inter-island ferry service industry to the people of our state, the construction and use of harbor improvements to facilitate this new type of inter-island ferry service is to be governed by this Act, and not by chapter 343, Hawaii Revised Statutes; and
- (2) Such construction and use shall continue, while any environmental review and studies, including environmental assessments or environmental impact statements, are prepared and following their completion, notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with such construction and use.

(d) The purpose of this Act is to facilitate the establishment of inter-island ferry service and, at the same time, protect Hawaii's fragile environment by clarifying that neither the preparation of an environmental assessment, nor a finding of no significant impact, nor acceptance of an environmental impact statement shall be a condition precedent to, or otherwise be required prior to:

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

- (2) The operation of a large capacity ferry vessel company and large capacity ferry vessel between any port or harbor in Hawaii pursuant to any written operating agreement;
- (3) The construction, use, or operation of any improvements at Kahului harbor and any other harbor in the state relating to the operation of a large capacity ferry vessel company or large capacity ferry vessel;
- (4) The appropriation or expenditure of any funds, the use of state lands, the issuance of any permits, or the entering into of any agreements; or
- (5) The taking of any other necessary or appropriate actions for the purpose of facilitating any matter covered by paragraphs (1) to (4), notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with the same; provided that upon commencement of inter-island ferry service, the large capacity ferry vessel company shall comply with the conditions and protocols established under this Act, and with any additional conditions and protocols set by the governor by executive order, or subsequently established by the legislature by law.

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

- (1) A large capacity ferry vessel company and large capacity ferry vessels may operate;
- (2) Agreements with respect to such operation, including the operating agreements, entered into between the State and a large capacity ferry vessel company may be enforced, executed, or re-executed; and
- (3) Related harbor improvements may be constructed and used by the State, by a large capacity ferry vessel company, and by others.

## PART II

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

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

“Large capacity ferry vessel company” means any company that owns or operates a large capacity ferry vessel.

“State entity” means any state or county department, board, commission, and any other agency of the state or county.

“State marine waters” means all waters of the state, including the water column, water surface, and state submerged lands, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State’s police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary, and including state harbors where appropriate, notwithstanding the depth of the harbor.

SECTION 3. Notwithstanding chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes, or their state or county implementing rules or ordinances, including but not limited to provisions relating to special management area permits, certificates of public convenience and necessity, common carriers by water, environmental as-

assessments, and environmental impact statements, and further notwithstanding that environmental assessments and environmental impact statements have not been prepared or completed, or have been completed and an environmental impact statement is not accepted, is found unacceptable, or a finding of no significant impact has not been made:

- (1) A large capacity ferry vessel company shall have the right to operate and the right to utilize Kahului harbor improvements and other improvements and facilities on any island, pursuant to and subject to any and all agreements and contracts with state entities, relating to the operation of a large capacity ferry vessel and the use of state harbor facilities;
- (2) All state harbor improvements, projects, and facilities available for or to be utilized by the large capacity ferry vessel company may be completed and utilized for any purpose agreed to and authorized by appropriate state entities;
- (3) A large capacity ferry vessel company and the appropriate state entities may proceed pursuant to and subject to all executed tariffs, agreements, and contracts between the company and the state entities, whether the tariffs, agreements, and contracts may have previously been found to be in violation of chapter 343, Hawaii Revised Statutes, or any other law and may re-execute the same, including an operating agreement, in the same general form as previously executed;
- (4) The operation of large capacity ferry vessels between the islands of Oahu, Maui, Kauai, and Hawaii, including the use of harbor facilities on each island and improvements at Kahului harbor, is declared to be a required public convenience and necessity;
- (5) A certificate of public convenience and necessity issued to a large capacity ferry vessel company shall not be revoked or modified on the basis that environmental assessments or environmental impact statements have not been prepared or completed; and
- (6) The construction, use, or operation of any facilities or improvements authorized by any agreement between a large capacity ferry vessel company and a state department, board, commission, or agency shall not be subject to or require any county permits or approvals,

notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with the same.

