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**Report Title:**

Environmental law; transportation; superferry.

**Description:**

Permits the Hawaii Superferry to operate while environmental studies are being conducted; establishes a Hawaii Superferry task force in the department of transportation.

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# A BILL FOR AN ACT

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RELATING TO GOVERNMENT.

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

1       SECTION 1. The Hawaii supreme court has determined that  
2 chapter 343, Hawaii Revised Statutes, requires that an  
3 environmental assessment be performed with respect to certain  
4 improvements at Kahului harbor intended for and to be used by an  
5 inter-island ferry service between the islands of Oahu, Maui,  
6 Kauai, and Hawaii, using harbor facilities on each island (the  
7 "Hawaii Superferry project"), known as the Hawaii Superferry,  
8 and that the environmental assessment must take into account  
9 secondary effects of the Kahului harbor improvements. No  
10 determination has yet been made as to whether an environmental  
11 impact statement is also required.

12       Subsequently, the circuit court of the second circuit  
13 determined that the Hawaii Superferry project should not be  
14 allowed to utilize certain improvements necessary for its  
15 operation at the Kahului harbor until the environmental  
16 assessment and any necessary environmental impact statement is  
17 completed. That court made other determinations as well,  
18 including declaring that part of the harbors operating agreement

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1 entered into on September 7, 2005, between the State of Hawaii  
2 department of transportation and Hawaii Superferry, Inc., as  
3 amended on October 25, 2005 ("Superferry operating agreement")  
4 is void because it was not preceded by an environmental  
5 assessment.

6 The legislature finds that the immediate operation of the  
7 Hawaii Superferry project is in the public interest. Over the  
8 years, the legislature has supported initiation of inter-island  
9 ferry service and appropriated funds for harbor improvements to  
10 facilitate the Hawaii Superferry project. The legislature also  
11 finds that it is clearly in the public interest that the Hawaii  
12 Superferry operate and be allowed to operate, and that harbor  
13 improvements continue to be constructed and be allowed to be  
14 used, while any environmental studies, including environmental  
15 assessments and environmental impact statements, are conducted.

16 The legislature also finds that it would be desirable and  
17 appropriate for the department of transportation to prepare or  
18 contract to prepare an environmental impact statement regarding  
19 commercial harbor improvements undertaken to accommodate the  
20 Hawaii Superferry project, even if such an environmental impact  
21 statement would not be legally required. Such an environmental  
22 impact statement should include secondary impacts of such

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1 commercial harbor improvements, including impacts of the Hawaii  
2 Superferry.

3 The legislature also finds, however, that it would neither  
4 be desirable nor in the public interest that the operations of  
5 the Hawaii Superferry project cease or be limited during the  
6 preparation of any required environmental studies, including the  
7 environmental impact statement.

8 The legislature also finds that it would be appropriate for  
9 a task force to study the Hawaii Superferry project as a whole,  
10 and to report back its findings to the legislature.

11 The legislature finds that in the absence of this  
12 legislation, the Hawaii Superferry would likely cease to  
13 operate, and the loss of the Hawaii Superferry would prove to be  
14 a significant loss and cause very significant and irreparable  
15 harm to Hawaii and its people. The legislature finds that  
16 adopting a statute that unambiguously allows the Hawaii  
17 Superferry project to operate in accord with the terms of the  
18 operating agreement it entered into with the State, during the  
19 preparation of any environmental studies, including  
20 environmental assessments and environmental impact statements,  
21 and during the review of any environmental effects, is in the  
22 best interests of the people of the State of Hawaii.

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1       The legislature has weighed competing interests, including  
2 all interests served by having required environmental review and  
3 studies performed prior to operation of the Hawaii Superferry  
4 project, and has determined that it is in the public interest to  
5 have the Hawaii Superferry project operate now, and during the  
6 preparation of any required environmental review and studies.

7       Among the purposes of this Act is the purpose to amend all  
8 relevant existing laws to provide that, while any required  
9 environmental review and studies, including environmental  
10 assessments and environmental impact statements, are prepared,  
11 and following their completion: (1) the Hawaii Superferry  
12 project may operate without restriction; (2) agreements with  
13 respect to its operation, including the Superferry operating  
14 agreement, entered into between the State and Hawaii Superferry,  
15 Inc., may be enforced or re-executed; and (3) related harbor  
16 improvements may be constructed and used by the State, by Hawaii  
17 Superferry, and by others.

