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# A BILL FOR AN ACT

RELATING TO AN AIRFIELD AUTHORITY.

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

1       SECTION 1. The legislature finds that Kawaihapai Airfield,  
2       also known as Dillingham Airfield, serves a critical role to  
3       both the city and county of Honolulu and the state of Hawaii and  
4       that the commercial use of this airfield benefits the state and  
5       its citizens.

6       In 2020, the department of transportation terminated its  
7       lease of the airfield, effective mid-2021. The department cited  
8       increasing safety incidents and liability concerns as their  
9       primary reason, while also noting an annual operating loss of  
10      one million dollars by the airfield. However, when considering  
11      the positive economic impact of the airfield and the tax  
12      revenues generated by that activity, it provides a net benefit  
13      to the State.

14      The legislature further finds that Kawaihapai offers  
15      a singularly unique venue for many businesses, and its closure  
16      will force these businesses to shut down. These losses will  
17      further compound the economic problems brought on by COVID-19



1 and further delay recovery for the state. If an alternative  
2 organization does not take over responsibilities for operating  
3 the airfield it will close, which will mean putting one hundred  
4 thirty individuals out of work and the end of an economic driver  
5 in the State.

6 The Legislature further finds that the U.S. Army as the  
7 legal owner of the airfield has shown no interest in taking over  
8 these responsibilities. It is the purpose of this bill to create  
9 a state agency which will avoid the closure of this facility to  
10 residents and commercial enterprises. This act shall be known  
11 and may be cited as the "Save Dillingham Airfield Act."

12 SECTION 2. The Hawaii Revised Statutes is amended  
13 by adding a new chapter to be appropriately designated and to  
14 read as follows:

15 **CHAPTER**

16 **KAWAIHAPAI AIRPORT AUTHORITY**

17 **PART I. GENERAL PROVISIONS**

18 **§ -1 Definitions.** As used in this chapter:

19 "Aircraft" means any contrivance now known or hereafter  
20 invented, used or designed for navigation of or flight in the  
21 air.



1 "Air navigation facility" means any facility used in,  
2 available for use in, or designed for use in, aid of air  
3 navigation, including any structures, mechanisms, light,  
4 beacons, markers, communicating systems, or other  
5 instrumentalities, or devices used or useful as an aid, or  
6 constituting an advantage or convenience, to the safe taking-  
7 off, navigation, and landing of aircraft, or the safe and  
8 efficient operation or maintenance of an airport, and any  
9 combination of any or all of such facilities shall.

10 "Airport" means any area of land or water which is used, or  
11 intended for use, for the landing and takeoff of aircraft, and  
12 any appurtenant areas which are used, or intended for use, for  
13 airport buildings or other airport facilities or rights-of-way,  
14 including approaches, together with all airport buildings and  
15 facilities located thereon.

16 "Airfield authority" or "authority" means the  
17 Kawaihapai airfield authority established by this chapter.

18 "Chief executive officer" means the chief executive officer  
19 of the Kawaihapai airfield authority.



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" Kawaihapai Airfield" shall mean the airfield located at  
TMK 680140010000, commonly known as Dillingham Airfield, as the  
same may be expanded, reduced or relocated from time to time.

**§ -2 Airfield Authority; establishment; board; members;  
chief executive officer.** (a) There is established the Kawaihapai  
airfield authority to:

(1) Develop and implement management structures,  
policies, and procedures based on airfield industry  
best practices;

(2) Efficiently develop, manage, operate, and maintain  
Kawaihapai Airfield.

(b) The powers of the Kawaihapai airfield authority shall  
be vested in and exercised by a board of directors that shall  
consist of five voting members, provided that:

(1) The members shall be appointed by the governor as  
provided in section 26-34, except as provided by this  
section;

(2) One member shall be appointed by the governor from a  
list of names submitted for each appointment by the  
House of Representatives member representing House  
District 45, and one member shall be appointed by the



1 governor from a list of names submitted for each  
2 appointment by the Senate member representing Senate  
3 District 23; provided that each list of names shall  
4 contain at least three names and shall include two  
5 names that qualify to fill any county specific  
6 vacancy, as appropriate; and

7 (3) Notwithstanding the state residency provisions  
8 of section 78-1(b), there shall be no more than  
9 one member who is a non-resident of the State on the  
10 board at any time.

11 (c) Members shall have relevant business and management  
12 experience, including experience in one or more of the  
13 following disciplines: financial planning, budgeting,  
14 hospitality, tourism, commercial development, construction,  
15 marketing, law, aviation, non-aviation airfield business, or the  
16 cultural traditions and practices of native Hawaiians. It is the  
17 intent of the legislature that there shall be, as far as  
18 practicable, a wide cross-section of these disciplines  
19 represented by the board.

20 (d) Members shall be appointed by the governor for terms of  
21 four years. Notwithstanding section 26-34(a) and (b), all



1 members of the board shall continue in office until  
2 their respective successors have been appointed, provided that  
3 no member shall serve more than eight consecutive years.

4 (e) No board member appointed under this section shall be  
5 an officer or employee of the State or a county.

6 (f) Each board member shall serve without compensation, but  
7 shall be reimbursed for necessary expenses, including travel  
8 expenses, incurred in the performance of their duties.

9 (g) The board of directors of the airfield authority shall  
10 appoint a single executive to be known as the chief executive  
11 officer of the Kawaihapai airfield authority, who shall:

- 12 (1) Not be a member of the board;  
13 (2) Be exempt from chapters 76 and 89; and  
14 (3) Receive a salary fixed by the board.

