

HB 1975

**RELATING TO THE
STRUCTURE OF
GOVERNMENTAL
AGENCIES**

A BILL FOR AN ACT

RELATING TO THE STRUCTURE OF GOVERNMENTAL AGENCIES.

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

1 SECTION 1. The purpose of this Act is to transfer the
2 responsibility for regulation of the small boat harbors and
3 related programs from the department of land and natural
4 resources to the department of transportation.

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

8 "§266- Definitions. As used in this chapter, unless
9 the context otherwise requires:

10 "Ocean waters" means all waters seaward of the shoreline
11 within the jurisdiction of the State.

12 "Shoreline" means the upper reaches of the wash of the
13 waves, usually evidenced by the edge of vegetation growth or by
14 the upper limit of debris left by the wash of the waves."

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



1 "(b) The department shall manage and administer the public
2 lands of the State and minerals thereon [~~and all water and~~
3 ~~coastal areas of the State except the commercial harbor areas of~~
4 ~~the State]~~, including the soil conservation function, the
5 forests and forest reserves, aquatic life, wildlife resources,
6 and state parks, including historic sites, and all activities
7 thereon and therein [~~including, but not limited to, boating,~~
8 ~~ocean recreation, and coastal areas programs]~~."

9 SECTION 4. Section 171-3, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The department of land and natural resources shall be
12 headed by an executive board to be known as the board of land
13 and natural resources. The department shall manage, administer,
14 and exercise control over public lands, the water resources,
15 [~~ocean waters, navigable streams, coastal areas (excluding~~
16 ~~commercial harbor areas),]~~ and minerals and all other interests
17 therein and exercise such powers of disposition thereof as may
18 be authorized by law. The department shall also manage and
19 administer the state parks, historical sites, forests, forest
20 reserves, aquatic life, aquatic life sanctuaries, public fishing
21 areas, [~~boating, ocean recreation, coastal programs,~~] wildlife,



1 wildlife sanctuaries, game management areas, public hunting
2 areas, natural area reserves, and other functions assigned by
3 law."

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

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

11 (1) Enforce title 12, chapters 6D, 6E, and 6K, and rules
12 adopted thereunder;

13 (2) Investigate complaints, gather evidence, conduct
14 investigations, and conduct field observations and
15 inspections as required or assigned;

16 (3) Cooperate with enforcement authorities of the State,
17 counties, and federal government in development of
18 programs and mutual aid agreements for conservation
19 and resources enforcement activities within the State;

20 (4) Cooperate with established search and rescue agencies
21 of the counties and the federal government in



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- 1 developing plans and programs and mutual aid
2 agreements for search and rescue activities within the
3 State;
- 4 (5) Check and verify all leases, permits, and licenses
5 issued by the department of land and natural
6 resources;
- 7 (6) Enforce the laws relating to firearms, ammunition, and
8 dangerous weapons contained in chapter 134;
- 9 ~~[(7) Enforce the laws in chapter 291E relating to operating~~
10 ~~a vessel on or in the waters of the State while using~~
11 ~~intoxicants;~~
- 12 ~~-(8) Whether through a specifically designated marine~~
13 ~~patrol or otherwise, enforce the rules in the areas of~~
14 ~~boating safety, conservation, and search and rescue~~
15 ~~relative to the control and management of boating~~
16 ~~facilities owned or controlled by the State, ocean~~
17 ~~waters, and navigable streams and any activities~~
18 ~~thereon or therein, and beaches encumbered with~~
19 ~~easements in favor of the public, and the rules~~
20 ~~regulating vessels and their use in the waters of the~~
21 ~~State,]~~ and



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1 [~~9~~] (7) Carry out other duties and responsibilities as
2 the board of land and natural resources from time to
3 time may direct."

4 SECTION 6. Section 200-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 1. By adding a new definition to be appropriately inserted
7 and to read:

8 "Director" means the director of transportation."

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

10 "Department" means the department of [~~land and natural~~
11 ~~resources.~~] transportation."

12 3. By repealing the definitions of "board" and
13 "chairperson."

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

15 ~~"Chairperson" means the chairperson of the board of land~~
16 ~~and natural resources."]~~

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

19 "§200-2 [~~Board of land and natural resources,~~] Department
20 of transportation; powers and duties. (a) The [~~board~~]
21 department shall have the primary responsibility for



1 administering the ocean recreation and coastal areas programs
2 and performing the functions heretofore performed by the
3 department of [~~transportation and the department of public~~
4 ~~safety~~] land and natural resources in the areas of boating
5 safety, conservation, search and rescue, and security of small
6 boat harbor environs.

