THE SENATE TWENTY-FOURTH LEGISLATURE, 2008 STATE OF HAWAII

S.B. NO. ³²²⁷ S.D. 2 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO HARBORS.

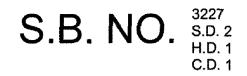
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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PART I

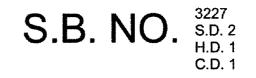
2 SECTION 1. To meet the economic needs of the state, the 3 harbors division of the department of transportation must provide suitable harbor facilities and berthing piers, which in 4 5 turn ensures the efficient and timely delivery and shipment of 6 goods imported into the state. Ocean surface transportation is 7 our state's lifeline. It remains the only viable means to 8 service the largest share of Hawaii's economic needs. However, 9 Hawaii's aging commercial harbor system has not kept pace with our growing economy, and Hawaii's commercial ports statewide are 10 11 experiencing competition for berthing rights for cargo, fuel, 12 and cruise ship activities, and severe congestion in harbor 13 facilities. Harbor users, the state administration, and the 14 legislature recognize that it is now extremely critical to 15 upgrade existing port facilities and develop harbor improvements in an expedited manner. The Hawaii Harbors Users Group, a 16 17 maritime transportation industry group, was formed in 2005





because the industry recognized that Hawaii is facing a shortage 1 2 of port facilities statewide. Its goal is to help the State 3 identify and prioritize Hawaii's harbor improvement needs. The 4 Hawaii Harbors Users Group has completed research that predicts 5 that if Hawaii's harbor infrastructure is not improved, the loss 6 of real domestic product (in 2007 dollars) could amount to more 7 than \$50,000,000,000 by the year 2030. In comparison, an 8 assessment of immediate commercial harbor needs statewide is 9 estimated to cost in the range of \$850,000,000.

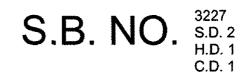
10 Under its statutory mandate, the harbors division focuses 11 on essential daily management and operations of the commercial 12 harbor system rather than development of new expansion 13 opportunities. To expeditiously develop critically needed 14 harbor infrastructure improvements and curtail statewide 15 economic hardships that will occur if the harbors reach maximum 16 cargo handling capacity by the year 2011 as currently projected, 17 the harbors division partnered with Aloha Tower development 18 corporation, an entity with a development-oriented mission, 19 statutory powers, and expertise in the development of state-20 owned properties for development of Honolulu harbor pursuant to 21 this Act.



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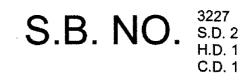
1 The harbors division is additionally stymied by the lack of 2 funding necessary to develop costly wharves and cargo handling 3 terminals and its traditional structure limits its ability to 4 consider development-oriented financing options such as public 5 or private partnerships, but the Aloha Tower development 6 corporation is empowered to do such things. A partnership with 7 the Aloha Tower development corporation, which has jurisdiction 8 over a portion of Honolulu harbor, can also assist the harbors 9 division by providing financial support from its limited 10 commercial development along the downtown urban waterfront. 11 Revenues generated from commercial development are proposed to 12 be directed toward the funding of commercial harbor system 13 infrastructure improvements.

14 The legislature, together with the administration and key 15 harbor users, recognizes that extraordinary means must be 16 employed to catch up on deferred harbor infrastructure 17 development. Accordingly, the legislature finds that the 18 harbors division should be given further development tools to 19 accomplish the formidable task of bringing the State's commercial harbors up to the standards needed to sustain 20 21 economic growth. The purpose of this Act is to expand the 22 formal partnership for development of Honolulu harbor between 2008-2618 SB3227 CD1 SMA.doc



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1	the Aloha Tower development corporation and the department of
2	transportation harbors division to a statewide jurisdiction for
3	the implementation of the commercial harbors modernization plan.
4	SECTION 2. Section 171-59, Hawaii Revised Statutes, is
5	amended by amending subsection (b) to read as follows:
6	"(b) Disposition of public lands for airline, aircraft,
7	airport-related, agricultural processing, cattle feed
8	production, aquaculture, marine, maritime, and maritime-related
9	operations may be negotiated without regard to the limitations
10	set forth in subsection (a) and section 171-16(c); provided
11	that:
12	(1) The disposition encourages competition within the
13	aeronautical, airport-related, agricultural,
14	aquaculture, maritime, and maritime-related
15	[industries;] operations;
16	(2) The disposition shall not exceed a maximum term of
17	thirty-five years[; and] <u>, except in the case of</u>
18	maritime and maritime-related operations, which may
19	provide for a maximum term of seventy years; and
20	(3) The method of disposition of public lands for cattle
21	feed production as set forth in this subsection shall
22	not apply after December 31, 1988.