15 (h) The chief executive officer:

- 16 (1) Shall be selected based on criteria approved by  
17 the board, including a professional airport management  
18 credential, 3-5 years of airport management experience  
19 at a general aviation airport, experience managing  
20 active FAA Airport Improvement Program (AIP) projects,  
21 and management of capital programs;



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- 1           (2) Shall be appointed by an affirmative vote of not  
2           less than two members of the board;
- 3           (3) Shall be employed subject to a formal contract, the  
4           terms of which shall be approved by the board,  
5           provided that the terms shall include provisions  
6           for the removal of the chief executive officer whether  
7           with or without cause;
- 8           (4) May be removed from office only by a vote of not  
9           less than two members of the board, provided that the  
10          basis for removal is consistent with the terms of the  
11          chief executive officer's employment contract;
- 12          (5) Shall have the powers as described in this chapter and  
13          as may be delegated by the board;
- 14          (6) Shall, except when excused by the board, attend all  
15          meetings of the board, keep a record of the  
16          proceedings, and maintain and be the custodian of the  
17          official seal of the authority and all books records,  
18          documents, and papers filed with the authority;
- 19          (7) Shall direct and supervise the authorities  
20          administrative and operational affairs in accordance  
21          with the directives of the board;



(8) Shall approve all accounts for salaries and allowable expenses of the authority; and

(9) Shall do all things necessary, as directed by the board, to carry out the powers and duties conferred upon the authority by this chapter.

(i) Upon the vacancy of the position of the chief executive officer, the board of directors shall designate a deputy executive officer or other employee of the authority to serve as the chief executive officer of the authority until the vacancy is filled by the board. This interim chief executive officer shall have all the powers and responsibilities, and receive the salary, of the chief executive officer.

(j) The number of members of the board necessary to constitute a quorum to do business shall be two members, and unless specified elsewhere in this chapter, the concurrence of two members of the board shall be necessary to make any action of the board valid.

**§ -3 Powers; generally.** (a) The Kawaihapai airfield authority, by and through its board of directors:

(1) Shall exercise power and control over Kawaihapai Airfield, air navigation facilities, buildings, and



1 other facilities that the authority is responsible for  
2 managing, operating, or controlling under this  
3 chapter.

4 (2) Shall provide as appropriate for the landing, taking  
5 off, and servicing of aircraft, and the loading and  
6 unloading of passengers and cargo at all airfields  
7 under the control of the authority;

8 (3) Shall ensure that appropriate mission  
9 statements, business plans, minimum development  
10 standards, and strategic goals are established and  
11 that progress towards their accomplishment is  
12 regularly assessed and reported;

13 (4) Shall develop an organization and management  
14 structure to best accomplish the goals of the  
15 Kawaihapai airfield authority;

16 (5) Shall have an official seal and may alter the  
17 official seal at its pleasure;

18 (6) May make, execute, or assume contracts, leases, and  
19 all other instruments necessary or convenient for the  
20 exercise of its powers and functions under this  
21 chapter.



- 1           (7)   Shall establish by-laws for its organization and
- 2                   internal management;
- 3           (8)   Shall adopt rules pursuant to chapter 91 as necessary
- 4                   to implement this chapter.
- 5           (9)   Shall prepare and adopt the authorities operating and
- 6                   capital improvement budgets;
- 7           (10)  May own, purchase, lease, exchange, or otherwise
- 8                   acquire property, whether real, personal, or mixed,
- 9                   tangible or intangible, and any interest therein, in
- 10                  the name of the authority, and may assign, exchange,
- 11                  transfer, convey, lease, sublease, or encumber the
- 12                  same or any project, improvement, or facility related
- 13                  thereto; provided that the lands to which the
- 14                  authority holds title shall not be subject to chapter
- 15                  171; provided further that any sale, gift, or
- 16                  exchange of real property shall be subject to the
- 17                  terms, conditions, and restrictions applicable to the
- 18                  sale, gift, or exchange of public lands in section
- 19                  171-50 and 171-64.7; provided further that any lease,
- 20                  sublease permit, or other encumbrance for any real
- 21                  property shall be issued in accordance with



1 administrative rules adopted by the authority  
2 pursuant to chapter 91;  
3 (11) May procure insurance against any loss in  
4 connection with its property and other assets and  
5 operations, in amounts and from insurers as it deems  
6 desirable; or provide for self-insurance;  
7 (12) May accept and receive gifts or grants in any form  
8 from any person, public entity, or source provided  
9 that the grants and gifts shall be used for airfield  
10 authority purposes;  
11 (13) Shall take all actions necessary under emergencies  
12 declared by the governor;  
13 (14) Shall fix, impose, prescribe, and collect rates,  
14 rentals, fees, or charges for the lease, use, and  
15 services of its airfield facilities at least  
16 sufficient to pay the costs of operation, maintenance,  
17 and repair, if any, and the required payments of the  
18 principal of and interest on all bonds, notes, or  
19 other obligations issued or assumed by the airfield  
20 authority and reserves therefor; provided that the  
21 rates, rentals, fees, or charges are established at



1 an open meeting subject to the requirements of  
2 chapter 92;

3 (15) May allot any and all airfield revenue and issue  
4 revenue bonds, refunding revenue bonds, special  
5 facility revenue bonds, bond anticipation notes, and  
6 other lawfully authorized obligations of the State in  
7 its name and secured by the revenue, or user taxes,  
8 or any combination of both, of an undertaking or  
9 loan program pursuant to chapter 39, but not in  
10 excess of the principal amounts as are necessary for  
11 its purposes;

12 (16) May invest and secure its moneys;

13 (17) May exercise the power of eminent domain pursuant to  
14 chapter 101 and in accordance with sections 261-31  
15 to 261-36, to acquire real property for the authority  
16 with which to carry out this chapter.

