
A BILL FOR AN ACT

RELATING TO DEPARTMENT OF TRANSPORTATION'S OFFICE OF SECURITY
AND LAW ENFORCEMENT.

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

1 SECTION 1. Current events such as terrorism, active
2 shooter, insider threat, human smuggling and trespassing impact
3 our airports, harbors, and highways and require a single program
4 entity under a unified command structure to strengthen the
5 specialized law enforcement and security required for Hawaii's
6 unique transportation systems for its airports, harbors, and
7 highways, while ensuring the freedom of movement for people and
8 commerce. Hawaii's isolation and geographic location as an
9 island state necessitates that the department of transportation
10 possess the ability and statutory authority to establish an
11 office of security and law enforcement specifically for its
12 transportation systems. Currently, the department's programs
13 for security and law enforcement for its transportation systems
14 are split under various memorandum of understandings,
15 agreements, and contracts reporting to their own command. To
16 better improve security and law enforcement with a single
17 program entity to address security, accountability, health, and

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1 safety concerns in aviation and maritime and at highway
2 facilities, the consolidation of these specialized operations
3 under a unified command structure with statutory authority would
4 better allow the department under its director to comply with
5 all federal, state, and local law enforcement and security
6 requirements. The purpose of this Act is to provide the
7 director of transportation with the statutory authority to
8 establish and direct an office of security and law enforcement
9 for transportation systems.

10 SECTION 2. The failure to approve the establishment of the
11 office of security and law enforcement will require the
12 department to place greater reliance on private contractors to
13 maintain the security and law enforcement of its critical
14 infrastructures, with less direct supervision over the different
15 programs and personnel, which will result in inefficiency,
16 conflicts, and an unsafe environment. Noncompliance with
17 applicable regulations and requirements could subject the
18 department to violations and noncompliance with federal
19 airports, harbors, and highways regulations and result in
20 penalties, fines, and demand for immediate remedial action(s).

1 SECTION 3. The Hawaii Revised Statutes is amended by
2 adding a new chapter under Title 15 Transportation and Utilities
3 to be appropriately designated and to read as follows:

4 **"CHAPTER**

5 **OFFICE OF SECURITY AND LAW ENFORCEMENT**

6 § -1 **Definitions.** As used in this chapter:

7 "Aeronautics" shall have the same meaning as defined in
8 section 261-1.

9 "Airport" shall have the same meaning as defined in section
10 261-1.

11 "Airport security plan" means the plan for the safety and
12 security of persons and property against criminal violence,
13 aircraft piracy, and the introduction of an unauthorized weapon,
14 explosive, or incendiary devise onto an aircraft that airports
15 are required to adopt and establish under 49 Code of Federal
16 Regulations part 1542. This plan must be approved by
17 Transportation Security Administration and an airport operator
18 cannot operate an airport unless the airport adopts and carries
19 out the provision of the plan. This document contains
20 information that is classified as a Security Sensitive
21 Information.

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1 "Assistant security manager" means the assistant chief of
2 the office of security and law enforcement under the department
3 with law enforcement powers and authority as delegated under
4 chapter 261 as amended.

5 "Commercial harbor" shall have the same meaning as defined
6 in section 266-1.

7 "Deputy sheriff II" means an individual duly authorized
8 and charged with enforcement of state laws for all premises and
9 property within the premises controlled by the State of Hawaii.

10 "Deputy sheriff III" means an individual duly authorized
11 and charged with enforcement of state laws for all premises and
12 property within the premises controlled by the State of Hawaii
13 with supervisory authority over Deputy sheriffs II.

14 "Deputy sheriff IV" means an individual duly authorized and
15 charged with enforcement of state laws for all premises and
16 property within the premises controlled by the State of Hawaii
17 with supervisory authority over deputy sheriffs III.

18 "Department" means the department of transportation.

19 "Director" means the director of transportation.

20 "Facility security plan" means the plan for safety and
21 security of persons and property that harbors are required to
22 adopt and establish under the Maritime Security Act of 2002.

