

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO AN AIRFIELD AUTHORITY.

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

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

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

14           The legislature further finds that Kawaihapai offers  
15 a singularly unique venue for many businesses, and its closure  
16 will force these businesses to shut down. These losses will



1 further compound the economic problems brought on by COVID-19  
2 and further delay recovery for the state. If an alternative  
3 organization does not take over responsibilities for operating  
4 the airfield it will close, which will mean putting one hundred  
5 thirty individuals out of work and the end of an economic driver  
6 in the State.

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

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

16 **CHAPTER**

17 **KAWAIHAPAI AIRPORT AUTHORITY**

18 **PART I. GENERAL PROVISIONS**

19 § -1 **Definitions.** As used in this chapter:

20 "Aircraft" shall have the same meaning as defined in  
21 section 261-1.



1 "Air navigation facility" shall have the same meaning  
2 as defined in section 261-1.

3 "Airport" shall have the same meaning as defined in  
4 section 261-1.

5 "Airport revenue" means all moneys paid into the airfield  
6 revenue fund pursuant to section 261-5(a).

7 "Airfield authority" or "authority" means the  
8 Kawaihapai airfield authority established by this chapter.

9 "Chief executive officer" means the chief executive officer  
10 of the Kawaihapai airfield authority.

11 **§ -2 Airfield Authority; establishment; board; members;**  
12 **chief executive officer.** (a) There is established the Kawaihapai  
13 airfield authority to:

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

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

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



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

4           (2) One member shall be appointed by the governor from a  
5           list of names submitted for each appointment by the  
6           House of Representatives member representing House  
7           District 45, and one member shall be appointed by the  
8           governor from a list of names submitted for each  
9           appointment by the Senate member representing Senate  
10          District 23; provided that each list of names shall  
11          contain at least three names and shall include two  
12          names that qualify to fill any county specific  
13          vacancy, as appropriate; and

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

18          (c) Members shall have relevant business and management  
19          experience, including experience in one or more of the  
20          following disciplines: financial planning, budgeting,  
21          hospitality, tourism, commercial development, construction,



1 marketing, law, aviation, non-aviation airfield business, or the  
2 cultural traditions and practices of native Hawaiians. It is the  
3 intent of the legislature that there shall be, as far as  
4 practicable, a wide cross-section of these disciplines  
5 represented by the board.

6 (d) Members shall be appointed by the governor for terms of  
7 four years. Notwithstanding section 26-34(a) and (b), all  
8 members of the board shall continue in office until  
9 their respective successors have been appointed, provided that  
10 no member shall serve more than eight consecutive years.

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

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

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

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



- 1 (h) The chief executive officer:
- 2 (1) Shall be selected based on criteria approved by
- 3 the board, including a professional airport management
- 4 credential, 3-5 years of airport management experience
- 5 at a general aviation airport, experience managing
- 6 active FAA Airport Improvement Program (AIP) projects,
- 7 and management of capital programs;
- 8 (2) Shall be appointed by an affirmative vote of not
- 9 less than two members of the board;
- 10 (3) Shall be employed subject to a formal contract, the
- 11 terms of which shall be approved by the board,
- 12 provided that the terms shall include provisions
- 13 for the removal of the chief executive officer whether
- 14 with or without cause;
- 15 (4) May be removed from office only by a vote of not
- 16 less than two members of the board, provided that the
- 17 basis for removal is consistent with the terms of the
- 18 chief executive officer's employment contract;
- 19 (5) Shall have the powers as described in this chapter and
- 20 as may be delegated by the board;



1           (6) Shall, except when excused by the board, attend all  
2           meetings of the board, keep a record of the  
3           proceedings, and maintain and be the custodian of the  
4           official seal of the authority and all books records,  
5           documents, and papers filed with the authority;

6           (7) Shall direct and supervise the authorities  
7           administrative and operational affairs in accordance  
8           with the directives of the board;

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

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

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



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

6           § -3 **Powers**; generally. (a) The Kawaihapai airfield  
7 authority, by and through its board of directors:

8           (1) Shall exercise power and control over Kawaihapai  
9 Airfield, air navigation facilities, buildings, and  
10 other facilities that the authority is responsible for  
11 managing, operating, or controlling under this  
12 chapter.

