

OVERVIEW

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: Phase I

Report No. 08-09, April 2008

Summary

We conducted this first phase of a performance audit in response to Act 2, Second Special Session Laws of Hawai'i 2007. Act 2 requested the Auditor to 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 the Hawai'i Environmental Impact Statements (EIS) law, Chapter 343, Hawai'i Revised Statutes (HRS). The audit request includes a review of the State's actions in not considering potential secondary environmental impacts of the harbor improvements prior to granting the exemption from these requirements. Our audit work was delayed by access issues, including access to public information and allegedly private, attorney-client, and executive privileged information. The attorney general took an active role in reviewing requested documents and interceding in our audit interviews. Moreover, Hawaii Superferry, Inc. declined to participate in our audit unless we amended our standard audit procedures. Because of these delays, the results of Phase II of our audit will be presented in a later report.

We found that faced with too little time and opposition from Hawaii Superferry, Inc., the state Department of Transportation abandoned efforts to prepare an environmental review for harbor improvements needed to accommodate the ferry service.

We also found that the flawed EIS law and rules enabled the department to invoke its exemption determination list and ignore calls for and bypass the environmental review. The Office of Environmental Quality Control (OEQC) implements the Environmental Impact Statements law, Chapter 343, HRS, and its director is responsible for advising the governor on environmental issues as well as providing advice and assistance to private industry and government agencies. The Environmental Council serves as a liaison between the OEQC director and the general public on issues concerning ecology and environmental quality. The council is the rule-making body for the EIS law and its rules are adopted as Chapters 11-200 and 201, Hawai'i Administrative Rules (HAR). Both OEQC and the Environmental Council are administratively attached to the Department of Health.

Details surrounding the DOT's efforts to validate the origin of a purported June 30, 2005 deadline that drove the entire process are murky. We found that it is likely



that the department relied on Hawaii Superferry, Inc.'s representation that the date was a federal deadline instead of Superferry's shipbuilding deadline.

In the end, the State may have compromised its environmental policy in favor of a private company's internal deadline. It remains to be seen whether these decisions will cost the State more than its environmental policy. These are issues we intend to discuss in Phase II of our audit.

Recommendations and Response

Our recommendations are designed to address the flawed EIS law and rules. We recommend that the Legislature consider making appropriate changes in the law to empower an entity with authority to enforce the Environmental Impact Statements law and rules and require agencies to provide OEQC with individual agency exemption determinations in a timely fashion.

We recommend the Environmental Council amend the EIS rules to require agencies to document and file records of their findings that have been determined to be exempt; review, update, and submit their exemption lists every five years; and consult with the OEQC director and outside agencies and individuals prior to reaching a decision of an exemption determination.

We recommend the OEQC establish guidelines and processes to ensure that all of the steps required to protect the environment have been properly addressed before an agency declares an exemption determination, that the Environmental Council is notified when the director of the OEQC receives a request for an opinion or consultation from an agency, and that exemption determination documentation is maintained and available for public review.

Finally, we recommend the DOT Harbors Division modify its record-keeping process to facilitate public review of exemption determinations.

In its response to our draft report, the Department of Transportation does not dispute either our findings or recommendations and generally supports our recommendations. After a careful review and consideration of the department's comments, we made minor changes and clarifications to our report, none of which affected our findings and conclusions.

The department's response also included comments from the Department of the Attorney General. The attorney general raised concerns about the breadth and scope of our audit activities and requests and the impact it had on his staff. Had we been allowed to follow our normal audit process, the Department of the Attorney General would have had limited involvement and we would not have encountered delays.

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