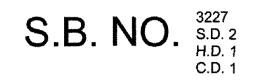
For the [purpose] purposes of this subsection: 1 2 ["agricultural processing"] "Agricultural processing" means 3 the processing of agricultural products, including dairying, 4 grown, raised, or produced in Hawaii [, "airport-related"]. 5 "Airport-related" means a purpose or activity that requires 6 air transportation to achieve that purpose or activity [--and 7 "maritime-related"]. 8 "Maritime-related" means a purpose or activity that 9 requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime 10 11 industry." SECTION 3. Section 206J-2, Hawaii Revised Statutes, is 12 13 amended by amending the definition of "development corporation" 14 to read as follows: 15 "Development corporation" means the Aloha Tower 16 [Development Corporation] development corporation established by section 206J-4." 17 SECTION 4. Section 206J-4, Hawaii Revised Statutes, is 18 19 amended by amending its title and subsections (a) and (b) to 20 read as follows: 21 "§206J-4 Aloha Tower [Development Corporation;]

22 development corporation; established. (a) There is established

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the Aloha Tower [Development Corporation,] development
<u>corporation</u>, which shall be a public body corporate and politic,
a public instrumentality, and an agency of the State. The
development corporation shall be placed within the department of
business, economic development, and tourism for administrative
purposes, pursuant to section 26-35.

7 (b) [The] Except as provided in section 206J-5.5, the development corporation shall consist of a board of directors 8 having seven voting members. The director of business, economic 9 10 development, and tourism, the director of transportation, the chairperson of the board of land and natural resources, and the 11 mayor of the city and county of Honolulu, or their respective 12 designated representatives, shall serve as ex officio voting 13 members. Three members from the public at large shall be 14 15 appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided 16 17 that no public member shall be an officer or employee of the 18 State or its political subdivisions. All members shall continue 19 in office until their respective successors have been appointed. The board, by a majority vote, shall elect a chairperson from 20 within its membership." 21



1	SECTION 5. Section 206J-5.5, Hawaii Revised Statutes, is
2	amended to read as follows:
3	"[{]§206J-5.5[}] Partnership with department of
4	transportation for [Honolulu harbor.] the implementation of the
5	commercial harbors modernization plan and the establishment of
6	the harbors modernization group. (a) Consistent with its
7	general powers under this chapter, the development corporation
8	[may] shall establish a subgroup called the harbors
9	modernization group to undertake projects for [Honolulu harbor
10	and its adjacent lands,] the commercial harbors modernization
11	plan in subsection (b), which are under the jurisdiction of the
12	department of transportation. Notwithstanding any provision in
13	section 206J-17 to the contrary, payments to the development
14	corporation for its administrative and operational expenses
15	shall be made by the department of transportation and deposited
16	into the Aloha Tower fund in a subaccount designated for [the
17	particular development project.] commercial harbors
18	modernization plan projects. The department of transportation
19	shall delegate to the development corporation the implementation
20	of commercial harbors modernization plan projects. All
21	projects, prior to implementation by the development
22	corporation, shall be approved by the director of transportation



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1	and the governor. After approval by the director of
2	transportation and the governor, the expending authority for the
3	approved projects shall be delegated to the development
4	corporation.
5	[(b) All appropriations for the development of Honolulu
6	harbor by the development corporation shall be received and
7	administered by the department of transportation. The department
8	of transportation shall retain fiscal management and oversight
9	of all project cost expenditures, budget, and contract
10	approvals.]
11	(b) The harbors modernization group shall have
12	jurisdiction over harbors projects that shall collectively be
13	known as the commercial harbors modernization plan. These
14	harbor projects shall be as follows:
15	(1) Honolulu harbor. Development of infrastructure,
16	expansion of facilities, and tenant relocations,
17	including the development of the new Kapalama
18	<pre>container terminal;</pre>
19	(2) Kahului harbor. Development of infrastructure,
20	expansion of facilities, tenant relocations, and
21	acquisition of lands, including the West harbor barge
22	or ferry slip or both, West harbor dredging and





