A BILL FOR AN ACT

RELATING TO THE HAWAII COMMERCIAL HARBORS AUTHORITY.

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

SECTION 1. The legislature finds that the well-being of the State is substantially dependent on the efficient administration, development, management, and operation of its commercial harbors and commercial maritime infrastructure. The legislature also finds that responsibility for Hawaii's commercial harbor planning, management, marketing, and capital development functions is currently distributed among a number of agencies, including the department of transportation's harbors division, Hawaii tourism authority, department of budget and finance, department of human resources development, board of land and natural resources, and department of health (with respect to environmental concerns), among others. Distributed responsibility and involvement by multiple agencies, which sometimes have conflicting goals and priorities, results in inefficiency, delayed decision-making, and reduced effectiveness. The legislature believes that coordinated planning and development of the State's commercial harbors
system and infrastructure would be achieved more efficiently by establishing and giving a separate state entity overall jurisdiction and responsibility for maritime operations and the State's commercial harbors.

The legislature further finds that the establishment of a separate commercial harbors authority would assist in the achievement of the following important statewide objectives:

(1) Maximizing the contribution of the State's commercial harbors to Hawaii's economy;

(2) Ensuring dedicated expert commercial harbor leadership, management continuity, and year-round decision-making, consistent with industry best practices;

(3) Improving administrative efficiency by streamlining administrative processes;

(4) Accelerating the planning and implementation of the state commercial harbors' capital improvement programs;

(5) Increasing the financial flexibility and strength of the State's commercial harbors;
(6) Increasing economic opportunities for the State, in collaboration with the Hawaii tourism authority;

(7) Increasing responsiveness to consumer needs, commercial opportunities, and economic demands; and

(8) Maximizing job creation within the State.

In addition, the management and administration of scarce and valuable commercial harbor resources is most effectively served by a separate commercial harbors authority.

The purpose of this Act is to establish the Hawaii commercial harbors authority, which shall assume all of the authority, powers, functions, duties, and responsibilities of the department of transportation related to commercial maritime and harbors, including responsibility for the development, management, operation, and maintenance of the State's commercial harbors, on and after the transfer completion date established by the Hawaii commercial harbors authority pursuant to section 14(b) of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:
"CHAPTER
HAWAII COMMERCIAL HARBORS AUTHORITY

PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter:
"Board" means the board of directors of the Hawaii commercial harbors authority.
"Chief executive officer" means the chief executive officer of the Hawaii commercial harbors authority.
"Commercial harbor" shall have the same meaning as defined in section 266-1.
"Commercial harbors authority" or "authority" means the Hawaii commercial harbors authority established by this chapter.
"Harbor revenue" means all moneys paid into the harbor special fund pursuant to section 266-19.
"Maritime facilities" means commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to the State.

§ -2 Harbors authority; establishment; board; members; chief executive officer. (a) There is established the Hawaii commercial harbors authority to:
(1) Develop and implement management structures, policies, and procedures based on commercial harbors industry best practices;

(2) Efficiently develop, manage, operate, and maintain the State's commercial harbors and maritime facilities; and

(3) Administer the provisions of chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities.

The authority shall be a body politic and corporate and an instrumentality and agency of the State, placed within the department of transportation for administrative purposes only, and shall enjoy the same sovereign immunity available to the State. The authority shall not be subject to supervision by the department of transportation or its director. Further, section 26-35(a)(1), (4), (5), and (6) shall not apply to the authority.

(b) The powers of the authority shall be vested in and exercised by a board of directors, which shall consist of ten voting members, who shall be appointed by the governor; provided that three members shall be selected from a list of persons nominated by the speaker of the house of representatives, and
three members shall be selected from a list of persons nominated
by the president of the senate; and provided further that the
counties of Hawaii, Kauai, and Maui, and the city and county of
Honolulu shall each be represented by at least one board member
who is a resident of the respective county. All members shall
be appointed for terms of four years; provided that the governor
shall stagger the initial terms pursuant to section 26-34(a).

(c) Members shall have relevant business and management
experience, including experience in one or more of the following
disciplines:

(1) Commercial maritime operations;
(2) Maritime law;
(3) Non-maritime harbor business;
(4) Commercial development
(5) Construction management;
(6) Financial planning;
(7) Budgeting;
(8) Hospitality;
(9) Tourism;
(10) Marketing; and
(11) Cultural traditions and practices of native Hawaiians.
It is the intent of the legislature that there shall be, as far as practicable, a wide cross-section of these disciplines represented by the board.

(d) The governor may appoint up to two members without regard to the requirement in section 78-1(b) that appointive officers be residents of the State at the time of their appointment; provided that no more than two nonresidents shall serve as members of the board at any time.

(e) Pursuant to section 26-34(a) and (b), all members of the board shall continue in office until their respective successors have been appointed; provided that no member shall serve more than eight consecutive years.

(f) No board member appointed under this section shall be an officer or employee of the State or a county.