13           (2) Shall provide as appropriate for the landing, taking  
14 off, and servicing of aircraft, and the loading and  
15 unloading of passengers and cargo at all airfields  
16 under the control of the authority;

17           (3) Shall ensure that appropriate mission  
18 statements, business plans, minimum development  
19 standards, and strategic goals are established and  
20 that progress towards their accomplishment is  
21 regularly assessed and reported;



- 1           (4) Shall develop an organization and management  
2                   structure to best accomplish the goals of the  
3                   Kawaihapai airfield authority;
- 4           (5) Shall have an official seal and may alter the  
5                   official seal at its pleasure;
- 6           (6) May make, execute, or assume contracts, leases, and  
7                   all other instruments necessary or convenient for the  
8                   exercise of its powers and functions under this  
9                   chapter.
- 10          (7) Shall establish by-laws for its organization and  
11                   internal management;
- 12          (8) Shall adopt rules pursuant to chapter 91 as necessary  
13                   to implement this chapter.
- 14          (9) Shall prepare and adopt the authorities operating and  
15                   capital improvement budgets;
- 16          (10) May own, purchase, lease, exchange, or otherwise  
17                   acquire property, whether real, personal, or mixed,  
18                   tangible or intangible, and any interest therein, in  
19                   the name of the authority, and may assign, exchange,  
20                   transfer, convey, lease, sublease, or encumber the  
21                   same or any project, improvement, or facility related



1           thereto; provided that the lands to which the  
2           authority holds title shall not be subject to chapter  
3           171; provided further that any sale, gift, or  
4           exchange of real property shall be subject to the  
5           terms, conditions, and restrictions applicable to the  
6           sale, gift, or exchange of public lands in section  
7           171-50 and 171-64.7; provided further that any lease,  
8           sublease permit, or other encumbrance for any real  
9           property shall be issued in accordance with  
10          administrative rules adopted by the authority  
11          pursuant to chapter 91;

12          (11) May procure insurance against any loss in  
13               connection with its property and other assets and  
14               operations, in amounts and from insurers as it deems  
15               desirable; or provide for self-insurance;

16          (12) May accept and receive gifts or grants in any form  
17               from any person, public entity, or source provided  
18               that the grants and gifts shall be used for airfield  
19               authority purposes;

20          (13) Shall take all actions necessary under emergencies  
21               declared by the governor;



- 1           (14) Shall fix, impose, prescribe, and collect rates,  
2                   rentals, fees, or charges for the lease, use, and  
3                   services of its airfield facilities at least  
4                   sufficient to pay the costs of operation, maintenance,  
5                   and repair, if any, and the required payments of the  
6                   principal of and interest on all bonds, notes, or  
7                   other obligations issued or assumed by the airfield  
8                   authority and reserves therefor; provided that the  
9                   rates, rentals, fees, or charges are established at  
10                  an open meeting subject to the requirements of  
11                  chapter 92;
- 12           (15) May allot any and all airfield revenue and issue  
13                   revenue bonds, refunding revenue bonds, special  
14                   facility revenue bonds, bond anticipation notes, and  
15                   other lawfully authorized obligations of the State in  
16                   its name and secured by the revenue, or user taxes,  
17                   or any combination of both, of an undertaking or  
18                   loan program pursuant to chapter 39, but not in  
19                   excess of the principal amounts as are necessary for  
20                   its purposes;
- 21           (16) May invest and secure its moneys;



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

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

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

10       (b) The airfield authority may sue and be sued in  
11       its corporate name. Notwithstanding any other law to the  
12       contrary, all claims arising out of the acts or omissions of the  
13       airfield authority or the members of its board, its officers, or  
14       its employees, including claims permitted against the State  
15       under chapter 661, part I, and claims for torts permitted  
16       against the State under chapter 662, may be brought only  
17       pursuant to this section and only against the airfield  
18       authority. However, the airfield authority shall be subject to  
19       suit only in the manner provided for suits against the State,  
20       including section 661-11. All defenses available to the State,



1 as well as all limitations on actions against the State, shall  
2 be applicable to the airfield authority.

3 (1) The board of directors, upon the advice of  
4 its attorney, may arbitrate, compromise, or settle any  
5 claim, action, or suit brought against the airfield  
6 authority pursuant to this section. Any claim  
7 compromised or settled under this subsection shall be  
8 payable solely from the moneys and property of the  
9 airfield authority and shall not constitute a general  
10 obligation of the state or be secured directly or  
11 indirectly by the full faith and credit of the state  
12 or the general credit of the state or by any revenue  
13 or taxes of the state. Nothing in this subsection  
14 shall preclude the board of directors from requesting  
15 legislative appropriations to fund the settlement of  
16 any claim or judgment against the airfield authority  
17 or its officers, employees, or agents.