1		breakwater, West harbor cruise terminal, Pier 1 fuel
2		line replacement and upgrade, East harbor breakwater,
3		and Pier 2B strengthening;
4	(3)	Hana Harbor. Development of infrastructure,
5		demolition, as necessary, and expansion of facilities
6		and acquisition of lands;
7	(4)	Hilo harbor. Development of infrastructure, expansion
8		of facilities, tenant relocations, and acquisition of
9		lands, including the Pier 4 interisland cargo
10		terminal;
11	(5)	Kawaihae harbor. Development of infrastructure,
12		expansion of facilities, tenant relocations,
13		acquisition of lands, including the Pier 2 terminal
14		and barge improvements, Pier 2 extension and terminal,
15		and Pier 4 and liquid bulk terminals;
16	(6)	Kalaeloa harbor. Development of infrastructure,
17		expansion of facilities, tenant relocations, and
18		acquisition of lands, including the West harbor
19		infrastructure, Pier 4 dedicated fuel pier, and
20		extension of the fuel line; and
21	(7)	Nawiliwili harbor. Development of infrastructure,
22		expansion of facilities, tenant relocations, and



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1	acquisition of lands, including the new multi-use
2	pier.
3	(c) For the purposes of this section, the chief executive
4	officer shall have the power to appoint officers, agents, and
5	employees, prescribe their duties and qualifications, and fix
6	their salaries, without regard to chapter 76.
7	(d) Land disposition matters in projects identified in the
8	commercial harbors modernization plan, including land
9	acquisition, leasing, and conveyance, and acquisition of
10	easements or rights-of-ways, shall continue to be under the
11	jurisdiction of the board of land and natural resources pursuant
12	to chapter 171.
13	(e) The harbors modernization group, when acting pursuant
14	to subsection (f), shall retain all the powers of the
15	development corporation under sections 206J-5 to 206J-21.
16	(f) Except as otherwise provided in this subsection, the
17	harbors modernization group shall be comprised of six voting
18	members appointed by the governor to the development corporation
19	in addition to those members appointed under section 206J-4(b),
20	and pursuant to section 26-34.
21	The harbors modernization group shall consist of:



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1	(1)	The director of budget and finance, or a designated
2		representative, who shall serve as an ex officio
3		voting member;
4	(2)	Two public members from the maritime industry who
5		shall be directly involved with a harbor or off-shore
6		mooring facility that is primarily for the movement of
7		commercial cargo, passenger, and fishing vessels
8		entering, leaving, or traveling within the state
9		harbor system, or directly involved with an activity
10		that requires and is directly related to the loading,
11		off-loading, storage, or distribution of goods and
12		services by means of seaborne transportation; and
13	(3)	The mayors of the counties of Hawaii, Maui, and Kauai,
14		or their designated representatives, who shall serve
15		<u>as ex officio voting members.</u>
16	The 1	members of the harbors modernization group shall serve
17	for four	year terms and shall continue in office until their
18	respectiv	e successors have been appointed. The chairperson of
19	the corpo	ration board shall serve as the chairperson of the
20	harbors m	odernization group.
21	The 1	members of the harbors modernization group shall act
22	and be cou	unted in determining quorum and majority for