SECTION 4. (a) As a condition precedent to the rights conferred by section 3 of this Act, any large capacity ferry vessel company seeking to operate pursuant to this Act shall comply with the following conditions:

- (1) Regarding whale encounters:
  - (A) Apply with the National Oceanic and Atmospheric Administration for an incidental-take permit; and
  - (B) Request an observer from the National Marine Fisheries Service, a division of the National Oceanic and Atmospheric Administration, be onboard its vessels at all times when traveling through the Hawaiian Islands Humpback Whale National Marine Sanctuary;
- (2) Regarding invasive species:
  - (A) Post signage and notify passengers beforehand of all bans, inspections, and check-in procedures and deadlines;
  - (B) Post signage and notify passengers beforehand of all bans such as the ban on the transport of fishing gill nets and fishing nets

for commercial use, or rocks, soil, or dirt or sand without a permit from the appropriate government agency. For the purposes of this paragraph, "soil or dirt" shall exclude soil or dirt in potted plants inspected and cleared for transport by the department of agriculture;

- (C) Require passengers to declare all plants, fruits, seeds, and any other biological medium and confiscate any pests for control or eradication purposes or invasive species;
  - (D) Inspect or cause to be inspected all vehicles prior to boarding, including the trunks of all cars, the beds of all pickup trucks and the undercarriage and interiors of all vehicles; and
  - (E) Promptly notify the appropriate governmental agency regarding any violation or potential violation of invasive species, agricultural, conservation or other law; and
- (3) Any other conditions or protocols the governor deems necessary and appropriate to protect the State's environment; provided that any such conditions or protocols established under this paragraph shall be executed by the governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law.

Prior to the commencement of operations by a large capacity ferry vessel company pursuant to the right to operate conferred by section 3 of this Act, the governor shall notify the legislature of all the conditions or protocols established pursuant to this subsection, including the entities consulted in establishing the conditions or protocols.

(b) Any large capacity ferry vessel company authorized to operate pursuant to this Act shall execute an agreement with the State, in a form acceptable to the attorney general, by which the large capacity ferry vessel company shall expressly agree to abide by any conditions or protocols established pursuant to this section.

(c) The governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law, may amend the conditions and protocols established under this section on a large capacity ferry vessel company's inter-island operations to ensure the reasonable, efficient, and expedient application of environmental protection measures set forth in this section.

In addition, the governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law, shall also impose additional conditions and protocols on a large capacity ferry vessel company's inter-island operations to mitigate significant environmental effects that the governor determines, in the governor's judgment, are likely to be caused by such inter-island operations.

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

- (1) Ocean life and marine animals and plants, including a whale avoidance policy and procedures;
- (2) Water resources and quality;
- (3) Harbor infrastructure;
- (4) Vehicular traffic;
- (5) Public safety and security;
- (6) Controlling the spread of invasive species;
- (7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
- (8) Economic consequences and impact; and
- (9) Any other natural resource or community concern the governor deems appropriate.

The governor shall also consider establishing conditions and protocols such as requiring department of agriculture inspectors and department of land and natural resources conservation and resources enforcement personnel on each inter-island voyage conducted by a large capacity ferry vessel company, as the governor deems necessary and appropriate. If the governor establishes such agriculture inspector and conservation and resources enforcement personnel conditions and protocols, the governor shall do so by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law. The governor shall notify the legislature of any conditions or protocols established pursuant to this subsection, including the entities consulted, within ten days of establishing the condition or protocol.

The governor shall also review and determine the efficacy and appropriateness of all conditions or protocols established pursuant to this section and report to the legislature at the end of each fiscal quarter of the State on the efficacy and appropriateness of all conditions or protocols established pursuant to this section and the costs incurred by the State in establishing and maintaining the enforcement activities required under this section.

(d) The legislature reserves the sole right to:

- (1) Review the adequacy of any conditions or protocols imposed or amended by the governor under this Act; and
- (2) Impose, by law, any other conditions or protocols it deems necessary and appropriate to further protect the state's environment or communities, or both, in addition to any conditions or protocols imposed or amended by the governor under this Act,

provided that this subsection shall not be construed as a condition precedent to the rights conferred by section 3.

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

### PART III

SECTION 6. Nothing in this part shall be deemed or construed to impose a condition precedent to any activity authorized under parts I, II, or IV of this Act.