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

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

13 "(a) Notwithstanding any law to the contrary, the [~~board~~]
14 department may lease fast lands and submerged lands within an
15 existing state boating facility by public auction, a request for
16 proposals, or by direct negotiation pursuant to section 171-59
17 and chapter 190D, for private development, management, and
18 operation; provided that any lease of fast lands or submerged
19 lands pursuant to a request for proposals shall be subject to
20 section 200-2.6, regardless [~~to which~~] of the state boating
21 facility to which the fast or submerged lands are attached.



1 As used in this section, the term "state boating facility"
2 means a state small boat harbor, launching ramp, offshore
3 mooring, pier, wharf, landing, or any other area under the
4 jurisdiction of the department pursuant to this chapter."

5 SECTION 9. Section 200-2.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 " [†] §200-2.6 [†] **Ala Wai boat harbor; leases.** The fast
8 lands and submerged lands of the Ala Wai boat harbor that may be
9 leased include the following:

10 (1) All fast lands and submerged lands described in the
11 request for qualifications or request for proposals
12 issued by the former division of boating and ocean
13 recreation of the department of land and natural
14 resources on November 25, 2008;

15 (2) The fast land described as a portion of tax map key:
16 (1) 2-3-37-12, composed of approximately 112,580
17 square feet, presently used for harbor offices and
18 permitted vehicular parking; and

19 (3) The fast land described as a portion of tax map key:
20 (1) 2-3-37-12, which is a triangular area located

1 Diamond Head of Mole B, presently used for permitted
2 vehicular parking."

3 SECTION 10. Section 200-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§200-3 Ocean recreation and coastal areas programs. The
6 [board] department shall assume the following functions of the
7 department of [~~transportation~~] land and natural resources:

8 (1) Managing and administering the ocean-based recreation
9 and coastal areas programs of the State;

10 (2) Planning, developing, operating, administering, and
11 maintaining small boat harbors, launching ramps, and
12 other boating facilities and associated aids to
13 navigation throughout the State;

14 (3) Developing and administering an ocean recreation
15 management plan;

16 (4) Administering and operating a vessel registration
17 system for the State;

18 (5) Regulating the commercial use of state waters and
19 marine resources, including operations originating
20 from private marinas;

21 (6) Regulating boat regattas and other ocean water events;



- 1 (7) Administering a marine casualty and investigation
- 2 program;
- 3 (8) Assisting in abating air, water, and noise pollution;
- 4 (9) Conducting public education in boating safety;
- 5 (10) Administering the boating special fund;
- 6 (11) Assisting in controlling shoreline erosion;
- 7 (12) Repairing seawalls and other existing coastal
- 8 protective structures under the jurisdiction of the
- 9 State; and
- 10 (13) Removing nonnatural obstructions and public safety
- 11 hazards from the shoreline, navigable streams,
- 12 harbors, channels, and coastal areas of the State."

13 SECTION 11. Section 200-10, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) The permittee shall pay moorage fees to the
16 department for the use permit that shall be based on but not
17 limited to the use of the vessel, its effect on the harbor, use
18 of facilities, and the cost of administering this mooring
19 program; and, furthermore:

- 20 (1) Except for commercial maritime activities where there
- 21 is a tariff established by the department [of



1 transportation], moorage fees shall be established by
2 appraisal by a state-licensed appraiser approved by
3 the department and shall be higher for nonresidents
4 than for residents [~~. The moorage fees shall be set by~~
5 ~~appraisal categories schedule A and schedule B, to be~~
6 ~~determined by the department, and may be increased~~
7 ~~annually by the department, to reflect a cost of~~
8 ~~living index increase, provided that:~~

9 ~~(A) Schedule A shall include existing mooring~~
10 ~~permittees, and~~

11 ~~(B) Schedule B shall apply to all new mooring~~
12 ~~applicants and transient slips on or after July~~
13 ~~1, 2011;~~

14 ~~provided further that schedule A rates shall be~~
15 ~~increased by the same amount each year so that~~
16 ~~schedule A rates equal schedule B rates by July 1,~~
17 ~~2014];~~

- 18 (2) For commercial maritime activities where there is a
19 tariff established by the harbors division of the
20 department [~~of transportation~~], the department may
21 [~~adopt~~] apply the published tariff of the harbors