1	development corporation actions only with respect to directing
2	the planning, design, construction, and financing of the harbor
3	projects identified in the commercial harbors modernization
4	plan. A majority of members of the development corporation and
5	four of the six members of the harbor modernization group shall
6	constitute quorum for matters relating to directing the
7	planning, design, construction, and financing of the harbor
8	projects identified in the commercial harbors modernization
9	plan. A majority of the voting members of the quorum shall be
10	required to validate any act relating to the harbor projects.
11	These members shall serve without compensation, but each member
12	shall be reimbursed for expenses, including travel expenses,
13	incurred in the performance of their duties.
14	[(c)] <u>(g)</u> Subject to existing contractual and statutory
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14 15	[(c)] <u>(g)</u> Subject to existing contractual and statutory commitments to the department of transportation for any losses
14 15 16	[(c)] (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may
14 15 16 17	[(c)] <u>(g)</u> Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects
14 15 16 17 18	[+(c+)] (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects in the Aloha Tower project area to defray the cost of harbor
14 15 16 17 18 19	[(c)] (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects in the Aloha Tower project area to defray the cost of harbor infrastructure improvements incurred within the [State.] state."
14 15 16 17 18 19 20	[(c)] (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects in the Aloha Tower project area to defray the cost of harbor infrastructure improvements incurred within the [State.] state." SECTION 6. The department of transportation is authorized

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1 be financed by revenue bond funds or by general obligation bond 2 funds with debt service cost to be paid from special funds, in 3 such principal amount as shall be required to yield the amounts 4 appropriated for such capital improvement program projects, and, 5 if so determined by the department and approved by the governor, 6 such additional amounts as may be deemed necessary by the 7 department to pay interest on such revenue bonds during the 8 estimated construction period of the capital improvement project 9 for which such harbor revenue bonds are issued to establish, 10 maintain, or increase reserves for the harbor revenue bonds or 11 harbor revenue bonds heretofore authorized (whether authorized 12 and issued or authorized and still unissued), and to pay the 13 expenses of issuance of such bonds. The aforementioned harbor 14 revenue bonds shall be issued pursuant to the provisions of part 15 III of chapter 39, Hawaii Revised Statutes, as the same may be 16 amended from time to time. The principal of and interest on 17 harbor revenue bonds, to the extent not paid from the proceeds 18 of such bonds, shall be payable solely from and secured solely 19 by the revenues derived from harbors and related facilities 20 under the ownership of the State or operated and managed by the 21 department, including rents, mooring, wharfage, dockage,

22 pilotage fees, and other fees or charges presently or hereafter 2008-2618 SB3227 CD1 SMA.doc

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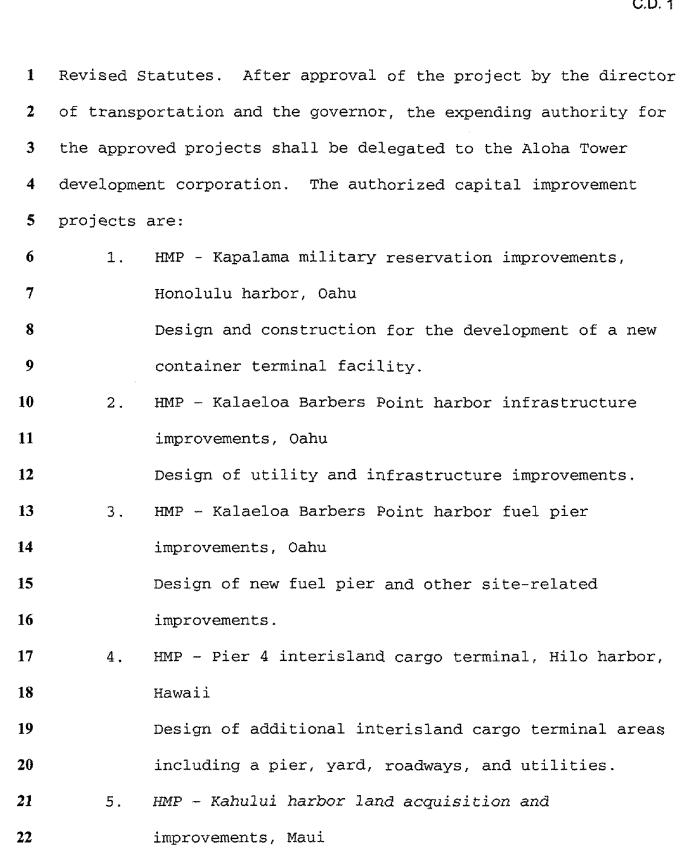
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1 derived from or arising through the ownership, operation, and 2 management of harbor and related facilities and the furnishing 3 and supplying of the services thereof. The expenses of the 4 issuance of such harbor revenue bonds shall, to the extent not 5 paid from the proceeds of such bonds, be paid from the harbor 6 special fund.