18 (2) Rights and remedies conferred by this section shall  
19 not be construed to authorize any other claim, suit,  
20 or action against the State. In addition, a judgment,  
21 compromise, or settlement in an action brought against



1           the airfield authority under this section shall  
2           constitute a complete bar to any action brought by the  
3           claimant, by reason of the same subject matter,  
4           against the state or an officer or employee of the  
5           airfield authority.

6           (c) The authority shall be a "jurisdiction" and an  
7           "appointing authority" under chapter 76 and an "appointing  
8           authority" and an "appropriate authority" for those of  
9           its officers and employees who are excluded employees under  
10          chapter 89C. In addition to its chief executive officer, the  
11          authority may employ executive officers, including a chief  
12          procurement officer, appointed by the chief executive officer  
13          who are qualified to fill positions established in the bylaws  
14          of the authority adopted by the board of directors, to perform  
15          functions and exercise powers assigned by the bylaws or  
16          delegated by the board or the chief executive officer. The  
17          other executive officers of the authority, and up to seven  
18          additional specially qualified employees appointed by the chief  
19          executive officer shall be exempt from chapters 76 and 89. All  
20          other persons employed by the authority shall be subject to  
21          chapters 76 and 89, and rules adopted to implement those



1 provisions, unless expressly exempted from the civil service  
2 under chapter 76 or excluded from collective bargaining under  
3 chapter 89. The officers and personnel of the authority shall be  
4 included in all benefit programs applicable to officers  
5 and employees of the State.

6 (d) The authority and its corporate existence shall  
7 continue until terminated by law; provided that no termination  
8 shall take effect as long as bonds or other obligations issued  
9 or assumed by the authority are outstanding, unless adequate  
10 provision has been made for the payment or satisfaction  
11 thereof.

12 Upon termination of the existence of the authority, all of  
13 the rights and properties of the authority then remaining  
14 shall pass to and vest in the State in the manner prescribed by  
15 law.

16 **PART II. BUDGET AND FINANCE**

17 **§ -4 Fiscal provisions.** (a) The authorities board of  
18 directors shall establish guidelines for preparing the  
19 authorities annual operating and capital improvement budget  
20 proposals that take into account anticipated receipts,  
21 surpluses, reserves, and funds from any other source, on deposit



1 in or available for deposit into any special or revolving fund  
2 that the legislature may establish for the authority.

3 (b) The authority shall submit its biennium  
4 and supplemental operating and capital improvement budget  
5 proposals to the department of business, economic development &  
6 tourism, which shall transmit those budget proposals to the  
7 governor.

8 (c) Along with its budget proposals, the authority shall  
9 provide an annual report of the income to and the expenditures  
10 from any special or revolving fund administered by the  
11 authority. The authority shall provide a copy of its annual  
12 report to the legislature at least twenty days prior to the  
13 convening of each regular session.

14 (d) The supporting documents for each budget proposal shall  
15 include the annual report, but need not include any  
16 other information, except when state general funds are  
17 requested.

18 (e) Notwithstanding sections 37-71 and 37-72, the governor  
19 shall include in the executive budget one lump sum for each  
20 means or source of funds for the authorities operating and  
21 capital budget proposals in the amounts specified in the budget



1 proposals transmitted to the governor by the department of  
2 business, economic development & tourism pursuant to subsection  
3 (b).

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

7 § -5 **Budget oversight.** The authorities operating and  
8 capital improvement budgets shall not be subject to review or  
9 approval by the governor or any agency of the executive  
10 branch, except where state general funds are requested.

11 § -6 **Accounts; depositories.** Appropriations for the  
12 authority shall not be subject to any allotment system  
13 or requirements. The director of finance shall notify the  
14 authority and comptroller that all of the appropriations for  
15 the authority for the fiscal year have been allotted and are  
16 available for expenditure as soon as possible, and in no event  
17 more than three business days, after the general or supplemental  
18 appropriation act is effective.

19 § -7 **Expenditures in excess of appropriations.** If in any  
20 fiscal year the amount of revenues deposited into special funds  
21 established for the authority exceeds the amount appropriated



1 from that fund for that year, the board of directors of the  
2 authority may approve expenditures in excess of the amount  
3 appropriated, up to the amount by which revenues for that fund  
4 exceed the appropriations from that fund for a fiscal year.