17 (18) Shall establish and maintain an appropriate system of  
18 accounts for the authority; and

19 (19) May do any and all things necessary to exercise  
20 the powers and perform the duties conferred upon  
21 the authority by this chapter.



1 (b) The airfield authority may sue and be sued in  
2 its corporate name. Notwithstanding any other law to the  
3 contrary, all claims arising out of the acts or omissions of the  
4 airfield authority or the members of its board, its officers, or  
5 its employees, including claims permitted against the State  
6 under chapter 661, part I, and claims for torts permitted  
7 against the State under chapter 662, may be brought only  
8 pursuant to this section and only against the airfield  
9 authority. However, the airfield authority shall be subject to  
10 suit only in the manner provided for suits against the State,  
11 including section 661-11. All defenses available to the State,  
12 as well as all limitations on actions against the State, shall  
13 be applicable to the airfield authority.

14 (1) The board of directors, upon the advice of  
15 its attorney, may arbitrate, compromise, or settle any  
16 claim, action, or suit brought against the airfield  
17 authority pursuant to this section. Any claim  
18 compromised or settled under this subsection shall be  
19 payable solely from the moneys and property of the  
20 airfield authority and shall not constitute a general  
21 obligation of the state or be secured directly or



1 indirectly by the full faith and credit of the state  
2 or the general credit of the state or by any revenue  
3 or taxes of the state. Nothing in this subsection  
4 shall preclude the board of directors from requesting  
5 legislative appropriations to fund the settlement of  
6 any claim or judgment against the airfield authority  
7 or its officers, employees, or agents.

8 (2) Rights and remedies conferred by this section shall  
9 not be construed to authorize any other claim, suit,  
10 or action against the State. In addition, a judgment,  
11 compromise, or settlement in an action brought against  
12 the airfield authority under this section shall  
13 constitute a complete bar to any action brought by the  
14 claimant, by reason of the same subject matter,  
15 against the state or an officer or employee of the  
16 airfield authority.

17 (c) The authority shall be a "jurisdiction" and an  
18 "appointing authority" under chapter 76 and an "appointing  
19 authority" and an "appropriate authority" for those of  
20 its officers and employees who are excluded employees under  
21 chapter 89C. In addition to its chief executive officer, the



1 authority may employ executive officers, including a chief  
2 procurement officer, appointed by the chief executive officer  
3 who are qualified to fill positions established in the bylaws  
4 of the authority adopted by the board of directors, to perform  
5 functions and exercise powers assigned by the bylaws or  
6 delegated by the board or the chief executive officer. The  
7 other executive officers of the authority, and up to seven  
8 additional specially qualified employees appointed by the chief  
9 executive officer shall be exempt from chapters 76 and 89. All  
10 other persons employed by the authority shall be subject to  
11 chapters 76 and 89, and rules adopted to implement those  
12 provisions, unless expressly exempted from the civil service  
13 under chapter 76 or excluded from collective bargaining under  
14 chapter 89. The officers and personnel of the authority shall be  
15 included in all benefit programs applicable to officers  
16 and employees of the State.

17 (d) The authority and its corporate existence shall  
18 continue until terminated by law; provided that no termination  
19 shall take effect as long as bonds or other obligations issued  
20 or assumed by the authority are outstanding, unless adequate



1 provision has been made for the payment or satisfaction  
2 thereof.

3       Upon termination of the existence of the authority, all of  
4 the rights and properties of the authority then remaining  
5 shall pass to and vest in the State in the manner prescribed by  
6 law.

7                               **PART II. BUDGET AND FINANCE**

8       **§ -4 Fiscal provisions.** (a) The authorities board of  
9 directors shall establish guidelines for preparing the  
10 authorities annual operating and capital improvement budget  
11 proposals that take into account anticipated receipts,  
12 surpluses, reserves, and funds from any other source, on deposit  
13 in or available for deposit into any special or revolving fund  
14 that the legislature may establish for the authority.

15       (b) The authority shall submit its biennium  
16 and supplemental operating and capital improvement budget  
17 proposals to the governor.

18       (c) Along with its budget proposals, the authority shall  
19 provide an annual report of the income to and the expenditures  
20 from any special or revolving fund administered by the  
21 authority. The authority shall provide a copy of its annual



1 report to the legislature at least twenty days prior to the  
2 convening of each regular session.

3 (d) The supporting documents for each budget proposal shall  
4 include the annual report, but need not include any  
5 other information, except when state general funds are  
6 requested.

7 (e) Notwithstanding sections 37-71 and 37-72, the governor  
8 shall include in the executive budget one lump sum for each  
9 means or source of funds for the authorities operating and  
10 capital budget proposals in the amounts specified in the budget  
11 proposals transmitted to the governor by the Kawaihapai airfield  
12 authority pursuant to subsection (b).

13 (f) The legislature shall appropriate one lump sum for each  
14 means or source of funding for the authorities operating budget  
15 and for the authority's capital budget.

16 **§ -5 Budget oversight.** The authorities operating and  
17 capital improvement budgets shall not be subject to review or  
18 approval by the governor or any agency of the executive  
19 branch, except where state general funds are requested.

20 **§ -6 Accounts; depositories.** Appropriations for the  
21 authority shall not be subject to any allotment system



1 or requirements. The director of finance shall notify the  
2 authority and comptroller that all of the appropriations for  
3 the authority for the fiscal year have been allotted and are  
4 available for expenditure as soon as possible, and in no event  
5 more than three business days, after the general or supplemental  
6 appropriation act is effective.

