

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO AIRPORTS.

**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 areas;
- 8           (4) Airport security measures or requirements, and
- 9           designation of sterile passenger holding areas;
- 10          (5) The regulation of motor vehicles and traffic;
- 11          (6) Any other matter relating to the health, safety, and
- 12          welfare of the general public and persons operating,
- 13          using, or traveling in aircraft.

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

22          ~~[(b) Tour aircraft operations.]~~ (c) Any other law to

1 the contrary notwithstanding, no tour aircraft operation  
2 shall be permitted in any airport under the State's  
3 control without having a permit. The director shall  
4 adopt rules to regulate tour aircraft operations by  
5 permit which shall include but not be limited to:

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

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

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

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

18          [~~(c) Definitions.~~](d) For the purpose of this section, if  
19          not inconsistent with the context:

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

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

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

1            [~~(e) How made.~~] (f) All rules having the force and effect  
2 of law[7] shall be adopted by the director pursuant to chapter  
3 91.

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

7            SECTION 2. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

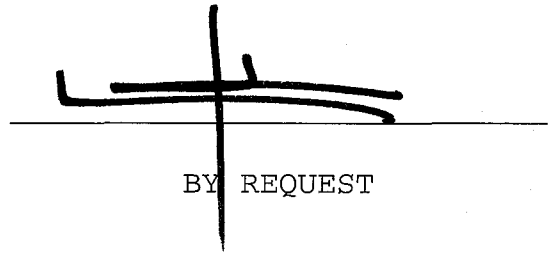
9            SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:



BY REQUEST

**Report Title:**

Airports Indemnification

**Description:**

To provide statutory authority to allow the Department of Transportation to adopt rules that require certain private persons who use the State's commercial airports, to defend, hold harmless and indemnify the State and any of its agencies, officers, and employees, against all claims that arise from such use.

SB 986

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO AIRPORTS.

PURPOSE: To provide statutory authority to allow the department of transportation to adopt rules that require certain private persons engaged in commercial activities who use the State's commercial airports, 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 261-12, 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 both 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 imposed 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. The Hawaii Supreme Court vacated the judgment and remanded 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.

The department is concerned that the same lack of statutory authority to promulgate administrative rules to require the users of harbor facilities to defend and indemnify the State is also lacking with respect to users of airport facilities. Rather than wait until the administrative rule imposing a duty to defend and indemnify on airport users is challenged in Court for lack of statutory authority, the department is taking a proactive approach by proposing this bill to expressly provide for such statutory authority.

Impact on the public: This statutory amendment will provide the department with the authority to promulgate administrative rules to require certain private persons engaged in commercial activities who use the State's commercial airports to defend, indemnify, and hold harmless the State. This will reduce costly lawsuits against the State. Users, other than passengers of airports and airport facilities should be held responsible for the safe operation of their activities on airport property. While this duty to defend and indemnify the State is already imposed upon tenants and permittees under written lease agreements and written revocable permits, other commercial activities take place within our airports that do not require written agreements or for which written agreements

are impracticable. While leases, revocable permits, and regulations control the fees charged to most users and tenants of airport 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 administrative rules adopted by the department would extend the protection and benefit to other state departments that may also be affected by activities engaged by private parties in the commercial airports.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.