

JAN 28 2009

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF TRANSPORTATION.

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

1 SECTION 1. Section 261-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§261-12 Rules, standards.** (a) [~~Powers to adopt.~~] The
4 director of transportation may perform [~~such~~] acts, issue and
5 amend [~~such~~] orders, adopt [~~such~~] reasonable general or special
6 rules and procedures, and establish [~~such~~] minimum standards,
7 consistent with this chapter, as the director deems necessary to
8 carry out this chapter and to perform the duties assigned
9 thereunder, all commensurate with and for the purpose of
10 protecting and insuring the general public interest and safety,
11 the safety of persons operating, using, or traveling in
12 aircraft, and the safety of persons and property on land or
13 water, and developing and promoting aeronautics in the State.
14 No rule of the director shall apply to airports or air
15 navigation facilities owned or operated by the United States.

16 In furtherance of the duties assigned under this chapter,
17 the director may adopt rules relating to:



- 1 (1) Safety measures, requirements and practices in or
2 about the airport premises;
- 3 (2) The licensing and regulation of persons engaged in
4 commercial activities in or about the airport
5 premises;
- 6 (3) The regulation of equipment and motor vehicles
7 operated in or about the airport operational area;
- 8 (4) Airport security measures or requirements, and
9 designation of sterile passenger holding areas and
10 operational areas;
- 11 (5) The regulation of motor vehicles and traffic; and
- 12 (6) Any other matter relating to the health, safety and
13 welfare of the general public and persons operating,
14 using, or traveling in aircraft.

15 (b) The director of transportation may adopt rules
16 pursuant to chapter 91 necessary to require any person who uses
17 or occupies, airport land, buildings, and facilities, to defend,
18 indemnify, and hold harmless, the State and any of its agencies,
19 officers, and employees from and against any liability, loss,
20 damage, cost, and expense, including attorneys' fees, and all
21 claims, suits, and demands therefor, arising out of or resulting
22 from the use or occupation.



1 ~~[(b) Tour aircraft operations.]~~ (c) Any other law to the
2 contrary notwithstanding, no tour aircraft operation shall be
3 permitted in any airport under the State's control without
4 having a permit. The director shall adopt rules to regulate
5 tour aircraft operations by permit which shall include but not
6 be limited to:

- 7 (1) Identification of the types of aircraft to be
8 utilized;
- 9 (2) The number of operations daily for each type of
10 aircraft used and the days and hours of operation;
- 11 (3) Verification that the applicant is in compliance with
12 all state statutes, including but not limited to this
13 section;
- 14 (4) Verification that the applicant has the Federal
15 Aviation Administration certificate 121 or 135;
- 16 (5) A written assessment by the department of the impact
17 to the surrounding area and to the subject state
18 airport;
- 19 (6) Revocation of a permit based on the failure to comply
20 with the information provided by the applicant and the
21 terms and conditions set forth by the department in



- 1 the permit; and any false statement or
2 misrepresentation made by the applicant;
- 3 (7) Establishment of penalties for revocation and
4 suspension of a permit for failure to comply with
5 permit conditions;
- 6 (8) Annual renewal of permits; and
- 7 (9) Any change of operations under the existing permit to
8 be approved by the director.

9 No permit shall be authorized unless accompanied by a
10 Hawaii sectional aeronautical chart marked to indicate routes
11 and altitudes to be used in conducting aerial tours and noise
12 abatement procedures to be employed in the vicinity of
13 identified noise sensitive areas.

14 For the purposes of this subsection, "tour aircraft
15 operations" means any business operation which offers aircraft
16 for hire by passengers for the purpose of aerial observation of
17 landmarks and other manmade or natural sites within an island of
18 the State, and for the purpose of transporting passengers for
19 tourist-related activities.

20 ~~[(e) Definitions.]~~ (d) For the purpose of this section,
21 if not inconsistent with the context:



1 ~~["Sterile passenger holding area" means any portion of a~~
2 ~~public airport designated by the director and identified by~~
3 ~~appropriate signs as an area into which access is conditioned~~
4 ~~upon the prior inspection of persons and property in accordance~~
5 ~~with the approved Federal Aviation Administration air carrier~~
6 ~~screening program.]~~

7 "Operational area" means any portion of a public airport,
8 from which access by the public is prohibited by fences or
9 appropriate signs, and which is not leased or demised to anyone
10 for exclusive use and includes runways, taxiways, all ramps,
11 cargo ramps and apron areas, aircraft parking and storage areas,
12 fuel storage areas, maintenance areas, and any other area of a
13 public airport used or intended to be used for landing, takeoff
14 or surface maneuvering of aircraft or used for embarkation or
15 debarkation of passengers.

