

JAN 28 2009

A BILL FOR AN ACT

RELATING TO OCEAN RECREATION AND COASTAL AREAS PROGRAMS.

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

1 SECTION 1. The legislature finds that regulation of small
2 boat harbors, originally under the jurisdiction of the
3 department of transportation, was transferred to the department
4 of land and natural resources by Act 272, Session Laws of Hawaii
5 1991. This occurred in part because virtually all small boat
6 harbor fees were for noncommercial boats and small boat harbors
7 generated very little revenue.

8 However, conditions at small boat harbors have changed.
9 Small boat harbor facilities have deteriorated and commercial
10 businesses that pay higher fees have increased in small boat
11 harbors. The legislature finds that to ensure the best
12 management and use of small boat harbors, a change in
13 jurisdiction is again necessary.

14 The purpose of this Act is to return responsibility for
15 regulation of the small boat harbors and related programs to the
16 department of transportation.



1 SECTION 2. Chapter 266, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§266- Definitions. As used in this chapter, unless
5 the context otherwise requires:

6 "Ocean waters" means all waters seaward of the shoreline
7 within the jurisdiction of the State.

8 "Shoreline" means the upper reaches of the wash of the
9 waves, usually evidenced by the edge of vegetation growth or by
10 the upper limit of debris left by the wash of the waves."

11 SECTION 3. Section 26-15, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) The department shall manage and administer the public
14 lands of the State and minerals thereon [~~and all water and~~
15 ~~coastal areas of the State except the commercial harbor areas of~~
16 ~~the State]~~, including the soil conservation function, the
17 forests and forest reserves, aquatic life, wildlife resources,
18 and state parks, including historic sites, and all activities
19 thereon and therein [~~including, but not limited to, boating,~~
20 ocean recreation, and coastal areas programs]."

21 SECTION 4. Section 171-3, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§171-3 Department of land and natural resources. (a)
2 The department of land and natural resources shall be headed by
3 an executive board to be known as the board of land and natural
4 resources. The department shall manage, administer, and
5 exercise control over public lands, the water resources, [~~ocean~~
6 ~~waters, navigable streams, coastal areas (excluding commercial~~
7 ~~harbor areas),~~] and minerals and all other interests therein,
8 and exercise such powers of disposition thereof as may be
9 authorized by law. The department shall also manage and
10 administer the state parks, historical sites, forests, forest
11 reserves, aquatic life, aquatic life sanctuaries, public fishing
12 areas, [~~boating, ocean recreation, coastal programs,~~] wildlife,
13 wildlife sanctuaries, game management areas, public hunting
14 areas, natural area reserves, and other functions assigned by
15 law."

16 SECTION 5. Section 199-3, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The conservation and resources enforcement officers,
19 with respect to all state lands, including public lands, state
20 parks, forest reserves, forests, aquatic life and wildlife
21 areas, Kaho'olawe island reserve, and any other lands and waters
22 within the State, shall:



- 1 (1) Enforce title 12, chapters 6D, 6E, and 6K, and rules
2 adopted thereunder;
- 3 (2) Investigate complaints, gather evidence, conduct
4 investigations, and conduct field observations and
5 inspections as required or assigned;
- 6 (3) Cooperate with enforcement authorities of the State,
7 counties, and federal government in development of
8 programs and mutual aid agreements for conservation
9 and resources enforcement activities within the
10 ~~[State,]~~ state;
- 11 (4) Cooperate with established search and rescue agencies
12 of the counties and the federal government in
13 developing plans and programs and mutual aid
14 agreements for search and rescue activities within the
15 ~~[State,]~~ state;
- 16 (5) Check and verify all leases, permits, and licenses
17 issued by the department of land and natural
18 resources;
- 19 (6) Enforce the laws relating to firearms, ammunition, and
20 dangerous weapons contained in chapter 134;



1 ~~[(7) Enforce the laws in chapter 291E relating to operating~~
2 ~~a vessel on or in the waters of the State while using~~
3 ~~intoxicants;~~

4 ~~(8) Whether through a specifically designated marine~~
5 ~~patrol or otherwise, enforce the rules in the areas of~~
6 ~~boating safety, conservation, and search and rescue~~
7 ~~relative to the control and management of boating~~
8 ~~facilities owned or controlled by the State, ocean~~
9 ~~waters, and navigable streams and any activities~~
10 ~~thereon or therein, and beaches encumbered with~~
11 ~~easements in favor of the public, and the rules~~
12 ~~regulating vessels and their use in the waters of the~~
13 ~~State;]~~ and

14 ~~[(9)]~~ (7) Carry out other duties and responsibilities as
15 the board of land and natural resources from time to
16 time may direct."