5       **§ -8 Issuance of bonds.** On an annual basis, and upon  
6 request of the authority, the legislature shall authorize one  
7 lump sum for each means or source of funds for each of the  
8 following types of bonds to be issued by the authority:  
9 revenue bonds, refunding revenue bonds, and special facility  
10 revenue bonds.

11       **§ -9 Audits.** The state auditor shall conduct  
12 management and financial audits of the authority for fiscal  
13 year 2023 and every second year thereafter."

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

16       **"§26-19 Department of transportation.** The department  
17 of transportation shall be headed by a single executive to be  
18 known as the director of transportation. The department  
19 shall establish, maintain, and operate transportation facilities  
20 of the State, including highways, airfields, harbors, and such



1 other transportation facilities and activities, other than  
2 Kawaihapai airfield authority, as may be authorized by law.

3 The department shall plan, develop, promote, and  
4 coordinate various transportation systems management programs  
5 that shall include, but not be limited to, alternate work and  
6 school hours programs, bicycling programs, and ridesharing  
7 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~~  
17 ~~the 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 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is  
4 amended as follows:

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

6 "(a) No department of the State other than the attorney  
7 general may employ or retain any attorney, by contract or  
8 otherwise, for the purpose of representing the State or the  
9 department in any litigation, rendering legal counsel to the  
10 department, or drafting legal documents for the department;  
11 provided that the foregoing provision shall not apply to the  
12 employment or retention of attorneys:

13 (1) By the public utilities commission, the labor and  
14 industrial relations appeals board, and the Hawaii  
15 labor relations board;

16 (2) By any court or judicial or legislative office of the  
17 State; provided that if the attorney general is  
18 requested to provide representation to a court or  
19 judicial office by the chief justice or the chief  
20 justice's designee, or to a legislative office by the  
21 speaker of the house of representatives and the



- 1 president of the senate jointly, and the attorney  
2 general declines to provide such representation on the  
3 grounds of conflict of interest, the attorney  
4 general shall retain an attorney for the court,  
5 judicial, or legislative office, subject to approval  
6 by the court, judicial, or legislative office;
- 7 (3) By the legislative reference bureau;
- 8 (4) By any compilation commission that may be constituted  
9 from time to time;
- 10 (5) By the real estate commission for any action involving  
11 the real estate recovery fund;
- 12 (6) By the contractors license board for any action  
13 involving the contractors recovery fund;
- 14 (7) By the office of Hawaiian affairs;
- 15 (8) By the department of commerce and consumer affairs for  
16 the enforcement of violations of chapters 480  
17 and 485A;
- 18 (9) As grand jury counsel;
- 19 (10) By the Hawaii health systems commission, or  
20 its regional system boards, or any of their  
21 facilities;



- 1 (11) By the auditor;
- 2 (12) By the office of ombudsman;
- 3 (13) By the insurance division;
- 4 (14) By the University of Hawaii;
- 5 (15) By the Kahoolawe island reserve commission;
- 6 (16) By the division of consumer advocacy;
- 7 (17) By the office of elections;
- 8 (18) By the campaign spending commission;
- 9 (19) By the Hawaii tourism authority, as provided in
- 10 section 201B-2.5;
- 11 (20) By the division of financial institutions;
- 12 (21) By the office of information practices; [~~or~~]
- 13 (22) By the Kawaihapai airfield authority; or
- 14 [~~(22)~~] (23) By a department, if the attorney general, for
- 15 reasons deemed by the attorney general to be good and
- 16 sufficient, declines to employ or retain an attorney
- 17 for a department; provided that the governor waives
- 18 the provision of this section."
- 19 2. By amending subsection (c) to read:
- 20 "(c) Every attorney employed by any department on a full
- 21 time basis, except an attorney employed by the public utilities



1 commission, the labor and industrial relations appeals board,  
2 the Hawaii labor relations board, the office of Hawaiian  
3 affairs, the Hawaii health systems commission or its regional  
4 system boards, the department of commerce and consumer affairs  
5 in prosecution of consumer complaints, insurance division, the  
6 division of consumer advocacy, the University of Hawaii, the  
7 Hawaii tourism authority as provided in section 201B-2.5, the  
8 office of information practices, the Kawaihapai airfield  
9 authority, or as grand jury counsel, shall be a deputy  
10 attorney general."

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

14 ""Jurisdiction" means the State, the city and county of  
15 Honolulu, the county of Hawaii, the county of Maui, the county  
16 of Kauai, the judiciary, the department of education, the  
17 University of Hawaii, the Kawaihapai airfield authority, and  
18 the Hawaii health systems authority."