1 division of the department [~~of transportation~~] or
2 establish the fee by appraisal by a state-licensed
3 appraiser approved by the department;
4 (3) An application fee shall be collected when applying
5 for moorage in state small boat harbors and shall
6 thereafter be collected annually when the application
7 is renewed. The application fee shall be:
8 (A) Set by the department; and
9 (B) Not less than \$100 for nonresidents;
10 (4) If a recreational vessel is used as a place of
11 principal habitation, the permittee shall pay, in
12 addition to the moorage fee, a liveaboard fee that
13 shall be calculated at a rate of:
14 (A) \$5.20 a foot of vessel length a month if the
15 permittee is a state resident; and
16 (B) \$7.80 a foot of vessel length a month if the
17 permittee is a nonresident;
18 provided that the liveaboard fees established by this
19 paragraph may be increased by the department at the
20 rate of the annual cost-of-living index, but not more



1 than five per cent in any one year, beginning July 1
2 of each year;

3 (5) If a vessel is used for commercial purposes from its
4 permitted mooring, the permittee shall pay, in lieu of
5 the moorage and liveaboard fee, a fee based on three
6 per cent of the gross revenues derived from the use of
7 the vessel or two times the moorage fee assessed for a
8 recreational vessel of the same size, whichever is
9 greater; and

10 (6) The department is authorized to assess and collect
11 utility fees, including electrical and water charges,
12 and common-area maintenance fees in small boat
13 harbors."

14 SECTION 12. Section 200-18, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The department shall maintain a record of all persons
17 adjudicated of violations under part III of chapter 291E and the
18 period of suspension or revocation of operator privileges
19 ordered by the [~~director~~] administrative director of the courts
20 under that part."



1 SECTION 13. Section 205A-48, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205A-48 Conflict of other laws. In case of a conflict
4 between the requirements of any other state law or county
5 ordinance regarding shoreline setback lines, the more
6 restrictive requirements shall apply in furthering the purposes
7 of this part. Nothing contained in this part shall be construed
8 to diminish the jurisdiction of the state department of
9 transportation over wharves, airports, docks, piers, small boat
10 or other [commercial] harbors, and any other maritime or water
11 sports recreational facilities constructed by the State;
12 provided that [such] plans for construction of the facility are
13 submitted for the review and information of the officer of the
14 respective agency charged with the administration of the county
15 zoning laws, and found not to conflict with any county
16 ordinances, zoning laws, and building codes."

17 SECTION 14. Section 248-8, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§248-8 Special funds in treasury of State. There are
20 created in the treasury of the State three special funds to be
21 known, respectively, as the state highway fund, the airport



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1 revenue fund, and the boating special fund. All taxes collected
2 under chapter 243 in each calendar year, except the "county of
3 Hawaii fuel tax", "city and county of Honolulu fuel tax",
4 "county of Maui fuel tax", and "county of Kauai fuel tax", shall
5 be deposited in the state highway fund; provided that:

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

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

13 As used in this section, "small boats" means all vessels
14 and other watercraft except those operated in overseas
15 transportation beyond the State, and ocean-going tugs and
16 dredges. The [~~chairperson of the board of land and natural~~
17 ~~resources,~~] director of transportation, from July 1, [~~1992,~~]
18 2019, and every three years thereafter, shall establish
19 standards or formulas that will as equitably as possible
20 establish the total taxes collected under chapter 243 in each
21 fiscal year that are derived from the sale of liquid fuel for



1 use in or used for small boats. The amount so determined shall
2 be deposited in the boating special fund.

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

10 SECTION 15. Section 266-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§266-1 Department of transportation; harbors;
13 jurisdiction. All [~~commercial~~] ocean waters and navigable
14 streams, and all harbors and roadsteads, and all [~~commercial~~]
15 harbor and waterfront improvements belonging to or controlled by
16 the State, and all vessels and shipping within the [~~commercial~~]
17 harbors and roadsteads, waters, and streams shall be under the
18 care and control of the department of transportation.

19 [~~For the purpose of this chapter, "commercial harbor" means~~
20 ~~a harbor or off shore mooring facility which is primarily for~~
21 ~~the movement of commercial cargo, passenger and fishing vessels~~



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1 ~~entering, leaving, or traveling within the State, and facilities~~
2 ~~and supporting services for loading, off loading, and handling~~
3 ~~of cargo, passengers, and vessels.] "~~

4 SECTION 16. Section 266-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§266-2 Powers and duties of department. (a) The
7 department of transportation shall:

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

16 (2) Have the authority to use and permit and regulate the
17 use of the ~~[commercial]~~ docks, wharves, piers, quays,
18 bulkheads, and landings belonging to or controlled by
19 the State for receiving or discharging passengers and
20 for loading and landing merchandise, with a right to
21 collect wharfage and demurrage thereon or therefor;