(g) Each board member shall serve without pay and shall be reimbursed for necessary out-of-pocket expenses incurred while attending meetings and otherwise discharging the member's board-related responsibilities.

(h) The authority shall be headed by a single executive to be known as the chief executive officer of the Hawaii commercial harbors authority, who shall:
(1) Not be a member of the board;
(2) Be exempt from chapters 76 and 89; and
(3) Receive a salary fixed by the board.

(i) The chief executive officer:
(1) Shall be selected based on criteria approved by the board, including experience in commercial harbor management at an executive level at a large-size or medium-size commercial harbor within the United States, management of large-scale capital programs, and domestic and international harbor and maritime development;
(2) Shall be appointed by an affirmative vote of not less than six members of the board;
(3) Shall be employed subject to a formal contract, the terms of which shall be approved by the board; provided that the terms shall include provisions for the removal of the chief executive officer whether with or without cause;
(4) May be removed from office only by a vote of not less than six members of the board; provided that the basis
for removal shall be consistent with the terms of the chief executive officer's employment contract;

(5) Shall have the powers as described in this chapter and the provisions of chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities, as may be delegated by the board;

(6) Except when excused by the board, shall attend all meetings of the board, keep a record of the proceedings, and maintain and be the custodian of the official seal of the authority and all books, records, documents, and papers filed with the authority;

(7) Shall direct and supervise the authority's administrative and operational affairs in accordance with the directives of the board;

(8) Shall approve all accounts for salaries and allowable expenses of the authority;

(9) Shall serve as chief procurement officer of the authority; and

(10) Shall do all things necessary, as directed by the board, to carry out the powers and duties conferred upon the authority by this chapter and the provisions
of chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities.

(j) Upon the vacancy of the position of the chief executive officer, the board of directors shall designate a deputy executive officer or other employee of the authority to serve as the chief executive officer of the authority until the vacancy is filled by the board. The interim chief executive officer shall have all the powers and responsibilities and receive the salary of the chief executive officer.

§ 3 Powers; generally. (a) The Hawaii commercial harbors authority, by and through its board of directors:

(1) Shall exercise power and control over all commercial harbors and maritime facilities that the authority is responsible for managing, operating, or controlling under this chapter and the provisions of chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities;

(2) Shall provide, as appropriate, for the arrival, departure, mooring, and servicing of vessels, and the loading and unloading of passengers and cargo at all
commercial harbors and maritime facilities under the control of the authority;

(3) Shall establish performance targets and performance standards for all state commercial harbors and marine facilities to achieve the highest levels of customer service;

(4) Shall ensure that appropriate mission statements, business plans, minimum development standards, and strategic goals are established and that progress towards their accomplishment is regularly assessed and reported;

(5) Shall develop an organization and management structure to best accomplish the goals of the Hawaii commercial harbors system and the authority;

(6) Shall have an official seal and may alter the official seal at its pleasure;

(7) May make, execute, or assume contracts, leases, and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter and the provisions of chapters 102, 266, and
268 that are applicable to commercial harbors and maritime facilities;

(8) Shall establish bylaws for its organization and internal management;

(9) Shall adopt rules pursuant to chapter 91 as necessary to implement this chapter and the provisions of chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities;

(10) Shall prepare and adopt the authority's operating and capital budgets;

(11) May own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or mixed, tangible or intangible, and any interest therein, in the name of the authority, and may assign, exchange, transfer, convey, lease, sublease, or encumber the same or any project, improvement, or facility related thereto; provided that the lands to which the authority holds title shall not be subject to chapter 171; provided further that any sale, gift, or exchange of real property shall be subject to the terms, conditions, and restrictions applicable to the sale,
gift, or exchange of public lands in section 171-50
and 171-64.7; and provided further that any lease,
sublease permit, or other encumbrance for any real
property shall be issued in accordance with
administrative rules adopted by the authority pursuant
to chapter 91;
(12) May procure insurance against any loss in connection
with its property and other assets and operations, in
amounts and from insurers as it deems desirable, or
provide for self-insurance;
(13) May accept and receive gifts or grants in any form
from any person, public entity, or source; provided
that the grants and gifts shall be used for harbors
authority purposes;
(14) Shall take all actions necessary under emergencies
declared by the governor;
(15) Shall fix, impose, prescribe, and collect rates,
rentals, fees, or charges for the lease, use, and
services of its maritime facilities at least
sufficient to pay the costs of operation, maintenance,
and repair, if any, and the required payments of the
principal of and interest on all bonds, notes, or
other obligations issued or assumed by the authority
and reserves therefor; provided that the rates,
rentals, fees, or charges are established at an open
meeting subject to the requirements of chapter 92;
(16) May allot any and all commercial harbor and maritime
facilities revenue and issue revenue bonds, refunding
revenue bonds, special facility revenue bonds, bond
anticipation notes, and other lawfully authorized
obligations of the State in its name and secured by
the revenue, or user taxes, or any combination of
both, of an undertaking or loan program pursuant to
chapter 39, but not in excess of the principal amounts
as are necessary for its purposes;
(17) May invest and secure its moneys;
(18) Shall establish and maintain an appropriate system of
accounts for the authority; and
(19) May do any and all things necessary to exercise the
powers and perform the duties conferred upon the
authority by this chapter and the provisions of
chapters 102, 266, and 268 that are applicable to commercial harbors and maritime facilities.