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



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

5           (1) Commissioned and enlisted personnel of the  
6 Hawaii National Guard as such, and positions in the  
7 Hawaii National Guard that are required by state or  
8 federal laws or regulations or orders of the National  
9 Guard to be filled from those commissioned or enlisted  
10 personnel;

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

20          (3) Positions that must be filled without delay to comply  
21 with a court order or decree if the director



- 1 determines that recruitment through normal recruitment  
2 civil service procedures would result in delay  
3 or noncompliance, such as the Felix-Cayetano  
4 consent decree;
- 5 (4) Positions filled by the legislature or by either  
6 house or any committee thereof;
- 7 (5) Employees in the office of the governor and office  
8 of the lieutenant governor, and household employees  
9 at Washington Place;
- 10 (6) Positions filled by popular vote;
- 11 (7) Department heads, officers, and members of any board,  
12 commission, or other state agency whose  
13 appointments are made by the governor or are required  
14 by law to be confirmed by the senate;
- 15 (8) Judges, referees, receivers, masters, jurors,  
16 notaries public, land court examiners, court  
17 commissioners, and attorneys appointed by a state  
18 court for a special temporary service;
- 19 (9) One bailiff for the chief justice of the supreme court  
20 who shall have the powers and duties of a court  
21 officer and bailiff under section 606-14; one



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



1 of the courts, the deputy administrative director of  
2 the courts, each department head, each deputy or  
3 first assistant, and each additional deputy, or  
4 assistant deputy, or assistant defined in  
5 paragraph(16);

6 (10) First deputy and deputy attorneys general, the  
7 administrative services manager of the department of  
8 the attorney general, one secretary for the  
9 administrative services manager, an administrator and  
10 any support staff for the criminal and juvenile  
11 justice resources coordination functions, and law  
12 clerks;

13 (11) (A) Teachers, principals, vice-principals, complex  
14 area superintendents, deputy and assistant  
15 superintendents, other certificated personnel, not  
16 more than twenty noncertificated administrative,  
17 professional, and technical personnel not engaged in  
18 instructional work;

19 (B) Effective July 1, 2003, teaching assistants,  
20 educational assistants,  
21 bilingual/bicultural school-home assistants,



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1 school psychologists, psychological examiners,  
2 speech pathologists, athletic health care  
3 trainers, alternative school work study  
4 assistants, alternative school  
5 educational/supportive services specialists,  
6 alternative school project coordinators,  
7 and communications aides in the department of  
8 education;

9 (C) The special assistant to the state librarian  
10 and one secretary for the special assistant to  
11 the state librarian; and

12 (D) Members of the faculty of the University  
13 of Hawaii, including research workers, extension  
14 agents, personnel engaged in instructional work,  
15 and administrative, professional, and technical  
16 personnel of the university;

17 (12) Employees engaged in special, research, or  
18 demonstration projects approved by the governor;

19 (13) (A) Positions filled by inmates, patients of state  
20 institutions, persons with severe physical or mental



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1 disabilities participating in the work experience  
2 training programs;

3 (B) Positions filled with students in accordance with  
4 guidelines for established state employment  
5 programs; and

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

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

18 (15) Positions filled by persons employed on a fee,  
19 contract, or piecework basis, who may lawfully perform  
20 their duties concurrently with their private business  
21 or profession or other private employment and whose



1 duties require only a portion of their time, if it is  
2 impracticable to ascertain or anticipate the portion  
3 of time to be devoted to the service of the State;  
4 (16) Positions of first deputies or first assistants of  
5 each department head appointed under or in the manner  
6 provided in section 6, article V, of the Hawaii State  
7 Constitution; [~~three~~] two additional deputies or  
8 assistants either in charge of the highways, harbors,  
9 and airfields divisions or other functions within the  
10 department of transportation as may be assigned by  
11 the director of transportation, with the approval of  
12 the governor; four additional deputies in the  
13 department of health, each in charge of one of the  
14 following: behavioral health, environmental health,  
15 hospitals, and health resources administration,  
16 including other functions within the department as may  
17 be assigned by the director of health, with the  
18 approval of the governor; an administrative assistant  
19 to the state librarian; and an administrative  
20 assistant to the superintendent of education;



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

3           (A) Any exemption created after July 1, 2014, shall  
4           expire three years after its enactment unless  
5           affirmatively extended by an act of the  
6           legislature; and

7           (B) All of the positions defined by paragraph (9)  
8           shall be included in the position classification  
9           plan;