1 The security requirements are also used to meet security
2 requirements during various Maritime Security levels. This plan
3 must be approved by United States Coast Guard and a harbor
4 operator cannot operate a harbor unless the harbor adopts and
5 carries out the provision of the plan. This document contains
6 information that is classified as Sensitive Security
7 Information.

8 "Investigators" means a law enforcement officer with prior
9 training and experience in conducting criminal and civil
10 investigations and designated by the director of transportation
11 with the authority to conduct these investigations.

12 "Law enforcement powers for airports" shall mean the powers
13 described in section 261-17(a).

14 "Law enforcement powers for harbors" shall mean the powers
15 described in section 266-24(a).

16 "Law enforcement powers for highways" shall be as directed
17 by or be at the discretion of the security manager.

18 "Office of security and law enforcement" means the special
19 program authorized under section 76-11.6 reporting to the
20 director of transportation.

21 "Public highways and trails" shall mean such highways and
22 trails as described in section 264-1.

1 "Security manager" means the chief of the office of
2 security and law enforcement under the department of
3 transportation with law enforcement powers and authority as
4 delegated under chapter 261 as amended.

5 "Transportation sectors" means the premises, property and
6 facilities owned and operated by the State of Hawaii under the
7 department of transportation and further identified as
8 transportation sectors (airports, harbors, and highways).

9 "Transportation sector federal agencies" means the federal
10 agency authorized to regulate security plans and measures to
11 prevent terrorism (i.e., Transportation Security Administration-
12 airport; United States Coast Guard-harbors; Customs and Border
13 Protection-international arrivals area of transportation sectors
14 (airports, harbors, and highways); Federal Aviation
15 Administration-regulates movement areas of transportation
16 sectors (airports, harbors, and highways); and United States
17 Department of Agricultural; etc.) with authority to impose
18 violation notice(s).

19 "Trusted individual" means an employee designated as a law
20 enforcement, investigator, or security official assigned to and
21 part of the office of law enforcement and security for
22 transportation systems whose official duties require and

1 authorize the employee to have access to security sensitive
2 information on a need to know basis to perform their duties.
3 Each individual with this designation will be held accountable
4 for any unauthorized disclosure or release of security sensitive
5 information to unauthorized individuals.

6 § -2 **The office of law enforcement and security for**
7 **transportation systems; establishment; appointment of officers.**

8 (a) There is established in the department of
9 transportation the office of security and law enforcement which
10 reports directly to the director and will consist of three
11 positions: security manager, assistant security manager, and
12 secretary.

13 (b) Under the general direction of the director, the
14 office shall be responsible for providing security and law
15 enforcement and administrative services to all persons and
16 property on the premises of the department statewide facilities
17 (airports, harbors, and highways) and surrounding appurtenances
18 and property under the jurisdiction and management of the
19 department.

20 (c) The general duties of the security manager are to
21 provide executive direction, manage operations and
22 administration, provide direct control and command of all

1 security and law enforcement personnel at the department, its
2 facilities, and land in accordance to and in compliance with all
3 applicable local, state, and federal laws. The security manager
4 shall serve to uphold the standards of law enforcement and
5 security.

6 (d) This office will have authority to control, manage and
7 administer security and law enforcement at the department and
8 its divisions, branches, units, programs and personnel.

9 (e) This office will work closely with federal, state,
10 and local officials, and the private sector to ensure that
11 proper procedures are established to protect critical
12 infrastructure under the jurisdiction of the department and
13 applicable federal agencies to improve security and law
14 enforcement operations.

15 (f) This office will also include component programs to
16 respond to enforcement of laws relating to the department's
17 jurisdiction; identify the need to enhance emergency management
18 operations at the department; and identify the need to create
19 and support internal criminal and administrative investigations
20 at the department.

21 § -3 The office of law enforcement and security for
22 transportation system - finances; duration; conversion; and

1 **reports.** (a) This office shall be entirely special-funded.

2 (b) The duration of this office shall be from August 1,
3 2017 to July 31, 2022, but may be converted to permanent status
4 from special project provided that it meets the goals in
5 performance and effectiveness in providing a safe and secure
6 environment. The criteria to determine its performance and
7 effectiveness will include, but not be limited to, whether
8 enforcement and security efficiencies increased, as well as,
9 development and maintenance of systems and personnel.