SECTION 7. As used in this part, unless the context otherwise requires:

“Acceptance” means a formal determination of acceptability that the document required to be filed pursuant to this part, fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with this part.

“Action” means any program or project that is proposed or completed by the department and covered by this part.

“Addendum” means an attachment to a draft environmental impact statement, prepared at the discretion of the department, and distinct from a supplemental statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental impact statement already filed with the office.

“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.

“Approval” means a discretionary consent required from an agency. Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

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

“Department” means the department of transportation.

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

“Environment” means humanity’s surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by an action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

“Environmental impact” means an effect of any kind, whether immediate or delayed, on any component of the environment.

“Environmental impact statement” or “statement” means an informational document prepared in compliance with this part and which discloses the environmental effects of an action, effects of an action on the economic welfare, social welfare, and cultural practices of the community and state, effects of the economic activities arising out of the action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

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

“Office” means the office of environmental quality control.

“Person” includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

“Primary impact” or “primary effect” or “direct impact” or “direct effect” means effects which are caused by the action and occur at the same time and place.

“Secondary impact” or “secondary effect” or “indirect impact” or “indirect effect” means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

“Significant effect” or “significant impact” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and state.

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

SECTION 9. (a) The environmental impact statement required to be prepared under this part by the department shall comply with and be in conformity with the provisions of this part.

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

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

An environmental impact statement is meaningless without the conscientious application of the environmental impact statement process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the action, but shall discuss adverse effects and available alternatives, so that decision-makers will be enlightened to any environmental consequences of the action. In preparing the environmental impact statement, the department shall submit it for review and comments, and revise it, taking into account all critiques and responses.

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

(d) The environmental impact statement shall contain an explanation of the environmental consequences of the action. The contents shall fully declare the environmental implications of the action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the department can make a sound decision based upon the full range of responsible opinions on environmental effects, the statement shall include responsible opposing views, if any, on significant environmental issues raised by the action.

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

(f) Any substantive comments received by the department pursuant to this part shall be responded to in writing and as appropriate, incorporated into the draft environmental impact statement by the department prior<sup>1</sup> its filing with the office.



Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgment of receipt of these items shall be included in the final statement.

SECTION 10. (a) The draft environmental impact statement, at a minimum, shall contain:

- (1) A summary sheet which concisely discusses the following:
  - (A) Brief description of the action;
  - (B) Significant beneficial and adverse impacts, including cumulative impacts and secondary impacts;
  - (C) Proposed mitigation measures;
  - (D) Alternatives considered;
  - (E) Unresolved issues; and
  - (F) Compatibility with land use plans and policies, and a listing of permits or approvals;
- (2) A table of contents;
- (3) A separate and distinct section that includes a statement of purpose and need for the action;
- (4) A project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:
  - (A) A detailed map, preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable, and a related regional map;
  - (B) Statement of objectives;
  - (C) General description of the action's technical, economic, social, and environmental characteristics;
  - (D) Use of public funds or lands for the action;
  - (E) Phasing and timing of action;
  - (F) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and
  - (G) Historic perspective;
- (5) A separate and distinct section of alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:
  - (A) The alternative of no action;
  - (B) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;
  - (C) Alternatives related to different designs or details of the actions which would present different environmental impacts;
  - (D) The alternative of postponing action pending further study; and
  - (E) Alternative locations for the proposed project, as appropriate.

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

- (6) A description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site, including natural or human-made resources of historic, archaeological, or aesthetic significance; specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. The department shall also identify, if appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the action and its alternatives. The sources of data used to identify, qualify, or evaluate any and all environmental consequences shall be expressly noted;
- (7) A statement of the relationship of the action to land use plans, policies, and controls for the affected area. Discussion of how the action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the department has reconciled its action with the plan, policy, or control, and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation. The draft statement shall also contain a list of necessary approvals which were obtained from governmental agencies, boards, or commissions or other similar groups having jurisdiction;
- (8) A statement of the probable impact of the action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment; direct and indirect effects shall be included. The interrelationships and cumulative environmental impacts of the action and other related projects shall be discussed in the draft statement. Secondary effects shall be thoroughly discussed to fully describe the probable impact of the action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the statement. The significance of the impacts shall be discussed in terms of paragraphs (9), (10), (11), and (12);
- (9) A separate and distinct section describing the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the action;
- (10) A separate and distinct section that describes all irreversible and irretrievable commitments of resources that would be involved in the action

should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. "Resources" shall not be interpreted to mean only the labor and materials devoted to an action, but to include the natural and cultural resources committed to loss or destruction by the action;