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- 1 (3) Subject to all applicable provisions of law, have the
2 power to fix and regulate from time to time rates and
3 charges for:
- 4 (A) Services rendered in mooring [~~commercial~~]
5 vessels;
- 6 (B) The use of [~~commercial~~] moorings belonging to or
7 controlled by the State;
- 8 (C) Wharfage or demurrage;
- 9 (D) Warehouse space, office space, and storage space
10 for freight, goods, wares, and merchandise; and
- 11 (E) The use of derricks or other equipment belonging
12 to the State or under the control of the
13 department;
- 14 (4) Make other charges including toll or tonnage charges
15 on freight passing over or across docks, wharves,
16 piers, quays, bulkheads, or landings;
- 17 (5) Appoint and remove clerks, harbor agents and their
18 assistants, and all such other employees as may be
19 necessary, and to fix their compensation;
- 20 (6) Adopt rules pursuant to chapter 91 and not
21 inconsistent with law; and



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

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

9 All moneys appropriated for [~~commercial~~] harbor
10 improvements, including new construction, reconstruction,
11 repairs, salaries, and operating expenses, shall be expended
12 under the supervision and control of the department, subject to
13 this chapter and chapter 103D.

14 All contracts and agreements authorized by law to be
15 entered into by the department shall be executed on its behalf
16 by the director of transportation.

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



1 SECTION 17. Section 266-2.2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]§266-2.2[~~f~~] Exemption from conservation district
4 permitting and site plan approval requirements. Notwithstanding
5 any law to the contrary, all work involving submerged lands used
6 for state [~~commercial~~] harbor purposes shall be exempt from any
7 permitting and site plan approval requirements established for
8 lands in a conservation district."

9 SECTION 18. Section 266-3, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) The director of transportation may adopt rules as
12 necessary to:

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



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



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

3 (1) For the proper regulation and control of all shipping,
4 traffic, and other related activities in the
5 ~~[commercial]~~ harbors belonging to or controlled by the
6 State; of the entry, departure, mooring, and berthing
7 of vessels therein; and of all other matters and
8 things connected with such activities ~~[+]~~ in all the
9 harbors, ocean waters, and navigable streams;

10 (2) To establish safety measures and security requirements
11 in or about the ~~[commercial]~~ harbors, land, and
12 facilities belonging to or controlled by the State;

13 (3) To prevent the discharge or throwing into ~~[commercial]~~
14 harbors, ocean waters, and navigable streams, of
15 rubbish, refuse, garbage, or other substances likely
16 to affect water quality or that contribute to making
17 such harbors, ocean waters, and navigable streams
18 unsightly, unhealthful, or unclean, or that are liable
19 to fill up shoal or shallow waters in, near, or
20 affecting the ~~[commercial]~~ harbors ~~[+and]~~, ocean
21 waters, and navigable streams; and



1 (4) To prevent the escape of fuel or other oils or
2 substances into the waters in, near, or affecting
3 [~~commercial~~] harbors, ocean waters, and navigable
4 streams, from any source point, including, but not
5 limited to, any vessel or pipes or storage tanks upon
6 the land."

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

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

10 "(a) Notwithstanding any law to the contrary, the
11 department of transportation may enter into a capital
12 advancement contract with a private party for any public
13 improvement to or construction of a state harbor, [~~commercial~~
14 ~~harbor~~], roadstead, or other waterfront improvement belonging to
15 or controlled by the State, if the director of transportation
16 determines that a capital advancement contract promotes the best
17 interest of the State by finding that:

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

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



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

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

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

5 "Capital advancement contract" means an agreement between
6 the department of transportation and a private party whereby the
7 private party agrees to furnish capital, labor, or materials for
8 a public improvement to or construction of a state harbor,
9 [~~commercial harbor,~~] roadstead, or other waterfront improvement
10 belonging to or controlled by the State and in return for which
11 the private party may be reimbursed in a manner to be determined
12 by the department.