7       **§ -7 Expenditures in excess of appropriations.** If in any  
8 fiscal year the amount of revenues deposited into special funds  
9 established for the authority exceeds the amount appropriated  
10 from that fund for that year, the board of directors of the  
11 authority may approve expenditures in excess of the amount  
12 appropriated, up to the amount by which revenues for that fund  
13 exceed the appropriations from that fund for a fiscal year.

14       **§ -8 Issuance of bonds.** On an annual basis, and upon  
15 request of the authority, the legislature shall authorize one  
16 lump sum for each means or source of funds for each of the  
17 following types of bonds to be issued by the authority:  
18 revenue bonds, refunding revenue bonds, and special facility  
19 revenue bonds.



1       **§ -9 Audits.** The state auditor shall conduct  
2 management and financial audits of the authority for fiscal  
3 year 2023 and every second year thereafter."

4       SECTION 3. Section 26-19, Hawaii Revised Statutes,  
5 is amended to read as follows:

6       **"§26-19 Department of transportation.** The department  
7 of transportation shall be headed by a single executive to be  
8 known as the director of transportation. The department  
9 shall establish, maintain, and operate transportation facilities  
10 of the State, including highways, airfields, harbors, and such  
11 other transportation facilities and activities, other than  
12 Kawaihapai airfield authority, as may be authorized by law.

13       The department shall plan, develop, promote, and  
14 coordinate various transportation systems management programs  
15 that shall include, but not be limited to, alternate work and  
16 school hours programs, bicycling programs, and ridesharing  
17 programs.

18       The department shall develop and promote ridesharing  
19 programs which shall include but not be limited to, carpool and  
20 vanpool programs, and may assist organizations interested in  
21 promoting similar programs, arrange for contracts with private



1 organizations to manage and operate these programs, and assist  
2 in the formulation of ridesharing arrangements. Ridesharing  
3 programs include informal arrangements in which two or more  
4 persons ride together in a motor vehicle.

5 ~~[The functions and authority heretofore exercised by~~  
6 ~~the department of public works with respect to highways are~~  
7 ~~transferred to the department of transportation established by~~  
8 ~~this chapter.~~

9 ~~On July 1, 1961, the Hawaii aeronautics commission, the~~  
10 ~~board of harbor commissioners and the highway commission shall~~  
11 ~~be abolished and their remaining functions, duties, and powers~~  
12 ~~shall be transferred to the department of transportation.] "~~

13 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is  
14 amended as follows:

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

16 "(a) No department of the State other than the attorney  
17 general may employ or retain any attorney, by contract or  
18 otherwise, for the purpose of representing the State or the  
19 department in any litigation, rendering legal counsel to the  
20 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the  
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and  
4 industrial relations appeals board, and the Hawaii  
5 labor relations board;

6 (2) By any court or judicial or legislative office of the  
7 State; provided that if the attorney general is  
8 requested to provide representation to a court or  
9 judicial office by the chief justice or the chief  
10 justice's designee, or to a legislative office by the  
11 speaker of the house of representatives and the  
12 president of the senate jointly, and the attorney  
13 general declines to provide such representation on the  
14 grounds of conflict of interest, the attorney  
15 general shall retain an attorney for the court,  
16 judicial, or legislative office, subject to approval  
17 by the court, judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted  
20 from time to time;



- 1           (5) By the real estate commission for any action involving
- 2           the real estate recovery fund;
- 3           (6) By the contractors license board for any action
- 4           involving the contractors recovery fund;
- 5           (7) By the office of Hawaiian affairs;
- 6           (8) By the department of commerce and consumer affairs for
- 7           the enforcement of violations of chapters 480
- 8           and 485A;
- 9           (9) As grand jury counsel;
- 10          (10) By the Hawaii health systems commission, or
- 11          its regional system boards, or any of their
- 12          facilities;
- 13          (11) By the auditor;
- 14          (12) By the office of ombudsman;
- 15          (13) By the insurance division;
- 16          (14) By the University of Hawaii;
- 17          (15) By the Kahoolawe island reserve commission;
- 18          (16) By the division of consumer advocacy;
- 19          (17) By the office of elections;
- 20          (18) By the campaign spending commission;



1 (19) By the Hawaii tourism authority, as provided in  
2 section 201B-2.5;

3 (20) By the division of financial institutions;

4 (21) By the office of information practices; ~~[or]~~

5 (22) By the Kawaihapai airfield authority; or

6 ~~[(+22)]~~ (23) By a department, if the attorney general, for  
7 reasons deemed by the attorney general to be good and  
8 sufficient, declines to employ or retain an attorney  
9 for a department; provided that the governor waives  
10 the provision of this section."

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

12 "(c) Every attorney employed by any department on a full  
13 time basis, except an attorney employed by the public utilities  
14 commission, the labor and industrial relations appeals board,  
15 the Hawaii labor relations board, the office of Hawaiian  
16 affairs, the Hawaii health systems commission or its regional  
17 system boards, the department of commerce and consumer affairs  
18 in prosecution of consumer complaints, insurance division, the  
19 division of consumer advocacy, the University of Hawaii, the  
20 Hawaii tourism authority as provided in section 201B-2.5, the  
21 office of information practices, the Kawaihapai airfield



1 authority, or as grand jury counsel, shall be a deputy  
 2 attorney general."