(b) The authority shall not be subject to chapters 36, 37, 38, and 40, except for section 36-29 and as otherwise provided in this chapter and chapters 266 and 268.

(c) The authority may sue and be sued in its corporate name. Notwithstanding any other law to the contrary, all claims arising out of the acts or omissions of the authority or the members of its board, its officers, or its employees, including claims permitted against the State under chapter 661, part I, and claims for torts permitted against the State under chapter 662, may be brought only pursuant to this section and only against the authority. However, the authority shall be subject to suit only in the manner provided by law for suits against the State, including section 661-11. All defenses available to the State, as well as all limitations on actions against the State, shall be applicable to the authority.

The board of directors, upon the advice of its attorney, may arbitrate, compromise, or settle any claim, action, or suit brought against the authority pursuant to this section. Any claim compromised or settled under this section shall be payable
solely from the moneys and property of the authority and shall not constitute a general obligation of the State or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State or by any revenue or taxes of the State. Nothing in this section shall preclude the board of directors from requesting legislative appropriations to fund the settlement of any claim or judgment against the authority or its officers, employees, or agents.

Rights and remedies conferred by this section shall not be construed to authorize any other claim, suit, or action against the State. In addition, a judgment, compromise, or settlement in an action brought against the authority under this section shall constitute a complete bar to any action brought by the claimant, by reason of the same subject matter, against the State or an officer or employee of the authority.

(d) The authority shall be a "jurisdiction" and an "appointing authority" under chapter 76, and an "appointing authority" and an "appropriate authority" for those of its officers and employees who are excluded employees under chapter 89C. In addition to its chief executive officer, the authority may employ executive officers appointed by the chief executive
officer who are qualified to fill positions established in the bylaws of the authority adopted by the board of directors, to perform functions and exercise powers assigned by the bylaws or delegated by the board or the chief executive officer. The other executive officers of the authority and up to additional specially qualified employees appointed by the chief executive officer shall be exempt from chapters 76 and 89. All other persons employed by the authority shall be subject to chapters 76 and 89, and rules adopted to implement those provisions, unless expressly exempted from the civil service under chapter 76 or excluded from collective bargaining under chapter 89. The officers and personnel of the authority shall be included in all benefit programs applicable to officers and employees of the State.

(e) The authority and its corporate existence shall continue until terminated by law; provided that no termination shall take effect as long as bonds or other obligations issued or assumed by the authority are outstanding, unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the authority, all of the
rights and properties of the authority then remaining shall pass to and vest in the State in the manner prescribed by law.

(f) The authority shall be subject to chapter 103D; provided that the chief executive officer shall serve as chief procurement officer pursuant to sections 2(i)(9) and 103D-203.

PART II. BUDGET AND FINANCE

§ -4 Exemptions. The harbor special fund shall be exempt from chapters 36, 37, and 40.

§ -5 Fiscal provisions. (a) The authority's board of directors shall establish guidelines for preparing the authority's annual operating and capital budget proposals the guidelines shall take into account anticipated receipts, surpluses, reserves, and funds from any other source, on deposit in or available for deposit into the harbor special fund or any other special or revolving fund that the legislature may establish for the authority.

(b) The authority shall submit by of every year its biennium and supplemental operating and capital budget proposals to the department of transportation, which shall transmit those budget proposals to the governor.
(c) Along with its budget proposals, the authority shall provide an annual report of the income to and the expenditures from the harbor special fund and any other special or revolving fund administered by the authority. The authority shall provide a copy of its annual report to the legislature at least twenty days prior to the convening of each regular session.

(d) The supporting documents for each budget proposal shall include the annual report, but need not include any other information, except when state general funds are requested.

(e) Notwithstanding sections 37-71 and 37-72, the governor shall include in the executive budget proposals separately for both the authority's operating and capital budget proposals, one lump sum for each means or source of funds in the amounts specified in the budget proposals transmitted to the governor by the department of transportation pursuant to subsection (b).

(f) The legislature shall appropriate one lump sum for each means or source of funding for the authority's operating budget and for the authority's capital budget.

§ -6 Budget oversight. The authority's operating and capital budgets shall not be subject to review or approval by
the governor or any agency of the executive branch, except where state general funds are requested.

§ 7 Accounts; depositories. (a) Appropriations for the authority shall not be subject to any allotment system or requirements. The director of finance shall notify the authority and the comptroller that all of the appropriations for the authority for the fiscal year have been allotted and are available for expenditure as soon as possible, and in no event more than three business days after the general or supplemental appropriations act is effective.