18       The legislature finds and believes that this Act is fully  
19 operative to amend existing law to allow Hawaii Superferry to  
20 operate while any required environmental studies and review,  
21 including environmental assessments and environmental impact  
22 statements are prepared and following their completion,

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1 notwithstanding the fact that the non-preparation or non-  
2 completion of environmental assessments or environmental impact  
3 statements would otherwise have barred, delayed, been a  
4 condition precedent to, or interfered with such operation,  
5 without any provision making this Act retroactive or  
6 retrospective in operation. Nonetheless, the legislature also  
7 finds and believes it possible that a claim could be made that  
8 without such a provision regarding retroactivity, this Act is  
9 ineffective to accomplish its stated ends and purposes.  
10 Therefore, the legislature, even though it finds and believes a  
11 retroactivity clause is not necessary to accomplish the stated  
12 goals and purposes of this Act, has included such a clause in  
13 this Act. However, this Act also includes a severability  
14 clause, and so even if section 11 of this Act dealing with the  
15 retroactive effect of this Act were somehow deemed invalid and  
16 severed, the legislature finds and believes that the remainder  
17 of this Act would still accomplish all of the stated purposes of  
18 this Act, including allowing the Hawaii Superferry project to  
19 fully operate and fully utilize state harbors and land, while  
20 any required environmental review and studies, including  
21 environmental assessments and environmental impact statements,  
22 are prepared and following their completion, notwithstanding the

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1 fact that the non-preparation or non-completion of environmental  
2 assessments or environmental impact statements would otherwise  
3 have barred, delayed, been a condition precedent to, or  
4 interfered with such operation and use.

5 SECTION 2. Any other state or county law, ordinance, code  
6 section, resolution, rule, guidance, or guidelines to the  
7 contrary notwithstanding, including but not limited to chapters  
8 205A and 343, Hawaii Revised Statutes, and notwithstanding that  
9 environmental assessments and environmental impact statements  
10 have either not been prepared or not been completed, the Hawaii  
11 Superferry project may operate and has the right to operate and  
12 the right to utilize Kahului harbor improvements and other  
13 improvements and facilities on any island, pursuant to and  
14 subject to all agreements and contracts between Hawaii  
15 Superferry, Inc., and appropriate state agencies, including but  
16 not limited to the Superferry operating agreement, while any  
17 required environmental review and studies, including  
18 environmental assessments and environmental impact statements,  
19 are prepared, and following their completion. Except as set  
20 forth above in this section, this right to operate conferred by  
21 this section shall not be construed to exempt the Hawaii  
22 Superferry project from compliance with laws of general

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1 applicability, but shall confer the right to operate and to use  
2 harbor facilities on any island, notwithstanding the fact that  
3 the non-preparation or non-completion of environmental  
4 assessments or environmental impact statements would otherwise  
5 have barred, delayed, or been a condition precedent to, or  
6 interfered with such operation.

7       SECTION 3. Any other state or county law, ordinance, code  
8 section, resolution, rule, guidance, or guidelines to the  
9 contrary notwithstanding, and notwithstanding that environmental  
10 assessments and environmental impact statements have either not  
11 been prepared or not been completed, all improvements, projects,  
12 and facilities available for or utilized by the Hawaii  
13 Superferry project on any island may be completed and utilized  
14 for any purpose agreed and authorized by appropriate state  
15 agencies while any required environmental review and studies,  
16 including environmental assessments and environmental impact  
17 statements, are prepared and following their completion,  
18 notwithstanding the fact that the non-preparation or non-  
19 completion of environmental assessments or environmental impact  
20 statements would otherwise have barred, delayed, been a  
21 condition precedent to, or interfered with such operation.



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1       SECTION 4. Any other state or county law, ordinance, code  
2 section, resolution, rule, guidance, or guidelines to the  
3 contrary notwithstanding, and notwithstanding that environmental  
4 assessments and environmental impact statements have either not  
5 been prepared or not been completed, Hawaii Superferry, Inc.,  
6 and the appropriate state agencies may proceed pursuant to and  
7 subject to all previously executed tariffs, agreements, and  
8 contracts between the Hawaii Superferry, Inc., and appropriate  
9 state agencies (including the Superferry operating agreement) or  
10 may execute an operating agreement in the same general form as  
11 the Superferry operating agreement previously executed,  
12 notwithstanding the fact that the non-preparation or non-  
13 completion of environmental assessments or environmental impact  
14 statements would otherwise have barred, delayed, been a  
15 condition precedent to, or interfered with such execution.

16       SECTION 5. Any other state or county law, ordinance, code  
17 section, resolution, rule, guidance, or guidelines to the  
18 contrary notwithstanding, and notwithstanding that environmental  
19 assessments and environmental impact statements have either not  
20 been prepared or not been completed, the Hawaii Superferry  
21 project is declared to be required by the public convenience and  
22 necessity. The existing certificate of public convenience and

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1 necessity shall not be revoked or modified on the basis that  
2 environmental assessments and environmental impact statements  
3 have either not been prepared or not been completed,  
4 notwithstanding the fact that the non-preparation or non-  
5 completion of environmental assessments or environmental impact  
6 statements would otherwise have barred or interfered with the  
7 issuance of such certificate, or required its revocation or  
8 modification.