16 Notwithstanding the restriction on access by the public
17 into operational areas, entry may be authorized for airport
18 operational area related purposes with the prior permission of
19 the director or the director's duly authorized representative.

20 "Sterile passenger holding area" means any portion of a
21 public airport designated by the director and identified by
22 appropriate signs as an area into which access is conditioned



1 upon the prior inspection of persons and property in accordance
2 with the approved Federal Aviation Administration air carrier
3 screening program.

4 [~~(d) Conformity to federal legislation and rules.~~] (e) No
5 rules, orders, or standards prescribed by the director shall be
6 inconsistent with, or contrary to, any act of the Congress of
7 the United States or any regulation promulgated or standard
8 established pursuant thereto.

9 [~~(e) How made.~~] (f) All rules having the force and effect
10 of law, shall be adopted by the director pursuant to chapter 91.

11 [~~(f) Distribution.~~] (g) The director shall provide for
12 the publication and general distribution of all of its rules and
13 procedures having general effect."

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

16 "§266-3 Rules. (a) The director of transportation may
17 adopt rules as necessary to:

18 (1) Regulate the manner in which all vessels may enter and
19 moor, anchor or dock in the commercial harbors, ports,
20 and roadsteads of the State, or move from one dock,
21 wharf, pier, quay, bulkhead, landing, anchorage, or



- 1 mooring to another within the commercial harbors,
2 ports, or roadsteads;
- 3 (2) The examination, guidance, and control of harbor
4 masters and their assistants and their conduct while
5 on duty;
- 6 (3) The embarking or disembarking of passengers;
- 7 (4) The expeditious and careful handling of freight,
8 goods, wares, and merchandise of every kind which may
9 be delivered for shipment or discharged on the
10 commercial docks, wharves, piers, quays, bulkheads, or
11 landings belonging to or controlled by the State; and
- 12 (5) Defining the duties and powers of carriers, shippers,
13 and consignees respecting passengers, freight, goods,
14 wares, and merchandise in and upon the docks, wharves,
15 piers, quays, bulkheads, or landings within the
16 commercial harbors, ports, and roadsteads of the
17 State. The director may also make further rules for
18 the safety of the docks, wharves, piers, quays,
19 bulkheads, and landings on, in, near, or affecting a
20 commercial harbor and waterfront improvements
21 belonging to or controlled by the State.



1 (b) The director may also adopt, amend, and repeal [sueh]
2 rules as are necessary:

3 (1) For the proper regulation and control of all shipping
4 in the commercial harbors belonging to or controlled
5 by the State, and of the entry, departure, mooring,
6 and berthing of vessels therein, and for the
7 regulation and control of all other matters and things
8 connected with [sueh] the shipping;

9 (2) To prevent the discharge or throwing into commercial
10 harbors of rubbish, refuse, garbage, or other
11 substances likely to affect water quality or that
12 contribute to making [sueh] the harbors unsightly,
13 unhealthful, or unclean, or that are liable to fill up
14 shoal or shallow waters in, near, or affecting the
15 commercial harbors; and

16 (3) To prevent the escape of fuel or other oils or
17 substances into the waters in, near, or affecting
18 commercial harbors from any source point, including,
19 but not limited to, any vessel or pipes or storage
20 tanks upon the land.

21 (c) The director of transportation may adopt rules
22 pursuant to chapter 91 necessary to require any person who uses



1 or occupies the commercial harbors, ports, roadsteads, harbor
 2 buildings, and other harbor facilities of the State, including
 3 but not limited to, the dock wharves, piers, quays, bulkheads,
 4 or landings thereon, to defend, indemnify, and hold harmless,
 5 the State and any of its agencies, officers, and employees from
 6 and against any liability, loss, damage, cost, and expense,
 7 including attorneys' fees, and all claims, suits, and demands
 8 therefor, arising out of or resulting from the use or
 9 occupation.

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

13 SECTION 3. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY:

Chick Galbraith
Norman Sakuma
Randy of Pad
Jim

J. Kalani Eguchi
Clarence K. Nishikawa
Will Eyo
Michelle N. Kakani
Anne Mercedes K.

Report Title:

Department of Transportation; Indemnification

Description:

Allows the department of transportation to impose upon private parties using state harbors and airports the duty to defend, hold harmless, and indemnify.