17 SECTION 6. Section 200-1, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By adding a new definition to be appropriately inserted
20 and to read:

21 "Director" means the director of transportation."

22 2. By amending the definition of "department" to read:

1 "Department" means the department of [~~land and natural~~
2 ~~resources.~~] transportation."

3 3. By repealing the definitions of "board" and
4 "chairperson."

5 [~~"Board" means the board of land and natural resources.~~

6 ~~"Chairperson" means the chairperson of the board of land~~
7 ~~and natural resources."]~~

8 SECTION 7. Section 200-2, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§200-2 [~~Board of land and natural resources,~~] Department
11 of transportation; powers and duties. (a) The [~~board~~]
12 department shall have the primary responsibility for
13 administering the ocean recreation and coastal areas programs
14 and performing the functions heretofore performed by the
15 department of [~~transportation and the department of public~~
16 ~~safety~~] land and natural resources in the areas of boating
17 safety, conservation, search and rescue, and security of small
18 boat harbor environs.

19 (b) The [~~board~~] department shall not transfer its
20 jurisdiction, management, or operations of the small boat
21 harbors to any other department or agency or any county in any
22 manner unless expressly provided by law."



1 SECTION 8. Section 200-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Notwithstanding any law to the contrary, the [~~board~~]
4 department may lease fast lands within an existing state boating
5 facility by public auction or by direct negotiation pursuant to
6 section 171-59, for private development, management, and
7 operation [-]; provided that the director shall make the finding
8 of public interest and otherwise administer the negotiation
9 process. For the purpose of this section, the term "state
10 boating facility" means a state small boat harbor, launching
11 ramp, offshore mooring, pier, wharf, landing, or any other area
12 under the jurisdiction of the department pursuant to this
13 chapter."

14 SECTION 9. Section 200-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~+~~]**\$200-3**[~~+~~] **Ocean recreation and coastal areas programs.**

17 The [~~board~~] department shall assume the following functions of
18 the department of [~~transportation~~] land and natural resources:

- 19 (1) Managing and administering the ocean-based recreation
20 and coastal areas programs of the State;
- 21 (2) Planning, developing, operating, administering, and
22 maintaining small boat harbors, launching ramps, and



- 1 other boating facilities and associated aids to
2 navigation throughout the [~~State~~] state;
- 3 (3) Developing and administering an ocean recreation
4 management plan;
- 5 (4) Administering and operating a vessel registration
6 system for the State;
- 7 (5) Regulating the commercial use of boating facilities;
- 8 (6) Regulating boat regattas and other ocean water events;
- 9 (7) Administering a marine casualty and investigation
10 program;
- 11 (8) Assisting in abating air, water, and noise pollution;
- 12 (9) Conducting public education in boating safety;
- 13 (10) Administering the boating special fund;
- 14 (11) Assisting in controlling shoreline erosion;
- 15 (12) Repairing seawalls and other existing coastal
16 protective structures under the jurisdiction of the
17 State; and
- 18 (13) Removing nonnatural obstructions and public safety
19 hazards from the shoreline, navigable streams,
20 harbors, channels, and coastal areas of the [~~State~~]
21 state."



1 SECTION 10. Section 200-18, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The department shall maintain a record of all persons
4 adjudicated of violations under part III of chapter 291E and the
5 period of suspension or revocation of operator privileges
6 ordered by the [~~director~~] administrative director of the courts
7 under that part."