3 SECTION 5. Section 76-11, Hawaii Revised Statutes,  
 4 is amended by amending the definition of "jurisdiction" to read  
 5 as follows:

6 "Jurisdiction" means the State, the city and county of  
 7 Honolulu, the county of Hawaii, the county of Maui, the county  
 8 of Kauai, the judiciary, the department of education, the  
 9 University of Hawaii, the Kawaihapai airfield authority, and  
 10 the Hawaii health systems authority."

11 SECTION 6. Section 76-16, Hawaii Revised Statutes,  
 12 is amended by amending subsection (b) to read as follows:

13 "(b) The civil service to which this chapter applies  
 14 shall comprise all positions in the State now existing or  
 15 hereafter established and embrace all personal services  
 16 performed for the State, except the following:

17 (1) Commissioned and enlisted personnel of the  
 18 Hawaii National Guard as such, and positions in the  
 19 Hawaii National Guard that are required by state or  
 20 federal laws or regulations or orders of the National



Guard to be filled from those commissioned or enlisted personnel;

(2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

(3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;

(4) Positions filled by the legislature or by either house or any committee thereof;



- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each



1           associate justice of the supreme court and each judge  
2           of the intermediate appellate court, one law clerk  
3           for each judge of the circuit court, two additional  
4           law clerks for the civil administrative judge of the  
5           circuit court of the first circuit, two additional  
6           law clerks for the criminal administrative judge of  
7           the circuit court of the first circuit, one additional  
8           law clerk for the senior judge of the family court of  
9           the first circuit, two additional law clerks for the  
10          civil motions judge of the circuit court of the first  
11          circuit, two additional law clerks for the criminal  
12          motions judge of the circuit court of the first  
13          circuit, and two law clerks for the administrative  
14          judge of the district court of the first circuit; and  
15          one private secretary for the administrative director  
16          of the courts, the deputy administrative director of  
17          the courts, each department head, each deputy or  
18          first assistant, and each additional deputy, or  
19          assistant deputy, or assistant defined in  
20          paragraph(16);



1       (10) First deputy and deputy attorneys general, the  
2           administrative services manager of the department of  
3           the attorney general, one secretary for the  
4           administrative services manager, an administrator and  
5           any support staff for the criminal and juvenile  
6           justice resources coordination functions, and law  
7           clerks;

8       (11) (A) Teachers, principals, vice-principals, complex  
9           area superintendents, deputy and assistant  
10          superintendents, other certificated personnel, not  
11          more than twenty noncertificated administrative,  
12          professional, and technical personnel not engaged in  
13          instructional work;

14       (B) Effective July 1, 2003, teaching assistants,  
15          educational assistants,  
16          bilingual/bicultural school-home assistants,  
17          school psychologists, psychological examiners,  
18          speech pathologists, athletic health care  
19          trainers, alternative school work study  
20          assistants, alternative school  
21          educational/supportive services specialists,



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- 1 alternative school project coordinators,  
2 and communications aides in the department of  
3 education;
- 4 (C) The special assistant to the state librarian  
5 and one secretary for the special assistant to  
6 the state librarian; and
- 7 (D) Members of the faculty of the University  
8 of Hawaii, including research workers, extension  
9 agents, personnel engaged in instructional work,  
10 and administrative, professional, and technical  
11 personnel of the university;
- 12 (12) Employees engaged in special, research, or  
13 demonstration projects approved by the governor;
- 14 (13) (A) Positions filled by inmates, patients of state  
15 institutions, persons with severe physical or mental  
16 disabilities participating in the work experience  
17 training programs;
- 18 (B) Positions filled with students in accordance with  
19 guidelines for established state employment  
20 programs; and



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(C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

(15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;

(16) Positions of first deputies or first assistants of each department head appointed under or in the manner



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1 provided in section 6, article V, of the Hawaii State  
2 Constitution; [~~three~~] two additional deputies or  
3 assistants either in charge of the highways, harbors,  
4 and airfields divisions or other functions within the  
5 department of transportation as may be assigned by  
6 the director of transportation, with the approval of  
7 the governor; four additional deputies in the  
8 department of health, each in charge of one of the  
9 following: behavioral health, environmental health,  
10 hospitals, and health resources administration,  
11 including other functions within the department as may  
12 be assigned by the director of health, with the  
13 approval of the governor; an administrative assistant  
14 to the state librarian; and an administrative  
15 assistant to the superintendent of education;

16 (17) Positions specifically exempted from this part by any  
17 other law; provided that:

18 (A) Any exemption created after July 1, 2014, shall  
19 expire three years after its enactment unless  
20 affirmatively extended by an act of the  
21 legislature; and



- 1           (B) All of the positions defined by paragraph (9)  
2           shall be included in the position classification  
3           plan;
- 4       (18) Positions in the state foster grandparent program  
5           and positions for temporary employment of senior  
6           citizens in occupations in which there is a severe  
7           personnel shortage or in special projects;
- 8       (19) Household employees at the official residence of  
9           the president of the University of Hawaii;
- 10      (20) Employees in the department of education engaged  
11           in the supervision of students during meal periods in  
12           the distribution, collection, and counting of meal  
13           tickets, and in the cleaning of classrooms  
14           after school hours on a less than half-time basis;
- 15      (21) Employees hired under the tenant hire program of  
16           the Hawaii public housing authority; provided that  
17           not more than twenty-six per cent of the  
18           authority's workforce in any housing project  
19           maintained or operated by the authority shall be hired  
20           under the tenant hire program;