9       SECTION 6. Any other state or county law, ordinance, codes  
10 section, resolution, rule, guidance, or guidelines to the  
11 contrary notwithstanding, the construction, use, or operation of  
12 any facilities or improvements authorized by the Superferry  
13 operating agreement shall not be subject to or require any  
14 county permits or approvals.

15       SECTION 7. Any other state or county law, ordinance, code  
16 section, resolution, rule, guidance, or guidelines to the  
17 contrary notwithstanding, neither the preparation of an  
18 environmental assessment, nor a finding of no significant  
19 impact, nor acceptance of an environmental impact statement,  
20 shall be a condition precedent to, or otherwise be required  
21 prior to, (1) the operation of the Hawaii Superferry pursuant to  
22 any certificate of public convenience and necessity approved by

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1 the public utilities commission on or before January 1, 2005, or  
2 (2) the operation of the Hawaii Superferry between any ports or  
3 harbors in Hawaii pursuant to any operating agreement, including  
4 the Superferry operating agreement, or (3) the construction,  
5 use, or operation of any improvements at Kahului harbor, or (4)  
6 the appropriation or expenditure of any funds, the use of any  
7 state lands, the issuance of any permits, or the entering into  
8 of any agreements for the purpose of facilitating any of  
9 paragraphs (1) to (3).

10 SECTION 8. The department of transportation shall perform  
11 or contract to perform an environmental impact statement for the  
12 improvements made to commercial harbors throughout the State  
13 that require the expenditure of public funds to accommodate the  
14 Hawaii Superferry project, and the secondary environmental  
15 effects of those operations on the State's environment,  
16 including of the operation of the Hawaii Superferry.

17 SECTION 9. The department of transportation shall make the  
18 environmental impact statement available for public review and  
19 comment pursuant to section 343-3, Hawaii Revised Statutes.

20 SECTION 10. (a) There is established in the department of  
21 transportation a temporary Hawaii Superferry task force. The  
22 department shall be responsible for administering the work of

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1 the temporary task force, providing a facilitator, and  
2 submitting reports to the legislature. The goal of the  
3 temporary task force shall be to examine the impact of the  
4 Hawaii Superferry including, but not limited to:

- 5 (1) Ocean life, including marine animals and plants;
- 6 (2) Water resources and quality;
- 7 (3) Harbor infrastructure for both marine and land;
- 8 (4) Vehicular traffic;
- 9 (5) Public safety and security;
- 10 (6) Cultural resources, including hunting, fishing, and  
11 native Hawaiian resources; and
- 12 (7) Economic consequences and impact.

13 (b) The members of the temporary task force, totaling  
14 seventeen members, shall include the following:

- 15 (1) The director of transportation, or the director's  
16 designee;
- 17 (2) The director of business, economic development, and  
18 tourism, or the director's designee;
- 19 (3) The chair of the board of land and natural resources,  
20 or the chair's designee;
- 21 (4) The attorney general or the attorney general's  
22 designee;

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1           (5) The president of Hawaii Superferry, Inc., or the  
2           president's designee;

3           (6) One representative from each of the four major  
4           counties, including at least one representative from  
5           the environmental community, one representative from  
6           the agricultural community, and one representative  
7           from the general business community, each such  
8           representative to be appointed by the speaker of the  
9           house of representatives;

10          (7) One representative from each of the four major  
11          counties, including at least one representative from  
12          the environmental community, one representative from  
13          the agricultural community, and one representative  
14          from the general business community, each such  
15          representative to be appointed by the president of the  
16          senate; and

17          (8) One representative from each of the four major  
18          counties, including at least one representative from  
19          the environmental community, one representative from  
20          the agricultural community, and one representative  
21          from the general business community, each such  
22          representative to be appointed by the governor.

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

6           (d) The Hawaii Superferry task force shall submit a report  
7     of its findings and recommendations to the legislature no later  
8     than twenty days prior to the convening of the regular session  
9     of 2009. The Superferry task force shall cease to exist upon  
10    the submission of the report.

11          SECTION 11. The legislature hereby expressly declares this  
12    Act to be retroactive and retrospective so as to be effective as  
13    of the respective effective dates of the appropriation or  
14    expenditure of any funds, the use of any state lands for the  
15    purpose of facilitating the Hawaii Superferry project, the  
16    construction of any state harbor improvements or facilities  
17    relating to the Hawaii Superferry project or used by Hawaii  
18    Superferry on any island, the approval of the certificate of  
19    public convenience and necessity for Hawaii Superferry, Inc.,  
20    the issuance of any tariffs for the purpose of facilitating the  
21    Hawaii Superferry project, or the entering into of any

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1 agreements, including the Superferry operating agreement, for  
2 the purpose of facilitating the Hawaii Superferry project.

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

9 SECTION 13. This Act shall take effect upon its approval,  
10 retroactive to the effective dates referred to in section 11.

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INTRODUCED BY: \_\_\_\_\_

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BY REQUEST