(b) Moneys in the harbor special fund may be deposited in depositories other than the state treasury; provided that the authority consults with the director of finance before selecting a depository for the authority's funds, and submits copies of annual statements from each of the depositories in which the moneys from the funds are deposited.

§ 8 Expenditures in excess of appropriations. If in any fiscal year, the amount of revenues deposited into the harbor special fund exceeds the amount appropriated from that fund for that year, the board of directors of the authority may approve expenditures in excess of the amount appropriated, up to
the amount by which revenues for that fund exceed the
appropriations from that fund for a fiscal year.

§ 9 Issuance of bonds. On an annual basis, and upon
request of the authority, the legislature shall authorize one
lump sum for each means or source of funds for each of the
following types of bonds to be issued by the authority: revenue
bonds, refunding revenue bonds, and special facility revenue
bonds.

§ 10 Audits. The auditor shall conduct management and
financial audits of the authority for fiscal year 2024 and every
second year thereafter."

SECTION 3. Section 26-19, Hawaii Revised Statutes, is
amended to read as follows:

"$26-19 Department of transportation. The department of
transportation shall be headed by a single executive to be known
as the director of transportation. The department shall
establish, maintain, and operate transportation facilities of
the State, including highways, airports, [harbors], and such
other transportation facilities and activities, other than
commercial harbors and commercial maritime activities, as may be
authorized by law.
The department shall plan, develop, promote, and coordinate various transportation systems management programs that shall include, but not be limited to, alternate work and school hours programs, bicycling programs, and ridesharing programs.

The department shall develop and promote ridesharing programs which shall include but not be limited to, carpool and vanpool programs, and may assist organizations interested in promoting similar programs, arrange for contracts with private organizations to manage and operate these programs, and assist in the formulation of ridesharing arrangements. Ridesharing programs include informal arrangements in which two or more persons ride together in a motor vehicle."

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department;
provided that the foregoing provision shall not apply to the employment or retention of attorneys:

1. By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;

2. By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice's designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;

3. By the legislative reference bureau;

4. By any compilation commission that may be constituted from time to time;
(5) By the real estate commission for any action involving the real estate recovery fund;

(6) By the contractors license board for any action involving the contractors recovery fund;

(7) By the office of Hawaiian affairs;

(8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;

(9) As grand jury counsel;

(10) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;

(11) By the auditor;

(12) By the office of ombudsman;

(13) By the insurance division;

(14) By the University of Hawaii;

(15) By the Kahoolawe island reserve commission;

(16) By the division of consumer advocacy;

(17) By the office of elections;

(18) By the campaign spending commission;

(19) By the Hawaii tourism authority, as provided in section 201B-2.5;
(20) By the division of financial institutions;

(21) By the office of information practices; [er]

(22) By the Hawaii commercial harbors authority; or

(23) By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section."

2. By amending subsection (c) to read:

"(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the office of information practices, the Hawaii commercial harbors authority, or as grand jury counsel, shall be a deputy attorney general."
SECTION 5. Section 41D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any provision in this section to the contrary notwithstanding, the Hawaii commercial harbors authority, the University of Hawaii (as to casualty insurance risks only), the Research Corporation of the University of Hawaii (as to casualty insurance risks only), the public health facilities of the department of health (with respect to medical malpractice risks only), and the Hawaii health systems corporation and its regional system boards shall be exempt from the requirements of this chapter."

SECTION 6. Section 76-11, Hawaii Revised Statutes, is amended by amending the definition of "jurisdiction" to read as follows:

"Jurisdiction" means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, the Hawaii commercial harbors authority, and the Hawaii health systems corporation."

SECTION 7. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:
"(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

1. Commissioned and enlisted personnel of the Hawaii National Guard as such, and positions in the Hawaii National Guard that are required by state or federal laws or regulations or orders of the National Guard to be filled from those commissioned or enlisted personnel;

2. Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

3. Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment
civil service procedures would result in delay or
noncompliance, such as the Felix-Cayetano consent
decree;

(4) Positions filled by the legislature or by either house
or any committee thereof;

(5) Employees in the office of the governor and office of
the lieutenant governor, and household employees at
Washington Place;

(6) Positions filled by popular vote;

(7) Department heads, officers, and members of any board,
commission, or other state agency whose appointments
are made by the governor or are required by law to be
confirmed by the senate;

(8) Judges, referees, receivers, masters, jurors, notaries
public, land court examiners, court commissioners, and
attorneys appointed by a state court for a special
temporary service;