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

16 SECTION 20. Section 266-24, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§266-24 Enforcement. (a) The director of transportation
19 shall enforce this chapter and chapter 200, and all rules
20 [~~thereunder, except for the rules relative to the control and~~
21 ~~management of the beaches encumbered with easements in favor of~~



1 ~~the public and ocean waters which shall be enforced by the~~
2 ~~department of land and natural resources.]~~ adopted pursuant to
3 this chapter and chapter 200. For the purpose of the
4 enforcement of this chapter and chapter 200, and of all rules
5 adopted pursuant to this chapter~~[7]~~ and chapter 200, the powers
6 of police officers are conferred upon the director of
7 transportation and any officer, employee, or representative of
8 the department of transportation. Without limiting the
9 generality of the foregoing, the director and any person
10 appointed by the director hereunder may serve and execute
11 warrants, arrest offenders, and serve notices and orders. The
12 director of transportation and any employee, agent, or
13 representative of the department of transportation appointed as
14 enforcement officers by the director, and every state and county
15 officer charged with the enforcement of any law, statute, rule,
16 regulation, ordinance, or order, shall enforce and assist in the
17 enforcement of this chapter and chapter 200, and of all rules
18 and orders issued pursuant ~~[thereto,]~~ to this chapter and
19 chapter 200, and in carrying out ~~[the]~~ these responsibilities
20 ~~[hereunder],~~ each shall be specifically authorized to:



1 (1) Conduct any enforcement action [~~hereunder~~] under the
2 authority of this section in any [~~commercial~~] harbor
3 area and any area over which the department of
4 transportation and the director of transportation
5 [~~has~~] have jurisdiction under this chapter[+] and
6 chapter 200;

7 (2) Inspect and examine at reasonable hours any premises,
8 and the buildings and other structures thereon, where
9 harbors or harbor facilities are situated, or where
10 harbor-related activities are operated or conducted;
11 and

12 (3) Subject to limitations as may be imposed by the
13 director of transportation, serve and execute
14 warrants, arrest offenders, and serve notices and
15 orders.

16 For purposes of this subsection, the term "agents and
17 representatives" includes persons performing services at harbors
18 or harbor areas under contract with the department of
19 transportation.

20 (b) The department of transportation, in the name of the
21 State, may enforce this chapter and chapter 200 and the rules



1 and orders issued pursuant thereto by injunction or other legal
2 process in the courts of the State.

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

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

16 SECTION 21. Section 266-27, Hawaii Revised Statutes, is
17 amended as follows:

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

19 "(a) No person shall moor a vessel in a state [~~commercial~~]
20 harbor without obtaining a use permit; nor shall a person
21 continue to moor a vessel in any state [~~commercial~~] harbor if



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1 the use permit authorizing the vessel to moor has expired or
2 otherwise been terminated. A vessel moored without a use permit
3 or with a use permit that has expired or been terminated is an
4 unauthorized vessel and is subject to subsections (b) to (e)."

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

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

12 SECTION 22. Section 266-28, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§266-28 Fines arising from environmental protection and
15 maritime transportation security violations. Notwithstanding
16 any other law to the contrary, any [~~commercial~~] harbor tenant or
17 user, including any shipper or shipping agent, who violates any
18 federal, state, or county law or rule relating to environmental
19 protection or maritime transportation security pursuant to title
20 33 Code of Federal Regulations chapter 1 and thereby causes a
21 fine to be levied by the United States Coast Guard upon the



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1 department, shall reimburse the department for the entire amount
2 of the fine. The department may take such actions necessary to
3 collect and deposit any amount reimbursable under this section
4 into the harbor special fund, and may also demand reimbursement
5 for costs or expenses incurred by the department resulting from
6 enforcement of this section."

7 SECTION 23. Section 200-5, Hawaii Revised Statutes, is
8 repealed.

9 ["~~§200-5 Commercial harbors excluded. For purposes of~~
10 ~~this chapter, ocean waters and navigable streams shall not~~
11 ~~include the commercial harbors of the State.~~"]

12 SECTION 24. Section 266-1.6, Hawaii Revised Statutes, is
13 repealed.

14 ["~~§266-1.6 Hana harbor, jurisdiction. Notwithstanding~~
15 ~~any law to the contrary, the department of transportation shall~~
16 ~~have jurisdiction and administrative authority over Hana harbor,~~
17 ~~excluding its small boat ramp facility. The Hana harbor small~~
18 ~~boat ramp facility shall remain under the jurisdiction and~~
19 ~~administrative authority of the department of land and natural~~
20 ~~resources.~~"]



1 SECTION 25. Sections 200-4(a), 200-8, 200-9(e), 200-10(d)
2 and (f), 200-12.5(c), 200-14.5(a), 200-19, 200-22, 200-26(d),
3 200-36, 200-37(k), 200-41, 200-49(a), and 200-73, Hawaii Revised
4 Statutes, are amended by substituting:

5 (1) The term "director" or like terms, wherever the term
6 "chairperson" or like terms occur; and

7 (2) The word "department" or like terms, wherever the
8 terms "board", "department of land and natural
9 resources", or like terms occur,

10 as the context requires.