10          (18) Positions in the state foster grandparent program  
11          and positions for temporary employment of senior  
12          citizens in occupations in which there is a severe  
13          personnel shortage or in special projects;

14          (19) Household employees at the official residence of  
15          the president of the University of Hawaii;

16          (20) Employees in the department of education engaged  
17          in the supervision of students during meal periods in  
18          the distribution, collection, and counting of meal  
19          tickets, and in the cleaning of classrooms  
20          after school hours on a less than half-time basis;



1       (21) Employees hired under the tenant hire program of  
2           the Hawaii public housing authority; provided that  
3           not more than twenty-six per cent of the  
4           authority's workforce in any housing project  
5           maintained or operated by the authority shall be hired  
6           under the tenant hire program;

7       (22) Positions of the federally funded expanded food  
8           and nutrition program of the University of Hawaii that  
9           require the hiring of nutrition program assistants  
10          who live in the areas they serve;

11       (23) Positions filled by persons with severe  
12          disabilities who are certified by the state vocational  
13          rehabilitation office that they are able to perform  
14          safely the duties of the positions;

15       (24) The sheriff;

16       (25) A gender and other fairness coordinator hired by the  
17          judiciary;

18       (26) Positions in the Hawaii National Guard youth and  
19          adult education programs;

20       (27) In the state energy office in the department of  
21          business, economic development, and tourism,



- 1 all energy program managers, energy program  
2 specialists, energy program assistants, and energy  
3 analysts; [and]
- 4 (28) Administrative appeals hearing officers in  
5 the department of human services;
- 6 (29) In the Med-QUEST division of the department of human  
7 services, the division administrator, finance officer,  
8 health care services branch administrator, medical  
9 director, and clinical standards administrator;
- 10 (30) In the director's office of the department of human  
11 services, the enterprise officer, information security  
12 and privacy compliance officer, security and privacy  
13 compliance engineer, and security and privacy  
14 compliance analyst; and
- 15 [+] (31) [+] The Alzheimer's disease and related dementia  
16 services coordinator in the executive office on  
17 aging. [-]; and
- 18 (32) The chief executive officer of the Kawaihapai airfield  
19 authority, all other executive officers the chief  
20 executive officer may appoint pursuant to section -  
21 3(d), and other positions that the chief executive



1           officer is authorized to fill by appointing specially  
2           qualified personnel pursuant to section -3(d).

3           The director shall determine the applicability of this  
4 section to specific positions. Nothing in this section shall be  
5 deemed to affect the civil service status of any incumbent as it  
6 existed on July 1, 1955."

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

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

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

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



- 1           (1) Any regional system board of the Hawaii health
- 2                   systems commission; [or]
- 3           (2) The Kaho'olawe island reserve commission, except as
- 4                   provided by section 6K-4.5[-]; or
- 5           (3) The Kawaihapai airfield authority; provided that the
- 6                   airfield authority adopts rules that meet the
- 7                   requirements of section -3."

8           SECTION 9. Section 171-2, Hawaii Revised Statutes, is

9 amended to read as follows:

10           "**§171-2 Definition of public lands.** "Public lands" means

11 all lands or interest therein in the State classed as government

12 or crown lands previous to August 15, 1895, or acquired or

13 reserved by the government upon or subsequent to that date by

14 purchase, exchange, escheat, or the exercise of the right of

15 eminent domain, or in any other manner; including lands accreted

16 after May 20, 2003, and not otherwise awarded, submerged lands,

17 and lands beneath tidal waters that are suitable for

18 reclamation, together with reclaimed lands that have been given

19 the status of public lands under this chapter, except:



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- 1       (1) Lands designated in section 203 of the Hawaiian Homes  
2           Commission Act, 1920, as amended;
- 3       (2) Lands set aside pursuant to law for the use of the  
4           United States;
- 5       (3) Lands being used for roads and streets;
- 6       (4) Lands to which the United States relinquished the  
7           absolute fee and ownership under section 91 of the  
8           Hawaiian Organic Act prior to the admission of Hawaii  
9           as a state of the United States unless subsequently  
10          placed under the control of the board of land and  
11          natural resources and given the status of public lands  
12          in accordance with the state constitution, the  
13          Hawaiian Homes Commission Act, 1920, as amended, or  
14          other laws;
- 15       (5) Lands to which the University of Hawaii holds title;
- 16       (6) Lands to which the Hawaii housing finance and  
17          development corporation in its corporate capacity  
18          holds title;
- 19       (7) Lands to which the Hawaii community development  
20          authority in its corporate capacity holds title;