10 (c) This office shall submit an annual report to the
11 legislature with annual statistics, reports, and records to
12 reflect this office's operation.

13 **§ -4 Enforcement of laws.** (a) The director shall
14 administer the public safety program of the department and shall
15 be responsible for the formulation and implementation of state
16 goals and objectives for law enforcement and security programs,
17 including but not limited to all of the transportation sectors
18 under the department ensuring full compliance with applicable
19 federal regulations and requirements to the maximum extent
20 practicable to allow freedom of movement of people and commerce.
21 In the administration of these programs, the director may:

22 (1) Preserve the public peace, prevent crime, detect

1 and detain and arrest offenders against the law,
2 protect the rights of persons and property, and
3 enforcement and prevent violation of all laws and
4 administrative rules of the State and the federal
5 government as the director deems to be necessary or
6 desirable or upon request, to assist other federal,
7 state officers or agencies that have primary
8 administrative responsibility over specific subject
9 matter or programs;

10 (2) Train, equip, maintain, and supervise the force
11 of public safety officers, including law enforcement
12 and designated security personnel, and other employees
13 of the department;

14 (3) Serve process both in civil and criminal
15 proceedings;

16 (4) Perform other duties as may be required by law;

17 (5) Adopt, pursuant to chapter 91 and other
18 applicable chapters associated with transportation
19 sectors (airports, harbors, and highways), harbors and
20 highways, rules that are necessary or desirable for
21 the administration of public safety programs; and

22 (6) Enter into contracts in behalf of the department

1 and take actions deemed necessary and appropriate for
2 the proper and efficient administration of the
3 department.

4 (b) The director may appoint officers, and employees of
5 the department to be public safety officers who shall have all
6 of the powers of police officers; provided that the director may
7 establish and assign the employees to positions or categories of
8 positions that may have differing titles, special duties, and
9 limitations upon the exercise of police powers;

10 (c) The director may appoint officers, and employees of
11 the department and every state and county officer charged with
12 the enforcement of state laws and ordinances, shall enforce and
13 assist in the enforcement of this chapter and of all rules and
14 orders issued pursuant thereto and of all other laws of the
15 State; and in that connection each of the person's may inspect
16 and examine at reasonable hours any premises, and the buildings
17 and other structures thereon, where transportation sectors
18 (airports, harbors, and highways), or other facilities or
19 activities as deemed appropriate by the director is operated or
20 conducted. In aid of the enforcement of this chapter, the rules
21 and orders issued pursuant thereto, and all other laws of the
22 State, the powers of police officers are conferred upon the

1 director, and such of the officers, employees, agents, and
2 representatives of the department as may be designated by the
3 director to exercise such powers, including the power to serve
4 and execute warrants and arrest offenders, and the power to
5 serve notices and orders. For the purposes of this subsection
6 the term "trusted agents and trusted representatives" includes
7 persons performing services at transportation sectors (airports,
8 harbors and highways) under contract with the department.

9 (d) The director may appoint, designate, and commission
10 other personnel such as security officers without law
11 enforcement powers as necessary to carry out the functions of
12 the department. Persons appointed and commissioned under this
13 subsection may be exempt from chapter 76.

14 (e) The director may appoint, designate, and commission
15 one or more investigators as the exigencies of the public
16 service may require. Persons appointed and commissioned under
17 this section shall have and may exercise all of the powers and
18 authority and the benefits and privileges of a deputy sheriff.
19 These investigators shall consist of personnel whose primary
20 duty is to conduct investigations as directed by the director.
21 Persons appointed and commissioned under this section may be
22 exempt from chapter 76.

1 (7) Investigators shall also have and may exercise
2 all of the powers and authority and benefits and
3 privileged of a police officer and/or a duty sheriff.

4 (8) The director may adopt rules pursuant to chapter
5 91 to implement this section.