- (11) All probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as those found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, Hawaii Revised Statutes, shall be included, including those effects discussed in other actions of this paragraph which are adverse and unavoidable under the action. Also, the rationale for proceeding with an action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft statement shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the action that would avoid some or all of the adverse environmental effects;
- (12) Mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provisions for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, should be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken;
- (13) A separate and distinct section that summarizes unresolved issues and containing a discussion of how such issues will be resolved;
- (14) A separate and distinct section that contains a list identifying all governmental agencies, other organizations, and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed; and
- (15) A separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the draft statement.
  - (b) The final environmental impact statement shall consist of:
    - (1) The draft statement revised to incorporate substantive comments received during the consultation and review processes;

- (2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;
- (3) A list of persons, organizations, and public agencies commenting on the draft statement; and
- (4) The responses of the department to each substantive question, comment, or recommendation received in the review and consultation processes. The text of the final statement shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft statement.

SECTION 11. (a) The department shall file the original (signed) draft environmental impact statement with the office, along with a minimum number of copies determined by the office.

(b) The department shall file the original (signed) final statement with the office, along with a minimum number of copies determined by the office.

(c) An environmental impact statement may be filed at any time at the office by the department.

The office shall inform the public of the availability of any statements or addendum documents for review and comments, and the acceptance or non-acceptance of statements through the periodic bulletin used by the office. The bulletin shall be made available to any person upon request.

All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates; the type of document prepared; the names, addresses, and contact persons as applicable, of the office, department, and the consultant; and a brief narrative summary of the action which provides sufficient detail to convey the full impact of the action to the public.

The office may provide recommendations to the department regarding any applicable administrative content requirements set forth in this part.

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

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

(f) The office shall be responsible for the publication of the notice of availability of the environmental impact statement in its periodic bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, to be developed cooperatively between the department and the office; provided that the office shall be responsible for determining the final list. To the extent possible, the department shall make copies of the statement available to individuals requesting the statement. The department shall directly distribute the required copies to those on the distribution list after the office has verified with the department the accuracy of the distribution list. For final statements, the department shall give the commentator an option of requesting a copy of the final statement or portions thereof.

(g) The draft and final statements shall be prepared by the department and submitted to the office. The draft statement shall be made available for public re-

view and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to this part. The department shall respond in writing to comments received during the review and prepare a final statement.

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

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

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

- (1) Point-by-point discussion of the validity, significance, and relevance of comments; and
- (2) Discussion as to how each comment was evaluated and considered in planning the action.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final statement shall indicate verbatim changes that have been made to the text of the draft statement. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the department's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

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

SECTION 12. (a) The final authority to accept a final statement required under this part shall rest with the office, or the office's authorized representative. The department may request the office to make a preliminary review regarding the acceptability or non-acceptability of the environmental impact statement. The office, when requested by the department, may review and make a recommendation as to the acceptability of the final statement.

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

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

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

- (1) The procedures for consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this part;
- (2) The content requirements described in this part have been satisfied; and
- (3) Comments submitted during the review process have received responses satisfactory to the office, and have been incorporated in the statement.

(e) Upon acceptance or non-acceptance of the environmental impact statement, a notice of the determination shall be filed by the office with the department. For any non-accepted statement, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin.