11 SECTION 26. 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 SECTION 27. All employees who occupy civil service
17 positions and whose functions are transferred to the department
18 of transportation by this Act shall retain their civil service
19 status, whether permanent or temporary. Employees shall be
20 transferred without loss of salary, seniority (except as
21 prescribed by applicable collective bargaining agreements),



1 retention points, prior service credit, any vacation and sick
2 leave credits previously earned, and other rights, benefits, and
3 privileges, in accordance with state personnel laws and this
4 Act; provided that the employees possess the minimum
5 qualifications and public employment requirements for the class
6 or position to which transferred or appointed, as applicable;
7 and provided further that subsequent changes in status may be
8 made pursuant to applicable civil service and compensation laws.

9 Any employee who, prior to this Act, is exempt from civil
10 service and is transferred as a consequence of this Act may
11 retain the employee's exempt status, but shall not be appointed
12 to a civil service position as a consequence of this Act. An
13 exempt employee who is transferred by this Act shall not suffer
14 any loss of prior service credit, vacation or sick leave credits
15 previously earned, or other employee benefits or privileges as a
16 consequence of this Act; provided that the employee possesses
17 legal and public employment requirements for the position to
18 which transferred or appointed, as applicable; and provided
19 further that subsequent changes in status may be made pursuant
20 to applicable employment and compensation laws. The director of
21 transportation may prescribe the duties and qualifications of



1 these employees and fix their salaries without regard to chapter
2 76, Hawaii Revised Statutes.

3 SECTION 28. All rules, policies, procedures, guidelines,
4 and other material adopted or developed by the board of land and
5 natural resources to implement provisions of the Hawaii Revised
6 Statutes that are reenacted or made applicable to the department
7 of transportation by this Act shall remain in full force and
8 effect until amended or repealed by the department of
9 transportation pursuant to chapter 91, Hawaii Revised Statutes.
10 In the interim, every reference to the department of land and
11 natural resources, the chairperson of the board of land and
12 natural resources, or the board of land and natural resources in
13 those rules, policies, procedures, guidelines, and other
14 material is amended to refer to the department of transportation
15 or director of transportation, as appropriate.

16 SECTION 29. All deeds, leases, contracts, loans,
17 agreements, permits, or other documents executed or entered into
18 by or on behalf of the department of land and natural resources,
19 pursuant to the provisions of the Hawaii Revised Statutes, that
20 are reenacted or made applicable to the department of
21 transportation by this Act shall remain in full force and



1 effect. Effective July 1, 2018, every reference to the
2 department of land and natural resources, the chairperson of the
3 board of land and natural resources, or the board of land and
4 natural resources in those deeds, leases, contracts, loans,
5 agreements, permits, or other documents shall be construed as a
6 reference to the department of transportation or director of
7 transportation, as appropriate.

8 SECTION 30. All appropriations, records, equipment,
9 machines, files, supplies, contracts, books, papers, documents,
10 maps, and other personal property heretofore made, used,
11 acquired, or held by the department of land and natural
12 resources or the board of land and natural resources relating to
13 the functions transferred to the department of transportation
14 shall be transferred with the functions to which they relate.

15 SECTION 31. It is the intent of this Act not to jeopardize
16 the receipt of any federal aid nor to impair the obligation of
17 the State or any agency thereof to the holders of any bond
18 issued by the State or by any such agency, and to the extent,
19 and only to the extent, necessary to effectuate this intent, the
20 governor may modify the strict provisions of this Act, but shall
21 promptly report any modification with reasons therefor to the



H.B. NO. 1975

1 legislature at its next session thereafter for review by the
2 legislature.

3 SECTION 32. All acts passed by the legislature during the
4 regular session of 2018, whether enacted before or after the
5 effective date of this Act, shall be amended to conform to this
6 Act unless such acts specifically provide that this Act is being
7 amended.

8 SECTION 33. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2018-2019 to hire
11 staff to plan and prepare for the transfer of the ocean
12 recreation and coastal areas programs from the department of
13 land and natural resources to the department of transportation.

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

16 SECTION 34. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 35. This Act shall take effect on July 1, 2018.

19

INTRODUCED BY:



JAN 19 2018



H.B. NO. 1975

Report Title:

Small Boat Harbors; Transfer to DOT; DLNR

Description:

Transfers small boat harbors, boating, ocean recreation, and coastal areas programs from the Department of Land and Natural Resources back to the Department of Transportation.

