

# H.B. NO. 1163

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## A BILL FOR AN ACT

RELATING TO HARBORS.

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

1           SECTION 1. Section 266-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§266-3 Rules.** (a) The director of transportation may  
4 adopt rules as necessary to:

- 5           (1) Regulate the manner in which all vessels may enter and  
6           moor, anchor, or dock in the commercial harbors,  
7           ports, and roadsteads of the State, or move from one  
8           dock, wharf, pier, quay, bulkhead, landing, anchorage,  
9           or mooring to another within the commercial harbors,  
10          ports, or roadsteads;
- 11          (2) The examination, guidance, and control of harbor  
12          masters and their assistants and their conduct while  
13          on duty;
- 14          (3) The embarking or disembarking of passengers;
- 15          (4) The expeditious and careful handling of freight,  
16          goods, wares, and merchandise of every kind which may  
17          be delivered for shipment or discharged on the

1 commercial docks, wharves, piers, quays, bulkheads, or  
2 landings belonging to or controlled by the State; and  
3 (5) Defining the duties and powers of carriers, shippers,  
4 and consignees respecting passengers, freight, goods,  
5 wares, and merchandise in and upon the docks, wharves,  
6 piers, quays, bulkheads, or landings within the  
7 commercial harbors, ports, and roadsteads of the  
8 State. The director may also make further rules for  
9 the safety of the docks, wharves, piers, quays,  
10 bulkheads, and landings on, in, near, or affecting a  
11 commercial harbor and waterfront improvements  
12 belonging to or controlled by the State.

13 (b) The director may also adopt, amend, and repeal such  
14 rules as are necessary:

15 (1) For the proper regulation and control of all shipping  
16 in the commercial harbors belonging to or controlled  
17 by the State, and of the entry, departure, mooring,  
18 and berthing of vessels therein, and for the  
19 regulation and control of all other matters and things  
20 connected with such shipping;

21 (2) To prevent the discharge or throwing into commercial  
22 harbors of rubbish, refuse, garbage, or other

1 substances likely to affect water quality or that  
2 contribute to making such harbors unsightly,  
3 unhealthful, or unclean, or that are liable to fill up  
4 shoal or shallow waters in, near, or affecting the  
5 commercial harbors; and

6 (3) To prevent the escape of fuel or other oils or  
7 substances into the waters in, near, or affecting  
8 commercial harbors from any source point, including,  
9 but not limited to, any vessel or pipes or storage  
10 tanks upon the land.

11 (c) The director may also adopt, amend, and repeal such  
12 rules as are necessary to require any person who uses or  
13 occupies the commercial harbors, ports, roadsteads, harbor  
14 buildings, and other harbor facilities of the State, including,  
15 but not limited to, the docks, wharves, piers, quays, bulkheads,  
16 or landings therein, to defend, indemnify, and hold harmless,  
17 the State, and any of its agencies, officers, and employees,  
18 from and against all liability, loss, damage, cost and expense,  
19 including all attorneys' fees, and all claims, suits, and  
20 demands therefore, arising out of or resulting from such use or  
21 occupation.

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1            [~~e~~] (d) The rules shall be adopted in the manner  
2 prescribed in chapter 91 and shall have the force and effect of  
3 law."

4            SECTION 2. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6            SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Day  
BY REQUEST

JAN 26 2009

**Report Title:**

Harbors; Indemnification.

**Description:**

Authorizes the Department of Transportation to impose upon private parties who use state commercial harbors the duty to defend, indemnify and hold harmless the State against claims that arise from such use.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO HARBORS.

PURPOSE: To provide statutory authority to allow the department to adopt rules that impose upon private persons who use the State's commercial harbors the duty to defend, hold harmless, and indemnify the State, and any of its agencies, officers, and employees, against all claims that arise from such use.

MEANS: Amend section 266-3, Hawaii Revised Statutes.

JUSTIFICATION: Section 19-41-7, Hawaii Administrative Rules (HAR), imposed a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from such activities, except where the State is proven to be solely and legally negligent. In William Haole v. State of Hawaii, 111 Haw. 144 (2006), the Hawaii Supreme Court concluded that the department's governing statutes did not explicitly or implicitly authorize the department to issue administrative rules allowing the department to impose upon private parties a duty to defend or indemnify the State. In Haole, a stevedore employed by a third party was injured while riding as a passenger in an automobile being unloaded by another stevedore employed by the same third party. The injured stevedore brought a personal injury action against Matson Terminals, which had subcontracted with the third party to conduct cargo loading and unloading, and the department. The State, in turn, cross-claimed against Matson and the third party seeking to enforce section 19-41-7, HAR, and the rule's duty to defend and indemnify the department. In October, 2004, the Circuit Court of the First Circuit entered its order granting partial summary judgment in favor

of the State in the action brought by the injured stevedore. On appeal, the Hawaii Supreme Court held that the circuit court erred and vacated the judgment, remanding the case to the circuit court for further proceedings. The Hawaii Supreme Court decision rendered section 19-41-7, HAR, unenforceable. As a result, the State bears considerable financial exposure in being held as a responsible party for the plaintiff's injuries.

Impact on the public: This bill will provide the department with the authority to impose the duty to defend, hold harmless, and indemnify through administrative rules. This will reduce costly lawsuits against the State. Users of harbor facilities should be held responsible for the safe operation of maritime and maritime related activities on harbor lands. While this duty to defend or indemnify the State is already imposed upon tenants under lease agreements, other commercial activities take place within our harbors which do not require written agreements or in which written agreements are impracticable. As tariffs control the fees charged to most users of port facilities and services, written agreements are not executed by all users. This amendment will provide more protection to the State in situations where such use is not covered by a written agreement.

Impact on the department and other agencies: The amendment will authorize the department to adopt administrative rules that can extend to other state departments that may be affected by activities engaged by private parties in the commercial harbors.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	TRN 301-395

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OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.