(f) A non-accepted statement shall be revised by the department to address the concerns of the office. The revision shall take the form of a revised draft environmental impact statement document which shall fully address the inadequacies of the non-accepted statement and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by this part for an environmental impact statement submitted for acceptance. In addition, the revised draft statement shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

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

#### PART IV

SECTION 13. (a) There is established under the department of transportation, a temporary Hawaii inter-island ferry oversight task force. The department of transportation shall be responsible for administering the work of the temporary Hawaii inter-island ferry oversight task force, providing a facilitator, and submitting reports to the legislature and governor. The goal of the temporary Hawaii inter-island ferry oversight task force shall be to study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company as a whole and to examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

- (1) Ocean life and marine animals and plants, including but not limited to an existing or proposed inter-island ferry operations' whale avoidance policy and procedures;
- (2) Water resources and quality;
- (3) Harbor infrastructure;
- (4) Vehicular traffic;
- (5) Public safety and security;
- (6) The potential to spread invasive species;
- (7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
- (8) Economic consequences and impact; and
- (9) Any other natural resource or community concern.

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

- (1) The director of transportation, or the director's designee;
- (2) The chairperson of the board of agriculture, or the chair's designee;

- (3) The chairperson of the board of land and natural resources, or the chairperson's designee;
- (4) The attorney general, or the attorney general's designee;
- (5) The president of a large capacity ferry vessel company, or the president's designee;
- (6) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community; provided that each such representative shall be appointed by the speaker of the house of representatives; and
- (7) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community; provided that each such representative shall be appointed by the president of the senate.

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

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

- (1) A listing and description of the mitigation measures established to deter or minimize any adverse environmental impact of the large capacity ferry vessel company and its operations; and
- (2) A review of the mitigation measures implemented and the efficacy of those mitigation measures on deterring or minimizing any adverse environmental impact caused by the operation of the large capacity ferry vessel company and its vessels.

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

SECTION 14. (a) The auditor shall conduct a performance audit on the state administration's actions in exempting certain harbor improvements to facilitate large capacity ferry vessels from the requirements of conducting an environmental assessment or environmental impact statement under chapter 343, Hawaii Revised Statutes. The audit shall also include the state administration's actions in not considering potential secondary environmental impacts of the harbor improvements prior to granting the exemption from these requirements. The governor and any other state officer deemed appropriate by the auditor are requested to provide all documents and information deemed relevant by the auditor in the conduct of the performance audit and otherwise fully cooperate with the auditor's requests made pursuant to this section.

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

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

Any state lands previously authorized to be used to facilitate or support the operation of a large capacity ferry vessel, shall be authorized to be used to effectuate the provisions of this Act.

Any state harbor improvement or state or county facilities previously made or made available to facilitate or support the operation of a large capacity ferry vessel may be used by any large capacity ferry vessel company or any other person to effectuate the provisions of this Act.

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

Any tariffs issued for the purpose of facilitating the provision of service by a large capacity ferry vessel may be used to effectuate the provisions of this Act.

Any agreements between the department of transportation or the state and a large capacity ferry vessel company previously entered into for the purpose of facilitating the provision of service by a large capacity ferry vessel may be used to effectuate the provisions of this Act.

SECTION 16. Every large capacity ferry vessel company that has the legal right to operate pursuant to section 3 of this Act, during the time period this Act is effective, by exercising such right to operate at any time this Act is effective, by such operation, releases and waives any and all claims that have accrued or arisen as of the effective date of this Act for damages or other judicial relief it or any of its agents, successors, and assigns might otherwise have or assert against the State of Hawaii, its agencies, and its officers and employees, in both their official and individual capacities, that have or may have been caused by or are related in any way to:

- (1) The need, requirement, preparation, non-preparation, acceptance, or lack of acceptance of or for any environmental assessments or environmental impact statements; or
- (2) Any judicial action regarding the establishment and operation of the large capacity ferry vessel in the state,

and such large capacity ferry vessel company by such operation accepts the obligation to, and thus shall indemnify and defend the State of Hawaii, its agencies, and its officers and employees, in both their official and individual capacities, from such claims brought by, through, or under the large capacity ferry vessel company, or any of its agents, successors, and assigns.

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

SECTION 18. This Act shall take effect upon its approval; provided that this Act shall be repealed on the earlier of:

- (1) The forty-fifth day, excluding Saturdays, Sundays, and holidays, following adjournment sine die of the regular session of 2009; or
- (2) Upon acceptance of the final environmental impact statement as provided in this Act; and

provided further that:



- (1) 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 repeal of this Act; and
- (2) Section 16 of this Act shall not be repealed when this Act is repealed.

(Approved November 2, 2007.)

**Note**

1. So in original.