(9) One bailiff for the chief justice of the supreme court
who shall have the powers and duties of a court
officer and bailiff under section 606-14; one
secretary or clerk for each justice of the supreme
court, each judge of the intermediate appellate court,
and each judge of the circuit court; one secretary for
the judicial council; one deputy administrative
director of the courts; three law clerks for the chief
justice of the supreme court, two law clerks for each
associate justice of the supreme court and each judge
of the intermediate appellate court, one law clerk for
each judge of the circuit court, two additional law
clerks for the civil administrative judge of the
circuit court of the first circuit, two additional law
clerks for the criminal administrative judge of the
circuit court of the first circuit, one additional law
clerk for the senior judge of the family court of the
first circuit, two additional law clerks for the civil
motions judge of the circuit court of the first
circuit, two additional law clerks for the criminal
motions judge of the circuit court of the first
circuit, and two law clerks for the administrative
judge of the district court of the first circuit; and
one private secretary for the administrative director
of the courts, the deputy administrative director of
the courts, each department head, each deputy or first
assistant, and each additional deputy, or assistant
deputy, or assistant defined in paragraph (16);

(10) First deputy and deputy attorneys general, the
administrative services manager of the department of
the attorney general, one secretary for the
administrative services manager, an administrator and
any support staff for the criminal and juvenile
justice resources coordination functions, and law
clerks;

(11) (A) Teachers, principals, vice-principals, complex
area superintendents, deputy and assistant
superintendents, other certificated personnel,
not more than twenty noncertificated
administrative, professional, and technical
personnel not engaged in instructional work;

(B) Effective July 1, 2003, teaching assistants,
educational assistants, bilingual/bicultural
school-home assistants, school psychologists,
psychological examiners, speech pathologists,
athletic health care trainers, alternative school
work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;

(C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and

(D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;

(12) Employees engaged in special, research, or demonstration projects approved by the governor;

(13) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;
(B) Positions filled with students in accordance with guidelines for established state employment programs; and

(C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

(15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is
impracticable to ascertain or anticipate the portion
of time to be devoted to the service of the State;
(16) Positions of first deputies or first assistants of
each department head appointed under or in the manner
provided in section 6, article V, of the Hawaii State
Constitution; [three] **two** additional deputies or
assistants either in charge of the highways[harbors] and airports divisions or other functions
within the department of transportation as may be
assigned by the director of transportation, with the
approval of the governor; four additional deputies in
the department of health, each in charge of one of the
following: behavioral health, environmental health,
hospitals, and health resources administration,
including other functions within the department as may
be assigned by the director of health, with the
approval of the governor; an administrative assistant
to the state librarian; and an administrative
assistant to the superintendent of education;
(17) Positions specifically exempted from this part by any
other law; provided that:
(A) Any exemption created after July 1, 2014, shall expire three years after its enactment unless affirmatively extended by an act of the legislature; and

(B) All of the positions defined by paragraph (9) shall be included in the position classification plan;

(18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;

(19) Household employees at the official residence of the president of the University of Hawaii;

(20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;

(21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's
workforce in any housing project maintained or
operated by the authority shall be hired under the
tenant hire program;

(22) Positions of the federally funded expanded food and
nutrition program of the University of Hawaii that
require the hiring of nutrition program assistants who
live in the areas they serve;

(23) Positions filled by persons with severe disabilities
who are certified by the state vocational
rehabilitation office that they are able to perform
safely the duties of the positions;

(24) The sheriff;

(25) A gender and other fairness coordinator hired by the
judiciary;

(26) Positions in the Hawaii National Guard youth and adult
education programs;

(27) In the state energy office in the department of
business, economic development, and tourism, all
energy program managers, energy program specialists,
energy program assistants, and energy analysts; [and]
(28) Administrative appeals hearing officers in the department of human services[;] and

(29) The chief executive officer of the Hawaii commercial harbors authority, all other executive officers that the chief executive officer may appoint pursuant to section -3(d), and positions that the chief executive officer is authorized to fill by appointing specially qualified employees pursuant to section -3(d).

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 8. Section 89C-1.5, Hawaii Revised Statutes, is amended by amending the definition of "appropriate authority" to read as follows:

"Appropriate authority" means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the state public charter school commission, the Hawaii health systems corporation board, the auditor, the ombudsman, the board of directors of the Hawaii
commercial harbors authority, and the director of the
legislative reference bureau. These individuals or boards may
make adjustments for their respective excluded employees."

SECTION 9. Section 103D-203, Hawaii Revised Statutes, is amended as follow:

1. By amending subsection (a) to read as follows:

"(a) The chief procurement officer for each of the following state entities shall be:

(1) The judiciary--the administrative director of the courts;
(2) The senate--the president of the senate;
(3) The house of representatives--the speaker of the house of representatives;
(4) The office of Hawaiian affairs--the chairperson of the board;
(5) The University of Hawaii--the president of the University of Hawaii;
(6) The department of education, excluding the Hawaii public library system--the superintendent of education;
(7) The Hawaii health systems corporation--the chief executive officer of the Hawaii health systems corporation; [and]

(8) The Hawaii commercial harbors authority--the chief executive officer of the Hawaii commercial harbors authority; and

(9) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them--the administrator of the state procurement office of the department of accounting and general services."