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- 1           (8) Lands set aside by the governor to the Hawaii public  
2           housing authority or lands to which the Hawaii public  
3           housing authority in its corporate capacity holds  
4           title;
- 5           (9) Lands to which the department of agriculture holds  
6           title by way of foreclosure, voluntary surrender, or  
7           otherwise, to recover moneys loaned or to recover  
8           debts otherwise owed the department under chapter 167;
- 9           (10) Lands that are set aside by the governor to the Aloha  
10          Tower development corporation; lands leased to the  
11          Aloha Tower development corporation by any department  
12          or agency of the State; or lands to which the Aloha  
13          Tower development corporation holds title in its  
14          corporate capacity;
- 15          (11) Lands that are set aside by the governor to the  
16          agribusiness development corporation; lands leased to  
17          the agribusiness development corporation by any  
18          department or agency of the State; or lands to which  
19          the agribusiness development corporation in its  
20          corporate capacity holds title;



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

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

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

8 provided that, except as otherwise limited under federal law and  
9 except for state land used as an airport as defined in section  
10 262-1, public lands shall include the air rights over any  
11 portion of state land upon which a county mass transit project  
12 is developed after July 11, 2005[~~7~~]; provided further that lands  
13 to which the Kawaihapai airfield authority holds title shall be  
14 considered "public lands" for the purpose of accounting of all  
15 receipts from lands that are described in section 5(f) of the  
16 Admission Act, Public Law 86-3, for the prior fiscal year,  
17 pursuant to section 5 of Act 178, Session Laws of Hawaii  
18 2006."

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



1           "§26-35.5 Members of boards and commissions; immunity from  
2 or indemnification for civil liability; defense of members. (a)

3 For purposes of this section, "member" means any person who is  
4 appointed, in accordance with the law, to serve on a temporary  
5 or permanent state board, including members of the board of  
6 education, the governing board of any charter school established  
7 under chapter 302D, council, authority, committee, or  
8 commission, established by law or elected to the board of  
9 trustees of the employees' retirement system under section 88-  
10 24, [~~o~~] the corporation board of the Hawaii health systems  
11 corporation under section 323F-3 and its regional system boards  
12 under section 323F-3.5[~~+~~], or members of the Kawaihapai Airfield  
13 Authority board; provided that "member" shall not include any  
14 person elected to serve on a board or commission in accordance  
15 with chapter 11.

16           (b) Notwithstanding any law to the contrary, no member  
17 shall be liable in any civil action founded upon a statute or  
18 the case law of this State, for damage, injury, or loss caused  
19 by or resulting from the member's performing or failing to  
20 perform any duty which is required or authorized to be performed  
21 by a person holding the position to which the member was



1 appointed, unless the member acted with a malicious or improper  
2 purpose, except when the plaintiff in a civil action is the  
3 State.

4 (c) Except as provided in subsections (d) and (f), the  
5 State shall indemnify a member from liability by paying any  
6 judgment in, or settlement or compromise of, any civil action  
7 arising under federal law, the law of another state, or the law  
8 of a foreign jurisdiction, including fees and costs incurred,  
9 unless the loss, injury, or damage for which the judgment or  
10 settlement amount is required to be paid:

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

13 (2) Is caused by or is the result of the member's  
14 performing an act authorized or required to be  
15 performed by a person holding the position to which  
16 the member was appointed so as to effect a malicious  
17 or improper purpose;

18 (3) Is caused by or is the result of the member's failure  
19 to perform an act required or authorized to be  
20 performed by a person holding the position to which



1           the member was appointed so as to effect a malicious  
2           or improper purpose.

3           (d) The State shall not indemnify a member who would  
4 otherwise be entitled to indemnification under subsection (c),  
5 if the member fails to cooperate fully in the defense of the  
6 civil action which is made available to the member under  
7 subsection (e). The State shall not indemnify a member for any  
8 portion of a judgment that represents punitive or exemplary  
9 damages. The State shall not indemnify a member for any portion  
10 of a settlement which is deemed unreasonable by the legislature.