- 1       (22) Positions of the federally funded expanded food  
2               and nutrition program of the University of Hawaii that  
3               require the hiring of nutrition program assistants  
4               who live in the areas they serve;
- 5       (23) Positions filled by persons with severe  
6               disabilities who are certified by the state vocational  
7               rehabilitation office that they are able to perform  
8               safely the duties of the positions;
- 9       (24) The sheriff;
- 10      (25) A gender and other fairness coordinator hired by the  
11             judiciary;
- 12      (26) Positions in the Hawaii National Guard youth and  
13             adult education programs;
- 14      (27) In the state energy office in the department of  
15             business, economic development, and tourism,  
16             all energy program managers, energy program  
17             specialists, energy program assistants, and energy  
18             analysts; [and]
- 19      (28) Administrative appeals hearing officers in  
20             the department of human services;



(29) In the Med-QUEST division of the department of human services, the division administrator, finance officer, health care services branch administrator, medical director, and clinical standards administrator;

(30) In the director's office of the department of human services, the enterprise officer, information security and privacy compliance officer, security and privacy compliance engineer, and security and privacy compliance analyst; and

[+] (31) [+] The Alzheimer's disease and related dementia services coordinator in the executive office on aging. [-]; and

(32) The chief executive officer of the Kawaihapai airfield authority, all other executive officers the chief executive officer may appoint pursuant to section - 3(d), and other positions that the chief executive officer is authorized to fill by appointing specially qualified personnel pursuant to section -3(d).

The director shall determine the applicability of this section to specific positions. Nothing in this section shall be



1 deemed to affect the civil service status of any incumbent as it  
2 existed on July 1, 1955."

3 SECTION 7. Section 89C-1.5, Hawaii Revised Statutes,  
4 is amended by amending the definition of "appropriate authority"  
5 to read as follows:

6 "Appropriate authority" means the governor, the  
7 respective mayors, the chief justice of the supreme court, the  
8 board of education, the board of regents, the state public  
9 charter school commission, the Hawaii health systems commission  
10 board, the auditor, the ombudsman, the board of directors of  
11 the Kawaihapai airfield authority, and the director of the  
12 legislative reference bureau. These individuals or boards may  
13 make adjustments for their respective excluded employees."

14 SECTION 8. Section 103D-102, Hawaii Revised Statutes,  
15 is amended by amending subsection (c) to read as follows:

16 "(c) Notwithstanding subsection (a), this chapter shall not  
17 apply to contracts made by:

18 (1) Any regional system board of the Hawaii health  
19 systems commission; [or]

20 (2) The Kaho'olawe island reserve commission, except as  
21 provided by section 6K-4.5[-]; or



1        (3) The Kawaihapai airfield authority; provided that the  
2        airfield authority adopts rules that meet the  
3        requirements of section -3."

4        SECTION 9. Section 171-2, Hawaii Revised Statutes, is  
5        amended to read as follows:

6        "**§171-2 Definition of public lands.** "Public lands" means  
7        all lands or interest therein in the State classed as government  
8        or crown lands previous to August 15, 1895, or acquired or  
9        reserved by the government upon or subsequent to that date by  
10       purchase, exchange, escheat, or the exercise of the right of  
11       eminent domain, or in any other manner; including lands accreted  
12       after May 20, 2003, and not otherwise awarded, submerged lands,  
13       and lands beneath tidal waters that are suitable for  
14       reclamation, together with reclaimed lands that have been given  
15       the status of public lands under this chapter, except:

16       (1) Lands designated in section 203 of the Hawaiian Homes  
17       Commission Act, 1920, as amended;

18       (2) Lands set aside pursuant to law for the use of the  
19       United States;

20       (3) Lands being used for roads and streets;



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- 1           (4) Lands to which the United States relinquished the  
2           absolute fee and ownership under section 91 of the  
3           Hawaiian Organic Act prior to the admission of Hawaii  
4           as a state of the United States unless subsequently  
5           placed under the control of the board of land and  
6           natural resources and given the status of public lands  
7           in accordance with the state constitution, the  
8           Hawaiian Homes Commission Act, 1920, as amended, or  
9           other laws;
- 10          (5) Lands to which the University of Hawaii holds title;
- 11          (6) Lands to which the Hawaii housing finance and  
12          development corporation in its corporate capacity  
13          holds title;
- 14          (7) Lands to which the Hawaii community development  
15          authority in its corporate capacity holds title;
- 16          (8) Lands set aside by the governor to the Hawaii public  
17          housing authority or lands to which the Hawaii public  
18          housing authority in its corporate capacity holds  
19          title;
- 20          (9) Lands to which the department of agriculture holds  
21          title by way of foreclosure, voluntary surrender, or



otherwise, to recover moneys loaned or to recover  
debts otherwise owed the department under chapter 167;

(10) Lands that are set aside by the governor to the Aloha  
Tower development corporation; lands leased to the  
Aloha Tower development corporation by any department  
or agency of the State; or lands to which the Aloha  
Tower development corporation holds title in its  
corporate capacity;

(11) Lands that are set aside by the governor to the  
agribusiness development corporation; lands leased to  
the agribusiness development corporation by any  
department or agency of the State; or lands to which  
the agribusiness development corporation in its  
corporate capacity holds title;

(12) Lands to which the Hawaii technology development  
corporation in its corporate capacity holds title;  
[and]

(13) Lands to which the department of education holds  
title; and

(14) Lands to which the Kawaihapai airfield authority holds  
title;



1 provided that, except as otherwise limited under federal law and  
2 except for state land used as an airport as defined in section  
3 262-1, public lands shall include the air rights over any  
4 portion of state land upon which a county mass transit project  
5 is developed after July 11, 2005[-]; provided further that lands  
6 to which the Kawaihapai airfield authority holds title shall be  
7 considered "public lands" for the purpose of accounting of all  
8 receipts from lands that are described in section 5(f) of the  
9 Admission Act, Public Law 86-3, for the prior fiscal year,  
10 pursuant to section 5 of Act 178, Session Laws of Hawaii  
11 2006."

