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## A BILL FOR AN ACT

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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,



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

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

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

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

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

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

(4) Cooperate with established search and rescue agencies 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;





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

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

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

- (1) Except for commercial maritime activities where there 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~~



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;





(3) Subject to all applicable provisions of law, have the power to fix and regulate from time to time rates and charges for:

(A) Services rendered in mooring [~~commercial~~] vessels;

(B) The use of [~~commercial~~] moorings belonging to or controlled by the State;

(C) Wharfage or demurrage;

(D) Warehouse space, office space, and storage space for freight, goods, wares, and merchandise; and

(E) The use of derricks or other equipment belonging to the State or under the control of the department;

(4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, piers, quays, bulkheads, or landings;

(5) Appoint and remove clerks, harbor agents and their assistants, and all such other employees as may be necessary, and to fix their compensation;

(6) Adopt rules pursuant to chapter 91 and not inconsistent with law; and



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



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

2. By amending subsection (e) to read:

"(e) For the purposes of this section:

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

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

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

**"§266-24 Enforcement.** (a) The director of transportation shall enforce this chapter and chapter 200, and all rules ~~[thereunder, except for the rules relative to the control and 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



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





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:



# 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.*