6 (f) No person shall provide or be hired to provide armed
7 or unarmed security services at transportation sectors
8 (airports, harbors and highways) within the State without first
9 submitting statements signed under penalty of false swearing by
10 the person indicating whether the person has ever been convicted
11 of a crime which, by law, would preclude the person from
12 carrying or using a firearm in the course of the person's
13 employment, including a felony conviction in the State or
14 elsewhere, and providing consent to the department to have a
15 criminal history record check conducted by the Federal Bureau of
16 Investigation to obtain criminal history record information.

17 The person shall also be fingerprinted for the purpose of a
18 Federal Bureau of Investigation criminal history record check.

19 The Hawaii criminal justice data center may also assess the
20 existing providers of armed security services at transportation
21 sectors (airports, harbors, and highways) within the State, or
22 their employees or applicants for employment, or any applicant

1 for employment to provide armed security services at the
2 department of transportation facilities within the State, a
3 reasonable fee for each criminal history record check performed
4 by the Federal Bureau of Investigation. In addition, if
5 applicable persons' providing armed security service shall
6 be subject to Federal transportation sector requirements
7 background clearance requirements (security threat assessment).

8 (g) The department may, in the name of the State,
9 enforce this chapter and the rules and orders issued pursuant
10 thereto by injunction or other legal process in the courts of
11 the State.

12 § -5 **Arrest or citation.** Except when required by
13 state law to take immediately before a district judge a person
14 arrested for a violation of any provision of this chapter,
15 including any rule or regulation adopted and promulgated
16 pursuant to this chapter, any person authorized to enforce the
17 provisions of this chapter, hereinafter referred to as
18 enforcement officer, upon arresting a person for violation of
19 any provision of this chapter, including any rule or regulation
20 adopted and promulgated pursuant to this chapter shall, in the
21 discretion of the enforcement officer, either;

22 (1) Issue to the purported violator a summons or

1 citation, printed in the form hereinafter described,
2 warning the purported violator to appear and answer to
3 the charge against the purported violator at a certain
4 place and at a time within seven days after such
5 arrest, or;

6 (2) Take the purported violator without unnecessary
7 delay before a district judge. The summons or
8 citation shall be printed in a form comparable to the
9 form of other summonses and citations used for
10 arresting offenders and shall be designed to provide
11 for inclusion of all necessary information. The form
12 and content of such summons or citation shall be
13 adopted or prescribed by the district courts.

14 The original of a summons or citation shall be given
15 to the purported violator and the other copy or copies
16 distributed in the manner prescribed by the district
17 courts; provided that the district courts may
18 prescribe alternative methods of distribution for the
19 original and any other copies.

20 Summonses and citations shall be consecutively
21 numbered and the carbon copy of each shall bear the
22 same number. Any person who fails to appear at the

1 place and within the time specified in the summons or
2 citation issued to the person by the enforcement
3 officer, upon the person's arrest for violation of any
4 provision of this chapter, including any rule or
5 regulation promulgated pursuant to this chapter, shall
6 be guilty of a misdemeanor and, on conviction, shall
7 be fined not more than \$1,000, or be imprisoned not
8 more than six months, or both. In the event any
9 person fails to comply with a summons or citation
10 issued to such person, or if any person fails or
11 refuses to deposit bail as required, the enforcement
12 officer shall cause a complaint to be entered against
13 such person and secure the issuance of a warrant for
14 the person's arrest.

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

17 **"§26-19 Department of transportation.** The department of
18 transportation shall be headed by a single executive to be known
19 as the director of transportation.

20 The department shall establish, maintain, and operate
21 transportation facilities of the State, including highways,

1 airports, harbors, and such other transportation facilities and
2 activities as may be authorized by law.

3 The department shall plan, develop, promote, and coordinate
4 various transportation systems management programs that shall
5 include, but not be limited to, security, law enforcement,
6 alternate work and school hours programs, bicycling programs,
7 and ridesharing programs.

8 The department shall develop and promote ridesharing
9 programs which shall include but not be limited to, carpool and
10 vanpool programs, and may assist organizations interested in
11 promoting similar programs, arrange for contracts with private
12 organizations to manage and operate these programs, and assist
13 in the formulation of ridesharing arrangements. Ridesharing
14 programs include informal arrangements in which two or more
15 persons ride together in a motor vehicle.