12 SECTION 10. Section 26-35.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 **"§26-35.5 Members of boards and commissions; immunity from**  
15 **or indemnification for civil liability; defense of members. (a)**

16 For purposes of this section, "member" means any person who is  
17 appointed, in accordance with the law, to serve on a temporary  
18 or permanent state board, including members of the board of  
19 education, the governing board of any charter school established  
20 under chapter 302D, council, authority, committee, or  
21 commission, established by law or elected to the board of



1 trustees of the employees' retirement system under section 88-  
2 24, [~~or~~] the corporation board of the Hawaii health systems  
3 corporation under section 323F-3 and its regional system boards  
4 under section 323F-3.5[+], or members of the Kawaihapai Airfield  
5 Authority board; provided that "member" shall not include any  
6 person elected to serve on a board or commission in accordance  
7 with chapter 11.

8 (b) Notwithstanding any law to the contrary, no member  
9 shall be liable in any civil action founded upon a statute or  
10 the case law of this State, for damage, injury, or loss caused  
11 by or resulting from the member's performing or failing to  
12 perform any duty which is required or authorized to be performed  
13 by a person holding the position to which the member was  
14 appointed, unless the member acted with a malicious or improper  
15 purpose, except when the plaintiff in a civil action is the  
16 State.

17 (c) Except as provided in subsections (d) and (f), the  
18 State shall indemnify a member from liability by paying any  
19 judgment in, or settlement or compromise of, any civil action  
20 arising under federal law, the law of another state, or the law  
21 of a foreign jurisdiction, including fees and costs incurred,



1 unless the loss, injury, or damage for which the judgment or  
2 settlement amount is required to be paid:

3 (1) Is fully covered by a policy of insurance for civil  
4 liability purchased by the State;

5 (2) Is caused by or is the result of the member's  
6 performing an act authorized or required to be  
7 performed by a person holding the position to which  
8 the member was appointed so as to effect a malicious  
9 or improper purpose;

10 (3) Is caused by or is the result of the member's failure  
11 to perform an act required or authorized to be  
12 performed by a person holding the position to which  
13 the member was appointed so as to effect a malicious  
14 or improper purpose.

15 (d) The State shall not indemnify a member who would  
16 otherwise be entitled to indemnification under subsection (c),  
17 if the member fails to cooperate fully in the defense of the  
18 civil action which is made available to the member under  
19 subsection (e). The State shall not indemnify a member for any  
20 portion of a judgment that represents punitive or exemplary



1 damages. The State shall not indemnify a member for any portion  
2 of a settlement which is deemed unreasonable by the legislature.

3 (e) The attorney general, or in the case of the board of  
4 regents of the University of Hawaii, its university general  
5 counsel, or in the case of the board of directors of the Hawaii  
6 health systems corporation under section 323F-3 or its regional  
7 system boards under [section] 323F-3.5, the attorneys retained  
8 by the board of directors of the Hawaii health systems  
9 corporation or its regional system boards under section 323F-9,  
10 shall represent and defend a member in any civil action for  
11 which immunity is conferred under subsection (b), or when the  
12 attorney general, or, if the action involves a member of the  
13 board of regents, the university general counsel, or, if the  
14 action involves a member of the board of directors of the Hawaii  
15 health systems corporation or its regional system boards, the  
16 attorneys retained by the board of directors of the Hawaii  
17 health systems corporation or its regional system boards,  
18 determines that indemnification is available to the member under  
19 subsection (c), and the member against whom the action is  
20 brought has submitted a written request for representation and  
21 has provided the attorney general, the university general



1 counsel in the case of an action involving a member of the board  
2 of regents, or the attorneys retained by the board of directors  
3 of the Hawaii health systems corporation or its regional system  
4 boards in the case of an action involving a member of the board  
5 of directors of the Hawaii health systems corporation or its  
6 regional system boards with all process or complaint served upon  
7 the member within a reasonable period of time, but not more than  
8 five days after being served with the process or complaint. The  
9 attorney general, the university general counsel, or an attorney  
10 retained by the board of directors of the Hawaii health systems  
11 corporation or its regional system boards may terminate the  
12 representation and defense of the member at any time if, after  
13 representation and defense is accepted, the attorney general,  
14 the university general counsel, or an attorney retained by the  
15 board of directors of the Hawaii health systems corporation or  
16 one of its regional system boards determines that  
17 indemnification would not be available to the member under  
18 subsection (c).

19 (f) A member may retain counsel of the member's own choice  
20 at the member's own expense. If the member chooses to retain  
21 counsel at the member's own expense, the State shall not



1 indemnify the member even though the member would have been  
2 entitled to indemnification under subsection (c). The attorney  
3 general, or the university general counsel in the case of a  
4 member of the board of regents, may enter an appearance in any  
5 action in which the member is represented by counsel of the  
6 member's own choice, even though no request for the appearance  
7 has been made by the member.

8 (g) Nothing in this section precludes a member from  
9 compromising or settling any claim against the member at the  
10 member's own expense. If such a settlement or compromise is  
11 effected, however, the member shall be deemed to have waived any  
12 claims which the member might have made under this section  
13 unless the provisions of subsection (i) apply.