7 The governor, in the governor's discretion, is authorized
8 to use the harbor revenue fund to finance those projects
9 authorized in section 7 of this Act where the method of
10 financing is designated to be by harbor revenue bond funds.

11 SECTION 7. The following sum, or so much thereof as may be 12 sufficient to accomplish the purposes designated herein, are 13 hereby appropriated or authorized, as the case may be, from the 14 harbor revenue bond funds for the fiscal years beginning July 1, 15 2008, and ending June 30, 2012, and all intervening fiscal 16 years. The sum appropriated shall be expended by the department 17 of transportation for the purposes of this Act. The department 18 of transportation, as expending agency, shall delegate to the 19 Aloha Tower development corporation the implementation of the 20 capital improvement projects authorized in this Act and 21 subsequent acts, for the projects identified as the commercial 22 harbors modernization plan described in chapter 206J, Hawaii

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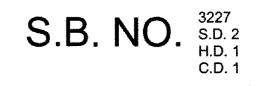
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1		Purchase of additional land and subsequent design of
2		improvements for the acquired land.
3	6.	HMP - Hana harbor, Maui
4		Development of infrastructure, demolition, as
5		necessary, and expansion of facilities
6		Total funding \$20,000,000
7	7.	HMP - West harbor barge/ferry slip, Kahului harbor,
8		Maui
9		Design for a new West harbor barge/ferry slip and
10		associated site work improvements.
11	8.	HMP - West harbor dredging and breakwater, Kahului
12		harbor, Maui
13		Design for West harbor breakwater, dredging, and
14		associated improvements.
15	9.	HMP - West harbor cruise terminal, Kahului harbor,
16		Maui
17		Design of a cruise terminal including paving,
18		utilities, security, and other site work improvements.
19	10.	HMP – East harbor breakwater, Kahului harbor, Maui
20		Design of the East harbor breakwater and related
21		improvements.
22	11.	HMP - Pier 2 improvements, Kahului harbor, Maui



1		Design of improvements to the pier, including
2		strengthening, bollard replacement, dredging, and
3		environmental permitting.
4	12.	HMP - Kawaihae harbor development plan, Hawaii
5		Development plan for improving new terminal cargo
6		facilities at Kawaihae harbor.
7	13.	HMP - Pier 2 terminal improvements, Kawaihae harbor,
8		Hawaii
9		Design and construction of terminal improvements,
10		including paving, utilities, relocation of the harbor
11		agent's office, and interim ferry improvements.
12	14.	HMP - Pier 4, Kawaihae harbor, Hawaii
13		Design of a multi-user pier 4 and associated site
14		work.
15	15.	HMP - Multi-user pier 4, Nawiliwili harbor
16		Design of new pier improvements and related site and
17		utility work.
18	16.	HMP - Construction management support, statewide
19		Construction consultant services during construction
20		of harbors modernization plan projects at harbor
21		facilities statewide.

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1	17. HMP - Harbors division capital improvement program
2	staff cost, statewide
3	Costs related to wages and fringe benefits for
4	permanent harbors modernization plan project-funded
5	positions.
6	The appropriations made for capital improvement projects
7	authorized by this Act shall not lapse unless unencumbered as of
8	June 30, 2012. All appropriations which are unencumbered as of
9	June 30, 2012, shall lapse as of that date.
10	PART II
11	SECTION 8. Chapter 266, Hawaii Revised Statutes, is
12	amended by adding a new section to be appropriately designated
13	and to read as follows:
14	"§266- Hana harbor; jurisdiction. Notwithstanding any
15	law to the contrary, the department of transportation shall have
16	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."
21	SECTION 9. All appropriations, records, equipment,
22	machines, files, supplies, contracts, books, papers, documents,



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maps, and other personal property heretofore made, used,
 acquired, or held by the department of land and natural
 resources relating to the functions transferred to the
 department of transportation shall be transferred with the
 functions to which they relate.