2. By amending subsection (c) to read as follows:

"(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, University of Hawaii, department of education, Hawaii commercial harbors authority, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, "State" shall mean "judiciary", "state senate", "state house of representatives", "office of Hawaiian affairs", "University of Hawaii", "department of education", 
"Hawaii commercial harbors authority", "executive branch", "county", "board of water supply" or "department of water supply", and "semi-autonomous public transit agency", respectively.

SECTION 10. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

"§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

(1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;

(2) Lands set aside pursuant to law for the use of the United States;

(3) Lands being used for roads and streets;
1. (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;

2. (5) Lands to which the University of Hawaii holds title;

3. (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;

4. (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;

5. (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;

6. (9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the
Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;

(10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title;

(11) Lands to which the Hawaii technology development corporation in its corporate capacity holds title;

[and]

(12) Lands to which the department of education holds title; and

(13) Lands to which the Hawaii commercial harbors authority holds title;

provided that, except as otherwise limited under federal law and except for state land used as an airport as defined in section 262-1, public lands shall include the air rights over any portion of state land upon which a county mass transit project
is developed after July 11, 2005[-]; and provided further that
lands to which the Hawaii commercial harbors authority holds
title shall be considered "public lands" for the purpose of
accounting of all receipts from lands that are described in
section 5(f) of the Admission Act, Public Law 86-3, for the
prior fiscal year, pursuant to section 5 of Act 178, Session
Laws of Hawaii 2006."

SECTION 11. Section 266-17, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) The [department of transportation] Hawaii commercial
harbors authority shall adjust, fix, and enforce the rates
assessable and chargeable by it in respect to dockage, wharfage,
demurrage, and other rates and fees pertaining to harbors,
wharves, and properties managed and operated by it so as to
produce from the rates and fees, in respect to all harbors,
wharves, and other properties, except those that are principally
used for recreation or the landing of fish, revenues sufficient
to:

(1) Pay when due the principal of and interest on all
bonds and other obligations for the payment of which
the revenue is or has been pledged, charged, or
otherwise encumbered, or which are otherwise payable
from the revenue or from a special fund maintained or
to be maintained from the revenue, including reserves
therefor, and to maintain the special fund in an
amount at least sufficient to pay when due all bonds
or other revenue obligations and interest thereon,
which are payable from the special fund, including
reserves therefor;

(2) Provide for all expenses of operation and maintenance
of the properties, including reserves therefor, and
the expenses of the department in connection with
operation and maintenance; and

(3) Reimburse the general fund of the State for all bond
requirements for general obligation bonds which are or
have been issued for harbor or wharf improvements, or
to refund any of the improvement bonds, excluding
bonds, the proceeds of which were or are to be
expended for improvements which are or will be neither
revenue producing nor connected in their use directly
with revenue producing properties."
SECTION 12. On and after the transfer completion date established by the Hawaii commercial harbors authority in section 14(b) of this Act, and until the revisor of statutes makes the amendments to applicable provisions in chapters 102, 266, and 268, Hawaii Revised Statutes, described in this section, every reference to the department of transportation or "department" or its role in awarding concessions in chapters 102, 266, and 268, Hawaii Revised Statutes, shall be a reference to the Hawaii commercial harbors authority, and every reference to the director of transportation or "director" or the director's role in awarding concessions in chapters 102, 266, and 268, Hawaii Revised Statutes, shall be a reference to the chief executive officer of the Hawaii commercial harbors authority. After the transfer completion date, but no later than when the subsequent supplements to the Hawaii Revised Statutes are prepared, the revisor of statutes shall make appropriate changes, including, without limitation, substituting the phrase "chief executive officer" for the terms "director" or "director of transportation", the term "Hawaii commercial harbors authority" for the term "department of transportation", and the term "authority" for the term "department."
SECTION 13. The Hawaii commercial harbors authority shall succeed to the jurisdiction, powers, and responsibilities of the department of transportation over commercial maritime operations, commercial harbors, and commercial maritime facilities, including all of the functions relating to commercial harbors and commercial maritime operations performed by the department and its harbors division, on the transfer completion date published by the Hawaii commercial harbors authority pursuant to section 14(b) of this Act, which date shall be no later than December 31, 2022.

Thereafter, to the extent that the Hawaii commercial harbors authority is authorized under this Act to exercise powers and duties that are also granted to other departments, offices, or boards of the State, with respect to commercial harbors, commercial maritime facilities, and commercial maritime operations, the Hawaii commercial harbors authority shall exclusively exercise those powers and perform those duties.

SECTION 14. (a) Not prior to January 1, 2020, but no later than September 30, 2020, the governor shall designate a representative who shall facilitate the Hawaii commercial harbors authority's orderly succession to the jurisdiction,
powers, functions, rights, benefits, obligations, assets,
liabilities, funds, accounts, contracts, and all other things
currently held, used, incurred, or performed by the department
of transportation, its director and staff, and its harbors
division, in administering and exercising the authority and
fulfilling the responsibilities authorized or conferred upon the
department of transportation and the director of transportation,
by chapters 102, 266, and 268, Hawaii Revised Statutes.