8 SECTION 11. Section 205A-48, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§205A-48 Conflict of other laws.** In case of a conflict
11 between the requirements of any other state law or county
12 ordinance regarding shoreline setback lines, the more
13 restrictive requirements shall apply in furthering the purposes
14 of this part. Nothing contained in this part shall be construed
15 to diminish the jurisdiction of the state department of
16 transportation over wharves, airports, docks, piers, small boat
17 or other [~~commercial~~] harbors, and any other maritime or water
18 sports recreational facilities constructed by the State;
19 provided that [~~such~~] plans for construction of the facility are
20 submitted for the review and information of the officer of the
21 respective agency charged with the administration of the county



1 zoning laws, and found not to conflict with any county
2 ordinances, zoning laws, and building codes."

3 SECTION 12. Section 248-8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§248-8 Special funds in treasury of State.** There are
6 created in the treasury of the State three special funds to be
7 known, respectively, as the state highway fund, the airport
8 revenue fund, and the boating special fund. All taxes collected
9 under chapter 243 in each calendar year, except the "county of
10 Hawaii fuel tax", "city and county of Honolulu fuel tax",
11 "county of Maui fuel tax", and "county of Kauai fuel tax", shall
12 be deposited in the state highway fund; provided that:

13 (1) All taxes collected under chapter 243 with respect to
14 gasoline or other aviation fuel sold for use in or
15 used for airplanes shall be set aside in the airport
16 revenue fund; and

17 (2) All taxes collected under chapter 243 with respect to
18 liquid fuel sold for use in or used for small boats
19 shall be deposited in the boating special fund.

20 As used in this section, "small boats" means all vessels
21 and other watercraft except those operated in overseas
22 transportation beyond the [~~State,~~] state, and ocean-going tugs



1 and dredges. The [~~chairperson of the board of land and natural~~
2 ~~resources,~~] director of transportation, from July 1, [~~1992,~~]
3 2009, and every three years thereafter, shall establish
4 standards or formulas that will as equitably as possible
5 establish the total taxes collected under chapter 243 in each
6 fiscal year that are derived from the sale of liquid fuel for
7 use in or used for small boats. The amount so determined shall
8 be deposited in the boating special fund.

9 An amount equal to 0.3 per cent of the highway fuel tax but
10 not more than \$250,000 collected under chapter 243 shall be
11 allocated each fiscal year to the special land and development
12 fund for purposes of the management, maintenance, and
13 development of trails and trail accesses under the jurisdiction
14 of the department of land and natural resources established
15 under section 198D-2."

16 SECTION 13. Section 266-1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**\$266-1 Department of transportation; harbors;**
19 **jurisdiction.** All [~~commercial~~] ocean waters and navigable
20 streams, and all harbors and roadsteads, and all [~~commercial~~]
21 harbor and waterfront improvements belonging to or controlled by
22 the State, and all vessels and shipping within the [~~commercial~~]



1 harbors and roadsteads, waters, and streams shall be under the
2 care and control of the department of transportation.

3 ~~[For the purpose of this chapter, "commercial harbor" means~~
4 ~~a harbor or off-shore mooring facility which is primarily for~~
5 ~~the movement of commercial cargo, passenger and fishing vessels~~
6 ~~entering, leaving, or traveling within the State, and facilities~~
7 ~~and supporting services for loading, off-loading, and handling~~
8 ~~of cargo, passengers, and vessels.]"~~

9 SECTION 14. Section 266-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§266-2 Powers and duties of department.** (a) The
12 department of transportation shall:

13 (1) Have and exercise all the powers and shall perform all
14 the duties which may lawfully be exercised by or under
15 the State relative to the control and management of
16 ~~[commercial]~~ shores, shore waters, navigable streams,
17 harbors, ~~[commercial]~~ harbor and waterfront
18 improvements, ports, docks, wharves, piers, quays,
19 bulkheads, and landings belonging to or controlled by
20 the State, and the shipping using the same;

21 (2) Have the authority to use and permit and regulate the
22 use of the ~~[commercial]~~ docks, wharves, piers, quays,