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



HB 1975

TESTIMONY

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
LABOR AND PUBLIC EMPLOYMENT**

**Thursday, February 1, 2018
9:00 AM
State Capitol, Conference Room 309**

**In consideration of
HOUSE BILL 1975
RELATING TO THE STRUCTURE OF GOVERNMENTAL AGENCIES**

House Bill 1975 proposes to transfer small boat harbors, boating, ocean recreation, and coastal area programs from the Department of Land and Natural Resources back to the Department of Transportation (DOT). **The Department of Land and Natural Resources (DLNR) strongly opposes this measure.**

Boating and ocean recreation functions were originally handled by the DOT Harbors Division Boating and Ocean Recreation Branch. Boating and ocean recreation functions were transferred from DOT to DLNR in 1992. After the transfer, the DOT Harbors Division Boating and Ocean Recreation Branch became the DLNR Division of Boating and Ocean Recreation (DOBOR).

As written, the measure will transfer to DOT: (1) DLNR jurisdiction seaward of the shore, which would include DLNR Office of Conservation and Coastal Lands (OCCL) beaches as well as OCCL coastal erosion and coastal conservation district permitting programs; (2) submerged lands within DLNR Land Division jurisdiction; (3) management of the reefs and streams under the jurisdiction of the DLNR Division of Aquatic Resources; (4) management of seabirds under the jurisdiction of the DLNR Division of Forestry and Wildlife; and (5) related enforcement jurisdiction of the DLNR Division of Conservation of Resources Enforcement.

DOBOR's core mission is as follows: Enhance, protect, conserve, and manage Hawai'i's unique and limited natural, cultural, and historic resources held in public trust for current and future generations of the people of Hawai'i nei, and its visitors, in partnership with others from the public and private sectors.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DOT's core mission is as follows: To provide a safe, efficient, accessible, and inter-modal transportation system that ensures the mobility of people and goods, and enhances and/or preserves economic prosperity and the quality of life.

DLNR notes that DOT's core mission does not include a mandate to protect the public trust. DLNR believes that absence of a mandate to protect the public trust would conflict with DOBOR's core mission and could hinder DOBOR's ability to effectively manage our State's natural and cultural resources. As such, DLNR believes that DOBOR should remain within DLNR.

Thank you for the opportunity to comment on this measure.



COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Daniel Holt, Vice Chair

Rep. Cindy Evans

Rep. Kyle T. Yamashita

Rep. Linda Ichiyama

Rep. Lauren Kealohilani Matsumoto

Rep. Jarrett Keohokalole

NOTICE OF HEARING

DATE: Thursday, February 1, 2018

TIME: 9:00 AM

PLACE: Conference Room 309

TESTIMONY OF THE OCEAN TOURISM COALITION IN STRONG SUPPORT HB1975

Chair Johanson, Vice Chair Holt and Members of LAB:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
speaking in Strong Support of HB 1975 Transferring Harbors back to DOT-H

The OTC represents over 300 small ocean tourism businesses state wide. All of them operate from State Boating Facilities managed by DLNR/DOBOR. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities.

When the Small Boating Program was being considered to be transferred to DLNR in the early 1990's the OTC pointed out the obvious pitfalls of that transfer from DOT Harbors, an agency that specializes in Harbor Management to an agency that is primarily a conservation agency with zero harbor management experience or resources. The Division of Boating and Ocean Recreation (DOBOR) was at a disadvantage from the start by not having access to the robust support which DOT-Harbors could have supplied to their divisions.

As form follows function there can be little doubt that--over the long haul--DOT Harbors could provide the resources and support necessary to manage the State's Small Boating Facilities far better than will ever be accomplished as long as DOBOR remains an orphan in DLNR. DLNR by function will never have a maritime industry focus or vision to provide for the management and development of Small Boating Facilities to accommodate the needs of Hawaii's Boating Community.

Please provide the leadership so badly needed to help our State Boating Program by passing HB 1975.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Coon". The signature is written in a cursive style with a large, stylized initial "J".

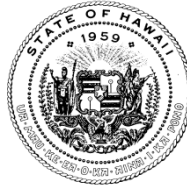
James E. Coon, President OTC

captcoon@gmail.com

808-870-9115

HB 1975

**LATE
TESTIMONY**



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 1, 2018
9:00 a.m.
State Capitol, Room 309

**H.B. 1975
RELATING TO THE STRUCTURE OF GOVERNMENTAL AGENCIES**

House Committee on Labor & Public Employment

The Department of Transportation **opposes** this measure that transfers responsibility for regulation of the small boat harbors and related programs from the Department of Land and Natural Resources (DLNR) to the Department of Transportation (DOT).