Not prior to October 1, 2020, but no later than December
31, 2020, the governor shall appoint the members of the board of
directors of the Hawaii commercial harbors authority.

To facilitate the Hawaii commercial harbors authority's
timely assumption of the department of transportation's
authority and responsibilities, including all of the
department's associated bonds, notes, and obligations as
described in sections 16 and 17 below, the department of
transportation, the department of accounting and general
services, the department of human resources development, the
state procurement office, and any other state department or
agency, if requested by the authority, shall enter into a
memorandum of understanding with the authority to:
(1) Provide administrative support services for the authority pending the transfer of employees from the department of transportation to the Hawaii commercial harbors authority pursuant to section 18 of this Act;

(2) Develop a policy and set of robust procurement procedures that foster accountability, transparency and oversight of contracts, to include compliance with federal procurement requirements;

(3) Assist the authority with the organization of its human resources development functions, including establishing:

(A) A human resources office;

(B) The authority's civil service and civil service positions, and the classification system, merit appeals board, recruitment system, performance appraisal system, and the administrative rules, policies, standards, and procedures, including internal complaint procedures, adopted to support its civil service; and

(C) The authority's exempt and excluded positions, and guidelines, procedures, and policies for
filling them, and compensating the officers and employees who fill them;

(4) Assist the authority in establishing its accounting, budgeting, fund management, and communication and electronic information systems, and creating appropriate interfaces between the authority's accounting, budgeting, fund management, communication and electronic information systems, and those of the department of transportation, and other state agencies;

(5) Assist the authority in identifying the plans and reports that departments and agencies administratively attached to a department are required to prepare for the governor, the legislature, or another state department or agency with respect to commercial maritime activities or the State's commercial harbor system; determining whether those plans and reports have been prepared and will be transferred to the authority on the transfer completion date; and preparing the same for the authority, if they do not exist;
(6) Expeditiously transfer or otherwise facilitate the authority's acquisition or assumption of all of the powers, functions, rights, benefits, obligations, assets, funds, accounts, contracts, and all other things held, used, incurred, or performed by the department of transportation, its director and staff, and its harbors division, in exercising the authority and fulfilling and administering the responsibilities authorized or conferred upon the department of transportation and the director of transportation by chapters 102, 266, and 268, Hawaii Revised Statutes; and

(7) Reimburse each cooperating department or agency for the cost of services provided under the memorandum of understanding.

(b) As soon as feasible, the Hawaii commercial harbors authority, with the concurrence of the director of transportation and the governor, shall establish the transfer completion date, which shall be no later than December 31, 2022, and publish notice of the transfer completion date by:
(1) Publishing the notice in a daily publication of statewide circulation pursuant to section 1-28.5, Hawaii Revised Statutes;

(2) Posting a copy of the notice on an electronic calendar on a website maintained by the State;

(3) Providing a copy of the notice to the department of transportation, the Secretaries of the United States Department of Transportation and Department of Defense, the Commandant of the United States Coast Guard, and the head of every other state department; and

(4) Posting the notice prominently at every commercial harbor and commercial maritime facility in the State.

All notices shall be published, distributed, or posted at least ninety days before the transfer completion date.

SECTION 15. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair any existing federal income tax exemption to, security interest of, or obligation of the State or any agency thereof to the holders of any bonds or other obligations issued by the State or by any department or agency of the State, and to the extent, and only
to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. The department of transportation shall be responsible for any and all obligations incurred by the department or its harbors division in connection with the department's exercise of the authority and performance of the duties and responsibilities conferred upon it and its director by chapters 102, 266, and 268, Hawaii Revised Statutes, until the time that the obligations, including any accounts payable, accrued paid time off, debt, capital leases, and other obligations incurred before the transfer completion date, have been assumed by the Hawaii commercial harbors authority, which shall not occur prior to the transfer completion date. All collective bargaining disputes or claims against the department grounded in an act or omission, or an event that occurred prior to the transfer completion date shall remain the responsibility of the department of transportation. All liabilities arising
out of the Hawaii commercial harbors authority's exercise of the
authority and performance of the duties and responsibilities
conferred upon it and its chief executive officer by chapters
102, 266, and 268, Hawaii Revised Statutes, after the transfer
completion date shall be the responsibility of the authority.
The assumption by the Hawaii commercial harbors authority of the
bonds, notes, or other obligations of the department of
transportation relating to the State's commercial harbors system
and commercial maritime facilities shall be subject to the terms
and provisions of any certificate, indenture, or resolution
securing those bonds, notes, or other obligations. On the
transfer completion date, the Hawaii commercial harbors
authority shall assume responsibility for all rights, duties,
penalties, and proceedings of the department of transportation
related to the State's commercial harbors system and commercial
maritime facilities.
SECTION 17. The State of Hawaii pledges to and agrees with
the holders of the bonds, notes, or other obligations of the
department of transportation being assumed by the Hawaii
commercial harbors authority on the transfer completion date and
the holders of the bonds, notes, or other obligations of the
harbors authority issued pursuant to chapters 37D or 39, Hawaii
Revised Statutes, that the State shall not limit or alter the
rights and powers vested in the Hawaii commercial harbors
authority so as to impair the terms of any contract made or
assumed by the Hawaii commercial harbors authority with holders
or in any way impair the rights and remedies of holders until
bonds, notes, or other obligations, together with interest
thereon, with interest on any unpaid installments of interest,
and all costs and expenses in connection with any action or
proceedings by or on behalf of holders, are fully met and
discharged. In addition, the State pledges to and agrees with
the holders of the bonds, notes, or other obligations of the
department of transportation being assumed by the Hawaii
commercial harbors authority on the transfer completion date and
the holders of the bonds, notes, or other obligations of the
Hawaii commercial harbors authority issued pursuant to chapter
37D or 39, Hawaii Revised Statutes, that the State shall not
limit or alter the basis on which the revenues or user taxes
securing any such bonds, notes, or other obligations issued or
assumed by the Hawaii commercial harbors authority are to be
received by the Hawaii commercial harbors authority, or the
rights of the Hawaii commercial harbors authority to the use of
the funds, so as to impair the terms of any contract securing
the same. The Hawaii commercial harbors authority is authorized
to include these pledges and agreements of the State in any
contract with the holders of bonds, notes, or other obligations
issued pursuant to chapter 37D or 39, Hawaii Revised Statutes.