1 bulkheads, and landings belonging to or controlled by
2 the State for receiving or discharging passengers and
3 for loading and landing merchandise, with a right to
4 collect wharfage and demurrage thereon or therefor;

5 (3) Subject to all applicable provisions of law, have the
6 power to fix and regulate from time to time rates and
7 charges for:

8 (A) Services rendered in mooring [~~commercial~~]
9 vessels;

10 (B) The use of [~~commercial~~] moorings belonging to or
11 controlled by the State;

12 (C) Wharfage or demurrage;

13 (D) Warehouse space, office space, and storage space
14 for freight, goods, wares, and merchandise; and

15 (E) The use of derricks or other equipment belonging
16 to the State or under the control of the
17 department;

18 (4) Make other charges including toll or tonnage charges
19 on freight passing over or across docks, wharves,
20 piers, quays, bulkheads, or landings;



1 (5) Appoint and remove clerks, harbor agents and their
2 assistants, and all such other employees as may be
3 necessary, and to fix their compensation;

4 (6) Adopt rules pursuant to chapter 91 and not
5 inconsistent with law; and

6 (7) Generally have all powers necessary to fully carry out
7 this chapter~~[7]~~ and chapter 200.

8 (b) Notwithstanding any law or provision to the contrary,
9 the department of transportation [~~is authorized to~~] may plan,
10 construct, operate, and maintain any commercial harbor facility
11 in the State, including~~[7]~~ but not limited to~~[7]~~ the acquisition
12 and use of lands necessary to stockpile dredged spoils, without
13 the approval of county agencies.

14 All moneys appropriated for [~~commercial~~] harbor
15 improvements, including new construction, reconstruction,
16 repairs, salaries, and operating expenses, shall be expended
17 under the supervision and control of the department, subject to
18 this chapter and chapter 103D.

19 All contracts and agreements authorized by law to be
20 entered into by the department shall be executed on its behalf
21 by the director of transportation.



1 (c) The department shall prepare and submit annually to
2 the governor a report of its official acts during the preceding
3 fiscal year, together with its recommendations as to
4 [~~commercial~~] harbor improvements throughout the [~~State.~~] state."

5 SECTION 15. Section 266-3, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) The director of transportation may adopt rules as
8 necessary to:

9 (1) Regulate the manner in which all vessels may enter and
10 moor, anchor or dock in the [~~commercial~~] ocean waters,
11 navigable streams, harbors, ports, and roadsteads of
12 the [~~State,~~] state, or move from one dock, wharf,
13 pier, quay, bulkhead, landing, anchorage, or mooring
14 to another within the [~~commercial~~] waters, streams,
15 harbors, ports, or roadsteads;

16 (2) The examination, guidance, and control of harbor
17 masters and their assistants and their conduct while
18 on duty;

19 (3) The embarking or disembarking of passengers;

20 (4) The expeditious and careful handling of freight,
21 goods, wares, and merchandise of every kind which may
22 be delivered for shipment or discharged on the

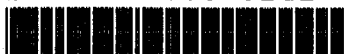


1 [~~commercial~~] docks, wharves, piers, quays, bulkheads,
2 or landings belonging to or controlled by the State;
3 and

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

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

17 (1) For the proper regulation and control of all shipping
18 in the [~~commercial~~] harbors belonging to or controlled
19 by the State, and of the entry, departure, mooring,
20 and berthing of vessels therein, and for the
21 regulation and control of all other matters and things



1 connected with such shipping[+] in all the harbors,
2 ocean waters, and navigable streams;

3 (2) To prevent the discharge or throwing into [~~commercial~~]
4 harbors, ocean waters, and navigable streams, of
5 rubbish, refuse, garbage, or other substances likely
6 to affect water quality or that contribute to making
7 such harbors, ocean waters, and navigable streams
8 unsightly, unhealthful, or unclean, or that are liable
9 to fill up shoal or shallow waters in, near, or
10 affecting the [~~commercial~~] harbors[+and], ocean
11 waters, and navigable streams; and

12 (3) To prevent the escape of fuel or other oils or
13 substances into the waters in, near, or affecting
14 [~~commercial~~] harbors, ocean waters, and navigable
15 streams, from any source point, including[+] but not
16 limited to[+] any vessel or pipes or storage tanks
17 upon the land."