16 The functions and authority heretofore exercised by the
17 department of public works with respect to highways are
18 transferred to the department of transportation established by
19 this chapter.

20 On July 1, 1961, the Hawaii aeronautics commission, the
21 board of harbor commissioners and the highway commission shall

1 be abolished and their remaining functions, duties, and powers
2 shall be transferred to the department of transportation.

3 Upon the abolishment of the Hawaii aeronautics commission,
4 the board of harbor commissioners, and the highway commission,
5 there shall be established within the department of
6 transportation a commission to be known as the commission on
7 transportation which shall sit in an advisory capacity to the
8 director of transportation on matters which the jurisdiction of
9 the department of transportation. The commission on
10 transportation shall consist of not more than eleven members,
11 with the number of members from each county insofar as
12 practicable being approximately proportional to the population
13 of the respective counties to the population of the State;
14 provided that each of the four counties shall be represented by
15 at least one member.

16 The department of transportation shall be responsible for
17 the formulation and implementation of state policies and
18 objectives for law enforcement and security, civil and criminal
19 investigations, and public safety purposes and functions, for
20 the administration and maintenance of all public transportation
21 system facilities and services, for service of process and
22 issuance of administrative subpoenas and the security of

1 department of transportation statewide transportation system
2 facilities to ensure freedom of movement of people and
3 commerce."

4 SECTION 5. Section 76-77, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§76-77 Civil service and exemptions.** The civil service
7 to which this part applies comprises all positions in the public
8 service of each county, now existing or hereafter established,
9 and embraces all personal services performed for each county,
10 except the following:

11 (1) Positions in the office of the mayor; provided that
12 the positions shall be included in the classification systems;

13 (2) Positions of officers elected by public vote,
14 positions of heads of departments, and positions of one first
15 deputy or first assistant of heads of departments;

16 (3) Positions of deputy county attorneys, deputy
17 corporation counsel, deputy prosecuting attorneys, and law
18 clerks;

19 (4) Positions of members of any board, commission, or agency;

20 (5) Positions filled by students; positions filled through
21 federally funded programs which provide temporary public service
22 employment such as the federal Comprehensive Employment and

1 Training Act of 1973; and employees engaged in special research
2 or demonstration projects approved by the mayor, for which
3 projects federal funds are available;

4 (6) Positions of district judges, jurors, and witnesses;

5 (7) Positions filled by persons employed by contract where
6 the personnel director has certified that the service is special
7 or unique, is essential to the public interest, and that because
8 of the circumstances surrounding its fulfillment, personnel to
9 perform the service cannot be recruited through normal civil
10 service procedures; provided that no contract pursuant to this
11 paragraph shall be for any period exceeding one year;

12 (8) Positions of a temporary nature needed in the public
13 interest where the need does not exceed ninety days; provided
14 that before any person may be employed to render temporary
15 service pursuant to this paragraph, the director shall certify
16 that the service is of a temporary nature and that recruitment
17 through normal civil service recruitment procedures is not
18 practicable; and provided further that the employment of any
19 person pursuant to this paragraph may be extended for good cause
20 for an additional period not to exceed ninety days upon similar
21 certification by the director;

22 (9) Positions of temporary election clerks in the office

1 of the county clerk employed during election periods;

2 (10) Positions specifically exempted from this part by
3 any other state statutes;

4 (11) Positions of one private secretary for each
5 department head; provided that the positions shall be included
6 in the classification systems;

7 (12) Positions filled by persons employed on a fee,
8 contract, or piecework basis who may lawfully perform their
9 duties concurrently with their private business or profession or
10 other private employment, if any, and whose duties require only
11 a portion of their time, where it is impracticable to ascertain
12 or anticipate the portion of time devoted to the service of the
13 county and that fact is certified by the director;

14 (13) Positions filled by persons with a severe disability
15 who are certified by the state vocational rehabilitation office
16 as able to safely perform the duties of the positions;

17 (14) Positions of the housing and community development
18 office or department of each county; provided that this
19 exemption shall not preclude each county from establishing these
20 positions as civil service positions;