SECTION 18. The Hawaii commercial harbors authority shall
recognize all bargaining units and collective bargaining
agreements existing at the time of transfer to the authority.
All employees who are subject to chapter 76, Hawaii Revised
Statutes, and occupy civil service positions and whose functions
are transferred to the Hawaii commercial harbors authority by
this Act shall retain their civil service status, whether
permanent or temporary. The employees shall be transferred to
the authority without loss of salary, seniority (except as
prescribed by applicable collective bargaining agreements),
retention points, prior service credits, any vacation and sick
leave credits previously earned, and other rights, benefits, and
privileges, in accordance with state personnel laws and this
Act; provided that the employees meet applicable requirements
for the class or position to which transferred or appointed, as
applicable.

Any employee who, prior to this Act, is a member of a
bargaining unit shall remain a member of that bargaining unit
when future collective bargaining agreements are negotiated.

Any employee who, prior to this Act, is exempt from civil
service and is transferred to the authority as a consequence of
this Act may retain the employee's exempt status, but shall not
be appointed to a civil service position as a consequence of
this Act. An exempt employee who is transferred by this Act
shall not suffer any loss of prior service credit, vacation or
sick leave credits previously earned, or other employee benefits
or privileges as a consequence of this Act. The chief executive
officer of the Hawaii commercial harbors authority may prescribe
the duties and qualifications of these employees and fix their
salaries without regard to chapter 76, Hawaii Revised Statutes.

No employee included in a collective bargaining unit as an
employee of the department of transportation shall be laid off
as a consequence of this Act.

SECTION 19. On or no more than ninety days after the
transfer completion date, all appropriations, records,
equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of transportation relating to the functions transferred to the Hawaii commercial harbors authority shall be transferred with the functions to which they relate.

SECTION 20. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of transportation to implement provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the Hawaii commercial harbors authority by this Act shall remain in full force and effect on and after the transfer completion date established pursuant to section 14(b) of this Act, until amended or repealed by the Hawaii commercial harbors authority pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of transportation or director of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the Hawaii commercial harbors authority or chief executive officer of the authority, as appropriate.
SECTION 21. All deeds, executive orders, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of transportation, pursuant to the provisions of the Hawaii Revised Statutes, that are reenacted or made applicable to the Hawaii commercial harbors authority by this Act shall remain in full force and effect. On the transfer completion date established pursuant to section 14(b) of this Act, every reference to the department of transportation in those deeds, executive orders, leases, contracts, loans, agreements, permits or other documents shall be construed as a reference to the Hawaii commercial harbors authority or the board of directors of the authority.

SECTION 22. There is appropriated out of the harbor special fund the sum of $ or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 to begin preparations for the transfer of functions from the department of transportation to the Hawaii commercial harbors authority pursuant to this Act.

The sums appropriated shall be expended by the Hawaii commercial harbors authority for the purposes of this Act.
SECTION 23. 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 24. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 25. This Act shall take effect on July 1, 2019;
provided that the amendments made to section 103D-203, Hawaii
Revised Statutes, by section 9 of this Act shall not be repealed
when that section is reenacted on June 30, 2021, pursuant to

INTRODUCED BY: 

JAN 24 2019
Report Title:
Hawaii Commercial Harbors Authority; DOT; Commercial Harbors; Commercial Maritime; Appropriation

Description:
Establishes the Hawaii Commercial Harbors Authority. Transfers jurisdiction and functions relating to commercial harbors and commercial maritime operations from the Department of Transportation to the Hawaii Commercial Harbors Authority. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.