18 SECTION 16. Section 266-19.5, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:

21 "(a) Notwithstanding any law to the contrary, the
22 department of transportation may enter into a capital



1 advancement contract with a private party for any public
2 improvement to or construction of a state harbor, [~~commercial~~
3 ~~harbor,~~] roadstead, or other waterfront improvement belonging to
4 or controlled by the State, if the director of transportation
5 determines that a capital advancement contract promotes the best
6 interest of the State by finding that:

7 (1) Private development is likely to be less costly than
8 any other type of contract;

9 (2) Private development provides needed public
10 improvements on a significantly more timely basis; or

11 (3) Public financing for the public improvements is not
12 available on a timely basis."

13 2. By amending subsection (e) to read:

14 "(e) For the purposes of this section:

15 "Capital advancement contract" means an agreement between
16 the department of transportation and a private party whereby the
17 private party agrees to furnish capital, labor, or materials for
18 a public improvement to or construction of a state harbor,
19 [~~commercial harbor,~~] roadstead, or other waterfront improvement
20 belonging to or controlled by the State and in return for which
21 the private party may be reimbursed in a manner to be determined
22 by the department.



1 "Total value" includes any contract extension, project
2 redesign, add-ons, or any other occurrence, act, or material
3 cost that may increase the cost of the contracted project."

4 SECTION 17. Section 266-24, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§266-24 Enforcement.** (a) The director of transportation
7 shall enforce this chapter and chapter 200, and all rules
8 ~~[thereunder, except for the rules relative to the control and~~
9 ~~management of the beaches encumbered with easements in favor of~~
10 ~~the public and ocean waters which shall be enforced by the~~
11 ~~department of land and natural resources.] adopted pursuant to~~
12 this chapter and chapter 200. For the purpose of the
13 enforcement of this chapter and chapter 200, and of all rules
14 adopted pursuant to this chapter~~[7]~~ and chapter 200, the powers
15 of police officers are conferred upon the director of
16 transportation and any officer, employee, or representative of
17 the department of transportation. Without limiting the
18 generality of the foregoing, the director and any person
19 appointed by the director hereunder may serve and execute
20 warrants, arrest offenders, and serve notices and orders. The
21 director of transportation and any employee, agent, or
22 representative of the department of transportation appointed as



1 enforcement officers by the director, and every state and county
2 officer charged with the enforcement of any law, statute, rule,
3 regulation, ordinance, or order, shall enforce and assist in the
4 enforcement of this chapter and chapter 200, and of all rules
5 and orders issued pursuant [~~thereto,~~] to this chapter and
6 chapter 200, and in carrying out [~~the~~] these responsibilities
7 [~~hereunder~~], each shall be specifically authorized to:

- 8 (1) Conduct any enforcement action [~~hereunder~~] under the
9 authority of this section in any [~~commercial~~] harbor
10 area and any area over which the department of
11 transportation and the director of transportation
12 [~~has~~] have jurisdiction under this chapter[+] and
13 chapter 200;
- 14 (2) Inspect and examine at reasonable hours any premises,
15 and the buildings and other structures thereon, where
16 harbors or harbor facilities are situated, or where
17 harbor-related activities are operated or conducted;
18 and
- 19 (3) Subject to limitations as may be imposed by the
20 director of transportation, serve and execute
21 warrants, arrest offenders, and serve notices and
22 orders.



1 For purposes of this subsection, the term "agents and
2 representatives" includes persons performing services at harbors
3 or harbor areas under contract with the department of
4 transportation.

5 (b) The department of transportation, in the name of the
6 State, may enforce this chapter and chapter 200 and the rules
7 and orders issued pursuant thereto by injunction or other legal
8 process in the courts of the State.