6 SECTION 10. The jurisdiction, functions, powers, duties, 7 and authority exercised by the department of land and natural resources pursuant to chapter 200, Hawaii Revised Statutes, 8 9 relating to the Hana harbor, excluding its small boat ramp 10 facility, shall be transferred to and conferred upon the 11 department of transportation by this Act and shall be performed 12 and enforced in the same manner as previously authorized, 13 entitled, or obligated except as otherwise authorized, directed, 14 or instructed by this Act.

15 The department of transportation shall succeed to all of 16 the rights and powers previously exercised, and all of the 17 duties and obligations incurred, by the department of land and 18 natural resources in the exercise of the functions, powers, 19 duties, and authority transferred, whether such functions, 20 powers, duties, and authority are mentioned in or granted in any 21 law, contract, or other document.

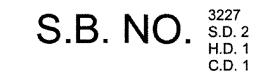
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1 All rules, policies, procedures, guidelines, and other 2 material adopted or developed by the department of land and 3 natural resources to implement the provisions of the Hawaii 4 Revised Statutes which are reenacted or made applicable to the 5 department of transportation by this Act, shall remain in full 6 force and effect until amended or repealed by the department of 7 transportation pursuant to chapter 91, Hawaii Revised Statutes. 8 In the interim, every reference to the department of land and 9 natural resources or chairperson of the board of land and 10 natural resources in those rules, policies, procedures, 11 guidelines, and other material is amended to refer to the 12 department of transportation or director of transportation as 13 appropriate.

14 All deeds, leases, contracts, loans, agreements, permits, 15 or other documents executed or entered into by or on behalf of 16 the department of land and natural resources pursuant to the 17 provisions of the Hawaii Revised Statutes, which are reenacted 18 or made applicable to the department of transportation by this 19 Act, shall remain in full force and effect. Every reference to 20 the department of land and natural resources or the chairperson 21 of the board of land and natural resources therein shall be

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construed as a reference to the department of transportation or
 the director of transportation as appropriate.

3 SECTION 11. All executive orders, revocable permits, 4 easements, and rights of entry for the use of state lands issued and granted to the department of land and natural resources for 5 6 use in connection with Hana harbor, excluding its small boat 7 ramp facility, shall be withdrawn or terminated and appropriate 8 land disposition for use in connection with Hana harbor, 9 excluding its small boat ramp facility, shall be made by the 10 department of transportation, as appropriate, subsequent to the 11 transfer of Hana harbor, excluding its small boat ramp facility, 12 to the department of transportation.

13 SECTION 12. All acts passed by the legislature during this 14 regular session of 2008, whether enacted before or after the 15 effective date of this Act shall be amended to conform to this 16 Act unless such acts specifically provide that this Act is being 17 amended.

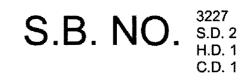
18 SECTION 13. This Act shall be liberally construed in order19 to accomplish the purposes set forth herein.

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PART III

21 SECTION 14. Statutory material to be repealed is bracketed22 and stricken. New statutory material is underscored.

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1 SECTION 15. This Act shall take effect on July 1, 2008; 2 provided that: 3 (1)The amendments to section 206J-5.5, Hawaii Revised 4 Statutes, in section 5 of this Act shall be repealed 5 on June 30, 2016, and section 206J-5.5, Hawaii Revised 6 Statutes, shall be reenacted in the form in which it 7 read on the day before the effective date of this Act; 8 and 9 (2)On June 30, 2016, any moneys or funds under the 10 management of the harbors modernization group pursuant to section 206J-5.5, Hawaii Revised Statutes, shall be 11 12 deposited into the department of transportation harbor 13 special fund.



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Report Title:

Harbors; Modernization Plan; Capital Improvement Projects; Revenue Bond; Hana Ramp and Wharf Transfer

Description:

Expands the authority of the aloha tower development corporation to assist in the development of the statewide harbors modernization plan by establishing the Harbors Modernization Group. Authorizes the department of transportation to issue revenue bonds to finance the harbor improvements. Appropriates or authorizes moneys from the harbor revenue bond funds. (CD1)