11          (e) The attorney general, or in the case of the board of  
12 regents of the University of Hawaii, its university general  
13 counsel, or in the case of the board of directors of the Hawaii  
14 health systems corporation under section 323F-3 or its regional  
15 system boards under [section] 323F-3.5, the attorneys retained  
16 by the board of directors of the Hawaii health systems  
17 corporation or its regional system boards under section 323F-9,  
18 shall represent and defend a member in any civil action for  
19 which immunity is conferred under subsection (b), or when the  
20 attorney general, or, if the action involves a member of the  
21 board of regents, the university general counsel, or, if the



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



1 the university general counsel, or an attorney retained by the  
2 board of directors of the Hawaii health systems corporation or  
3 one of its regional system boards determines that  
4 indemnification would not be available to the member under  
5 subsection (c).

6 (f) A member may retain counsel of the member's own choice  
7 at the member's own expense. If the member chooses to retain  
8 counsel at the member's own expense, the State shall not  
9 indemnify the member even though the member would have been  
10 entitled to indemnification under subsection (c). The attorney  
11 general, or the university general counsel in the case of a  
12 member of the board of regents, may enter an appearance in any  
13 action in which the member is represented by counsel of the  
14 member's own choice, even though no request for the appearance  
15 has been made by the member.

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



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



1 the member was denied representation if no appeal is filed, or  
2 two years after the conclusion of the final appeal from that  
3 judgment if an appeal is filed.

4 (i) If the attorney general, or the university general  
5 counsel in the case of a member of the board of regents, denies  
6 representation to the member under subsection (e) and the member  
7 negotiates a compromise or settlement without an entry of  
8 judgment in the action for which representation was denied, the  
9 member may seek to introduce a bill in the legislature to secure  
10 an appropriation to reimburse the member for the amount of the  
11 settlement or that portion which constitutes a reasonable  
12 settlement, and for reasonable costs and fees incurred by the  
13 member in defending against that action, including attorney's  
14 fees, court costs, investigative costs, and expert witness fees.

15 (j) Any moneys which the State is required to pay to a  
16 member under this section shall be paid from an appropriation  
17 made by the legislature at the next session after the  
18 requirement to pay inures to the member. The appropriation  
19 shall be sufficient to include any post judgment interest which  
20 the member was required to pay if the member has personally  
21 satisfied the judgment, or at the rate specified in section 478-



1 3 for the period from the entry of judgment for which  
2 indemnification is available until the appropriation is enacted  
3 if the judgment was not satisfied. Any bill necessary to effect  
4 a payment required by subsections (h) and (i) shall be submitted  
5 by the member to a legislator; all other bills necessary to  
6 effect payments required by this section shall be initiated by  
7 the attorney general.

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

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

15 SECTION 12. It is the intent of this Act to ensure  
16 commercial and private operations continue uninterrupted at  
17 Dillingham Airfield. Therefore, the Department of Transportation  
18 will extend its lease termination date until such a time as the  
19 Kawaihapai Airfield Authority is fully established and  
20 operational.



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1           SECTION 13. It is the intent of this Act not to jeopardize  
2 the receipt of any federal aid nor to impair any existing  
3 federal income tax exemption to, security interest of, or  
4 obligation of the State or any agency thereof to the holders of  
5 any bonds or other obligations issued by the State or by any  
6 department or agency of the State, and to the extent, and only  
7 to the extent necessary to effectuate this intent, the governor  
8 may modify the strict provisions of this Act, but shall  
9 promptly report any modification with reasons therefor to the  
10 legislature at its next session thereafter for review by the  
11 legislature.

12           SECTION 14. On or no more than ninety days after the first  
13 meeting of the board, all appropriations, records, equipment,  
14 machines, files, supplies, contracts, books, papers, documents,  
15 maps, and other personal property heretofore made, used,  
16 acquired, or held by the department of transportation relating  
17 to the functions transferred to the Kawaihapai airfield  
18 authority shall be transferred with the functions to which they  
19 relate.

20           SECTION 15. There is appropriated out of the  
21 airfield revenue fund the sum of \$100,000 or so much thereof



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1 as may be necessary for fiscal year 2021-2022, to affect the  
2 transfer of functions from the department of transportation to  
3 the Kawaihapai airfield authority required by this Act.

4 The sum appropriated shall be expended by the  
5 Kawaihapai airfield authority to implement the provisions of  
6 this Act.

7 SECTION 16. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions  
10 or applications of the Act that can be given effect without  
11 the invalid provision or application, and to this end the  
12 provisions of this Act are severable.

13 SECTION 17. Statutory material to be repealed is  
14 bracketed and stricken. New statutory material is underscored.

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

16  
17

INTRODUCED BY:



# S.B. NO. 1370

**Report Title:**

Dillingham, Kawaihapai, Airfield, Save

**Description:**

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

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