The Department of Transportation Harbors Division previously managed and operated by the small boat harbors and boat ramps, but since July 1, 1992, these facilities have been administered by the Department of Land and Natural Resources. The Hawaii State Legislature transferred these responsibilities because it reasoned that all recreational programs of the State of Hawaii should be administered by a single department and that the needs of the boating community would be better served by DLNR. Both reasons justifying the transfer in 1992 remain true today.

The mission of the Harbors Division is to effectively improve and manage a commercial harbors system that facilitates safe and efficient operations of commercial cargo, passenger, fishing, and other commercial maritime-related services and support activities within the State of Hawaii and which serves to sustain and enhance the State's economic prosperity and quality of life. The mission of DLNR and its Division of Boating and Ocean Recreation is so significantly different and the commonality between the two divisions is negligible. Merging the two agencies will require extensive administrative rule amendments to successfully implement what is proposed by the bill, including new harbor fee schedules for both recreational and commercial users. The transfer may also impact the bond rating and debt-coverage ratios of the DOT Harbors Division, which will impact the financing of ongoing large-scale capital improvement projects.

Aside from the concerns related to the actual merger, several proposed amendments to Chapter 266, Hawaii Revised Statutes, are problematic and will harm the ongoing operations of the commercial harbors.

Thank you for the opportunity to provide testimony.



Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
(808)871-7947 Main (808)877-3104 Fax

LATE

Testimony to the
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Aaron Johanson, Chair/ Rep. Daniel Holt, Vice Chair

Thursday, 02-01-18 9:00 AM
Conference Room 309
RE: Strong Support
HB1975 RELATING TO THE STRUCTURE OF GOVERNMENTAL
AGENCIES.

Aloha Chair Representative Johanson, Vice Chair Representative Holt & Members of the committee;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 20 years, it has been my honor to serve the Activity & Attraction Industry of Hawaii through my position as the Executive Director of A3H (Activities & Attractions Association of Hawaii). A3H represents nearly 200 businesses statewide, many of which are ocean-related commercial activities. Our members range in size from very large (over 300 employees) to very small (1-2 employees). **We support HB1975 which transfers the state's Small Boat Harbors from DLNR's DOBOR to DOT Harbors Division.**

DLNR's Division of Boating overseeing the State's Small Boat Harbors, where the main tenants are commercial boat businesses is inappropriate, inefficient and a conflict of interest. DLNR's hierarchy places conservation at the highest level and commercial access at the **lowest** level. A symptom of this dysfunction is that there exists a lobbying entity just for this group, OTC (Ocean Tourism Coalition). The OTC exists to ensure these small commercial operators continue to thrive in what is often a hostile environment.

*DOT Harbors' mission to effectively improve and manage a commercial harbors system that facilitates safe and efficient operations of commercial cargo, passenger, fishing, and other commercial maritime-related services and support activities within the State of Hawaii and which serves to sustain and enhance the State's economic prosperity and quality of life." **That's a much better FIT!***

Sincerely,
Toni Marie Davis
Executive Director

LATE

HB-1975

Submitted on: 1/31/2018 5:54:41 PM

Testimony for LAB on 2/1/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Quicksilver Charters	Support	No

Comments:

DOT is better equipped to handle commercial transportation matters. DOT Harbors is an agency that specializes in Harbor Management. The Division of Boating and Ocean Recreation (DOBOR) was at a disadvantage from the start by not having access to the robust support which DOT-Harbors could have supplied to their divisions.

LATE

HB-1975

Submitted on: 1/31/2018 5:55:45 PM

Testimony for LAB on 2/1/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Kasper	Calypso Charters	Support	No

Comments:

DOT is better equipped to handle commercial transportation matters. DOT Harbors is an agency that specializes in Harbor Management. The Division of Boating and Ocean Recreation (DOBOR) was at a disadvantage from the start by not having access to the robust support which DOT-Harbors could have supplied to their divisions.

LATE

HB-1975

Submitted on: 1/31/2018 11:01:24 PM
Testimony for LAB on 2/1/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Fox	The Nature Conservancy	Oppose	No

Comments:

The Nature Conservancy opposes H.B. 1975, especially its provisions that would transfer the marine and coastal natural resource management and conservation functions of the Department of Land and Natural Resources (DLNR) to the Department of Transportation (DOT). The DOT's mission, mandate, and capacity make it entirely ill-equipped to take on the lead role and responsibility of caring for natural habitat and related plant and animal species. This is not a criticism of the DOT, it is just the simple fact that conservation of natural resources is not in the agency's expertise, whereas it is squarely within the mission and expertise of the DLNR.