9 (c) Without limiting the generality of the foregoing,
10 enforcement measures may be effectuated through a specifically
11 designated marine patrol or otherwise, including enforcement of
12 the rules in the areas of boating safety, conservation, and
13 search and rescue relative to the control and management of
14 boating facilities owned or controlled by the State, ocean
15 waters, and navigable streams and any activities thereon or
16 therein, and beaches encumbered with easements in favor of the
17 public, and the rules regulating vessels and their use in the
18 waters of the State.

19 (d) The department shall enforce the laws in chapter 291E
20 relating to operating a vessel on or in the waters of the State
21 while using intoxicants."



1 SECTION 18. Section 266-27, Hawaii Revised Statutes, is
2 amended as follows:

3 "1. By amending subsection (a) to read:

4 "(a) No person shall moor a vessel in a state [~~commercial~~]
5 harbor without obtaining a use permit; nor shall a person
6 continue to moor a vessel in any state [~~commercial~~] harbor if
7 the use permit authorizing the vessel to moor has expired or
8 otherwise been terminated. A vessel moored without a use permit
9 or with a use permit that has expired or been terminated is an
10 unauthorized vessel and is subject to subsections (b) to (e)."

11 2. By amending subsection (c) to read:

12 "(c) An unauthorized vessel may be impounded by the
13 department at the sole cost and risk of the owner of the vessel,
14 if [~~such a~~] the vessel is not removed after the seventy-two-hour
15 period or if during [~~said~~] that period the vessel is removed and
16 re-moored in [~~said~~] the harbor or any other state [~~commercial~~]
17 harbor without a use permit."

18 SECTION 19. Section 266-28, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§266-28[+] **Fines arising from environmental protection**
21 **violations.** Notwithstanding any other law to the contrary, any
22 [~~commercial~~] harbor tenant or user, including any shipper or



1 shipping agent, who violates any federal, state, or county law
2 or rule relating to environmental protection and thereby causes
3 a fine to be levied upon the department, shall reimburse the
4 department for the entire amount of the fine. The department
5 may take such actions necessary to collect any amount
6 reimbursable under this section, and may also demand
7 reimbursement for costs or expenses incurred by the department
8 resulting from enforcement of this section."

9 SECTION 20. Section 200-5, Hawaii Revised Statutes, is
10 repealed.

11 [~~"§200-5 Commercial harbors excluded. For purposes of~~
12 ~~this chapter, ocean waters and navigable streams shall not~~
13 ~~include the commercial harbors of the State."~~]

14 SECTION 21. Section 266-1.6, Hawaii Revised Statutes, is
15 repealed.

16 [~~"§266-1.6 Hana harbor, jurisdiction. Notwithstanding~~
17 ~~any law to the contrary, the department of transportation shall~~
18 ~~have jurisdiction and administrative authority over Hana harbor,~~
19 ~~excluding its small boat ramp facility. The Hana harbor small~~
20 ~~boat ramp facility shall remain under the jurisdiction and~~
21 ~~administrative authority of the department of land and natural~~
22 ~~resources."~~]



1 SECTION 22. Sections 200-4(a), 200-9(d), 200-10(d),
2 200-14.5(a), 200-19, 200-22, 200-26(d), 200-36, 200-37(k),
3 200-41, 200-49(a), and 200-73, Hawaii Revised Statutes, are
4 amended by:

5 (1) Substituting the word "director" or like terms,
6 wherever the word "chairperson" or like term occurs,
7 as the context requires; and

8 (2) Substituting the word "department" or like term,
9 wherever the word "board" or like term occurs, as the
10 context requires.

11 SECTION 23. All rights, powers, functions, and duties of
12 the department of land and natural resources relating to
13 boating, small boat harbors, other ocean-based recreational
14 activities, and the marine patrol are transferred to the
15 department of transportation.

16 All officers and employees whose functions are transferred
17 by this Act shall be transferred with their functions and shall
18 continue to perform their regular duties upon their transfer,
19 subject to the state personnel laws and this Act.

20 No officer or employee of the State having tenure shall
21 suffer any loss of salary, seniority, prior service credit,
22 vacation, sick leave, or other employee benefit or privilege as



1 a consequence of this Act, and such officer or employee may be
2 transferred or appointed to a civil service position without the
3 necessity of examination; provided that the officer or employee
4 possesses the minimum qualifications for the position to which
5 transferred or appointed; and provided that subsequent changes
6 in status may be made pursuant to applicable civil service and
7 compensation laws.