21 (15) The following positions in the office of the
22 prosecuting attorney: private secretary to the prosecuting

1 attorney, secretary to the first deputy prosecuting attorney,
2 and administrative or executive assistants to the prosecuting
3 attorney; provided that the positions shall be included in the
4 classification systems; and

5 (16) Positions or contracts for personal services with
6 private persons or entities for services lasting no more than
7 one year and at a cost of no more than \$750,000; provided that
8 the exemption under this paragraph shall apply to contracts for
9 building, custodial, and grounds maintenance services with
10 qualified community rehabilitation programs, as defined in
11 section 103D-1001, lasting for no more than a year and at a cost
12 of no more than \$850,000.

13 (17) Positions or contracts for personal service with
14 private persons or entities for security services in accordance
15 with and pursuant to 49 CFR 152 (Airport Security Plan) for all
16 airports under the ownership of the Airports Division to meet
17 the various levels of security under the Homeland Security
18 Advisory System and in accordance with and pursuant to the
19 Maritime Transportation Security Act of 2002 (Facility Security
20 Plan) for all harbors under the ownership of the Harbors
21 Division, Department of Transportation to meet security
22 requirements in the Federal Security Plan during various

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1 Maritime Security levels."

2 SECTION 6. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



8

BY REQUEST

9

JAN 22 2018

H.B. NO. 2402

Report Title:

Security; Law Enforcement; Transportation

Description:

Establishes the Office of Law Enforcement and Security for Transportation Systems in 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.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF SECURITY AND LAW ENFORCEMENT.

PURPOSE: To establish the office of security and law enforcement for transportation systems in the department of transportation.

MEANS: Adding a chapter to the Hawaii Revised Statutes and amending Section 76-77.

JUSTIFICATION: The Department of Transportation's security and law enforcement for transportation systems functions are administered by each division through separate statutes, memorandums of understanding. This includes the Department of Public Safety, county police departments, or their own police (harbor police) as well as with various private security contracts. However, current events such as terrorism, smuggling, and homelessness, requires a unified command structure to strengthen the specialized law enforcement and security for Hawaii's transportation systems while ensuring the freedom of movement for people and commerce. It is critical to empower and bolster security and law enforcement with a layered, risk-based approach under a unified command structure. A single command structure is imperative to address security, accountability, health, and safety concerns in aviation, maritime and at highway facilities. The consolidation of these specialized operations under a unified command will allow the Department to specialize and enhance its law enforcement and security at the department of Transportation's airports, harbors and highways systems. A unified command structure at the direction of the Director of Transportation is fundamental in meeting federal, state, and local requirements. It

is impracticable to expect other law enforcement organizations to respond to protect our critical transportation system infrastructures during a state-wide emergency.

Impact on the public: Enhances the health, safety and security of travelers and personnel at airports, harbors, and highways, while ensuring the freedom of movement for people and commerce.

Impact on the department and other agencies: The establishment of the office of security and law enforcement for transportation systems consolidates and improves health, safety, and security aspects of the airports, harbors, and highways divisions under a unified command in meeting federal, state and local requirements in an expeditious and uniform manner. In addition, the office provides a central point of contact to better coordinate, communicate, and implement security plans as required by federal, state, and local law enforcement agencies. Nationally, all transportation systems are regulated by separate federal mandates that require security plans that allow facilities to remain operational. Failure to comply will impact federal funding, imposition of fines, or could result in termination of the security plan. Without this statutory authority, the 57 Deputy Sheriffs being transferred to and encumbered under DOT positions numbers will not have the full law enforcement authority as Deputy Sheriffs to carry out their full law enforcement duties at the airport.

GENERAL FUND: None.

OTHER FUNDS: TRN-995

PPBS PROGRAM
DESIGNATION: TRN-995, Administration Division

OTHER AFFECTED

AGENCIES:

Department of the Attorney General,
Department of Public Safety, Department of
Human Resource Development, Department of
Business, Economic Development, and Tourism,
Department of Health, Department of
Agriculture, Department of Land and Natural
Resources, and Hawaii Tourism Authority.

EFFECTIVE DATE:

July 1, 2018.