14 (h) If the attorney general, or the university general  
15 counsel in the case of a member of the board of regents, denies  
16 representation to the member under subsection (e) and the member  
17 proceeds to judgment in the action for which representation was  
18 denied, the member may commence an action against the State or  
19 the University of Hawaii in the case of a member of the board of  
20 regents, in the circuit court to recover reasonable costs and  
21 fees incurred by the member in defending against that action,



1 including attorney's fees, court costs, investigative costs, and  
2 expert witness fees. The State or the University of Hawaii in  
3 the case of a member of the board of regents, shall pay the  
4 judgment or reimburse the member if the member has satisfied the  
5 judgment in an action for which representation was denied;  
6 provided the member was found not liable in that action or the  
7 member establishes by a preponderance of the evidence that the  
8 member is entitled to indemnification under subsection (c). A  
9 finding of negligence against the member in the civil action for  
10 which representation was denied shall not be binding upon the  
11 circuit court in any action brought under this subsection. The  
12 member shall commence any action under this subsection no later  
13 than two years after entry of judgment in the action for which  
14 the member was denied representation if no appeal is filed, or  
15 two years after the conclusion of the final appeal from that  
16 judgment if an appeal is filed.

17 (i) If the attorney general, or the university general  
18 counsel in the case of a member of the board of regents, denies  
19 representation to the member under subsection (e) and the member  
20 negotiates a compromise or settlement without an entry of  
21 judgment in the action for which representation was denied, the



1 member may seek to introduce a bill in the legislature to secure  
2 an appropriation to reimburse the member for the amount of the  
3 settlement or that portion which constitutes a reasonable  
4 settlement, and for reasonable costs and fees incurred by the  
5 member in defending against that action, including attorney's  
6 fees, court costs, investigative costs, and expert witness fees.

7 (j) Any moneys which the State is required to pay to a  
8 member under this section shall be paid from an appropriation  
9 made by the legislature at the next session after the  
10 requirement to pay inures to the member. The appropriation  
11 shall be sufficient to include any post judgment interest which  
12 the member was required to pay if the member has personally  
13 satisfied the judgment, or at the rate specified in section 478-  
14 3 for the period from the entry of judgment for which  
15 indemnification is available until the appropriation is enacted  
16 if the judgment was not satisfied. Any bill necessary to effect  
17 a payment required by subsections (h) and (i) shall be submitted  
18 by the member to a legislator; all other bills necessary to  
19 effect payments required by this section shall be initiated by  
20 the attorney general.



1           (k) This section shall not be construed as eliminating,  
2   waiving, reducing, or limiting any defense, immunity, or  
3   jurisdictional bar conferred upon or available to a member or  
4   the State by any other statute or by case law."

5           SECTION 11. Within one hundred eighty days of the effective  
6   date of this Act, the governor shall appoint the members of  
7   the board of directors of the Kawaihapai airfield authority.

8           SECTION 12. It is the intent of this Act to ensure  
9   commercial and private operations continue uninterrupted at  
10   Dillingham Airfield. Therefore, the Department of Transportation  
11   will extend its lease termination date until such a time as the  
12   Kawaihapai Airfield Authority is fully established and  
13   operational.

14          SECTION 13. It is the intent of this Act not to jeopardize  
15   the receipt of any federal aid nor to impair any existing  
16   federal income tax exemption to, security interest of, or  
17   obligation of the State or any agency thereof to the holders of  
18   any bonds or other obligations issued by the State or by any  
19   department or agency of the State, and to the extent, and only  
20   to the extent necessary to effectuate this intent, the governor  
21   may modify the strict provisions of this Act, but shall



1 promptly report any modification with reasons therefor to the  
2 legislature at its next session thereafter for review by the  
3 legislature.

4 SECTION 14. On or no more than ninety days after the first  
5 meeting of the board, all appropriations, records, equipment,  
6 machines, files, supplies, contracts, books, papers, documents,  
7 maps, and other personal property heretofore made, used,  
8 acquired, or held by the department of transportation relating  
9 to the functions transferred to the Kawaihapai airfield  
10 authority shall be transferred with the functions to which they  
11 relate.

12 SECTION 15. There is appropriated out of the  
13 airfield revenue fund the sum of \$100,000 or so much thereof  
14 as may be necessary for fiscal year 2021-2022, to affect the  
15 transfer of functions from the department of transportation to  
16 the Kawaihapai airfield authority required by this Act.

17 The sum appropriated shall be expended by the  
18 Kawaihapai airfield authority to implement the provisions of  
19 this Act.

20 SECTION 16. If any provision of this Act, or the  
21 application thereof to any person or circumstance, is held

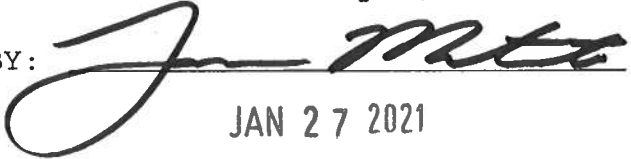


1    invalid, the invalidity does not affect other provisions  
2    or applications of the Act that can be given effect without  
3    the invalid provision or application, and to this end the  
4    provisions of this Act are severable.

5            SECTION 17. Statutory material to be repealed is  
6    bracketed and stricken. New statutory material is underscored.

7            SECTION 18. This Act shall take effect on July 1, 2021.

INTRODUCED BY:

  
JAN 27 2021



# H.B. NO. 1370

**Report Title:**

Dillingham, Kawaihapai, Airfield, Save

**Description:**

Establishes an independent authority to be called the Kawaihapai Airfield Authority. The intent of this authority is to allow continued use of Kawaihapai airfield for private and commercial use by the state's residents and tourists.

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