8 Any incumbent officer or employee of the State who does not
9 have tenure and who may be transferred or appointed to a civil
10 service position as a consequence of this Act, shall be granted
11 regular civil service status without loss of seniority, prior
12 service credit, vacation, sick leave, or other employee
13 benefits, and without the necessity of examination; provided
14 they possess the minimum qualifications for the class to which
15 their positions are assigned. The pay rate of non-tenured
16 employees affected by this Act shall be determined in the same
17 manner as the pay rate of other civil service employees in
18 comparable positions with the same length of service. Any
19 officer or employee converted by this Act shall have performed
20 work satisfactorily in the position for a period of not less
21 than six months prior to the effective date of this Act.



1 If an office or position held by an officer or employee
2 having tenure is abolished, the officer or employee shall not
3 thereby be separated from public employment, but shall remain in
4 the employment of the State with the same pay and classification
5 and shall be transferred to some other office or position for
6 which the officer or employee is eligible under the personnel
7 laws of the State as determined by the head of the department or
8 the governor.

9 All appropriations, records, equipment, machines, files,
10 supplies, contracts, books, papers, documents, maps, and other
11 personal property heretofore made, used, acquired, or held by
12 the department of land and natural resources relating to the
13 functions transferred to the department of transportation shall
14 be transferred with the functions to which they relate.

15 SECTION 24. All rules, policies, procedures, guidelines,
16 and other material adopted or developed by the department of
17 land and natural resources shall remain in full force and effect
18 until amended or repealed by the department of transportation
19 pursuant to chapter 91, Hawaii Revised Statutes. In the
20 interim, every reference to the department, board, or
21 chairperson of the board of land and natural resources in those
22 rules, policies, procedures, guidelines, and other material is



1 amended to refer to the department of transportation or director
2 of transportation, as appropriate.

3 SECTION 25. All executive orders, revocable permits,
4 easements, and rights of entry for the use of state lands issued
5 and granted to the department of land and natural resources for
6 use in connection with the boating program shall be withdrawn or
7 terminated and appropriate land dispositions for use in
8 connection with the boating program may be made by the
9 department of transportation, as appropriate, subsequent to the
10 transfer of the boating program to the department of
11 transportation.

12 SECTION 26. It is the intent of this Act to neither
13 jeopardize the receipt of any federal aid nor to impair the
14 obligation of the State or any agency thereof to persons with
15 which it has existing contracts or to the holders of any bond
16 issued by the State or by any such agency, and to the extent,
17 and only to the extent, necessary to effectuate this intent, the
18 governor may modify the strict provisions of this Act, but shall
19 promptly report any such modification with reasons therefor to
20 the legislature at its next session thereafter for review by the
21 legislature.



1 SECTION 27. All acts passed by the legislature during this
2 regular session of 2009, whether enacted before or after the
3 effective date of this Act, shall be amended to conform to this
4 Act unless such acts specifically provide that this Act is being
5 amended.

6 SECTION 28. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so much
8 thereof as may be necessary for fiscal year 2009-2010 and the
9 sum of \$ or so much thereof as may be necessary for
10 fiscal year 2010-2011 to hire staff to plan and prepare for the
11 transfer of the ocean recreation and coastal areas programs from
12 the department of land and natural resources to the department
13 of transportation.

14 The sums appropriated shall be expended by the department
15 of transportation for the purposes of this Act.

16 SECTION 29. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 30. This Act shall take effect on July 1, 2011;



S.B. NO. 1155

1 provided that sections 26, 27, and 28 shall take effect on July
2 1, 2009.

3

INTRODUCED BY:



Report Title:

Small Boat Harbors; Transfer to Department of Transportation

Description:

Transfers small boat harbors, boating, ocean recreation, and coastal areas programs from DLNR back to DOT; requires the Director of Transportation when leasing boating facility fast lands by negotiation to make the finding of public interest and administer the negotiation process.

