A BILL FOR AN ACT

RELATING TO AN AIRFIELD AUTHORITY.

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

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

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

The legislature further finds that Kawaihapai offers a singularly unique venue for many businesses, and its closure will force these businesses to shut down. These losses will further compound the economic problems brought on by COVID-19
and further delay recovery for the state. If an alternative organization does not take over responsibilities for operating the airfield it will close, which will mean putting one hundred thirty individuals out of work and the end of an economic driver in the State.

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

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

CHAPTER
KAWAIHAPA AIRPORT AUTHORITY

PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter:

"Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.
"Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities shall.

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

"Airfield authority" or "authority" means the Kawaihapa airfield authority established by this chapter.

"Chief executive officer" means the chief executive officer of the Kawaihapa airfield authority.
"Kawaihapai Airfield" shall mean the airfield located at TMK 680140010000, commonly known as Dillingham Airfield, as the same may be expanded, reduced or relocated from time to time.

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

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

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

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

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

(2) One member shall be appointed by the governor from a list of names submitted for each appointment by the House of Representatives member representing House District 45, and one member shall be appointed by the
governor from a list of names submitted for each
appointment by the Senate member representing Senate
District 23; provided that each list of names shall
contain at least three names and shall include two
names that qualify to fill any county specific
crudity, as appropriate; and

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

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

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

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

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

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

(1) Not be a member of the board;

(2) Be exempt from chapters 76 and 89; and

(3) Receive a salary fixed by the board.

(h) The chief executive officer:

(1) Shall be selected based on criteria approved by
the board, including a professional airport management
credential, 3-5 years of airport management experience
at a general aviation airport, experience managing
active FAA Airport Improvement Program (AIP) projects,
and management of capital programs;
(2) Shall be appointed by an affirmative vote of not less than two members of the board;

(3) Shall be employed subject to a formal contract, the terms of which shall be approved by the board, provided that the terms shall include provisions for the removal of the chief executive officer whether with or without cause;

(4) May be removed from office only by a vote of not less than two members of the board, provided that the basis for removal is consistent with the terms of the chief executive officer's employment contract;

(5) Shall have the powers as described in this chapter and as may be delegated by the board;

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

(7) Shall direct and supervise the authorities administrative and operational affairs in accordance with the directives of the board;
(8) Shall approve all accounts for salaries and allowable expenses of the authority; and

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

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

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

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

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

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

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

(4) Shall develop an organization and management
structure to best accomplish the goals of the
Kawaihapaia airfield authority;

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

(6) May make, execute, or assume contracts, leases, and
all other instruments necessary or convenient for the
exercise of its powers and functions under this
chapter.
(7) Shall establish by-laws for its organization and internal management;

(8) Shall adopt rules pursuant to chapter 91 as necessary to implement this chapter.

(9) Shall prepare and adopt the authorities operating and capital improvement budgets;

(10) May own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or mixed, tangible or intangible, and any interest therein, in the name of the authority, and may assign, exchange, transfer, convey, lease, sublease, or encumber the same or any project, improvement, or facility related thereto; provided that the lands to which the authority holds title shall not be subject to chapter 171; provided further that any sale, gift, or exchange of real property shall be subject to the terms, conditions, and restrictions applicable to the sale, gift, or exchange of public lands in section 171-50 and 171-64.7; provided further that any lease, sublease permit, or other encumbrance for any real property shall be issued in accordance with
administrative rules adopted by the authority pursuant to chapter 91;

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

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

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

(14) Shall fix, impose, prescribe, and collect rates, rentals, fees, or charges for the lease, use, and services of its airfield facilities at least sufficient to pay the costs of operation, maintenance, and repair, if any, and the required payments of the principal of and interest on all bonds, notes, or other obligations issued or assumed by the airfield authority and reserves therefor; provided that the rates, rentals, fees, or charges are established at
an open meeting subject to the requirements of chapter 92;

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

(15) May invest and secure its moneys;

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

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

(19) May do any and all things necessary to exercise the powers and perform the duties conferred upon the authority by this chapter.
The airfield authority may sue and be sued in its corporate name. Notwithstanding any other law to the contrary, all claims arising out of the acts or omissions of the airfield authority or the members of its board, its officers, or its employees, including claims permitted against the State under chapter 661, part I, and claims for torts permitted against the State under chapter 662, may be brought only pursuant to this section and only against the airfield authority. However, the airfield authority shall be subject to suit only in the manner provided for suits against the State, including section 661-11. All defenses available to the State, as well as all limitations on actions against the State, shall be applicable to the airfield authority.

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

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

(c) The authority shall be a "jurisdiction" and an
"appointing authority" under chapter 76 and an "appointing
authority" and an "appropriate authority" for those of
its officers and employees who are excluded employees under
chapter 89C. In addition to its chief executive officer, the
authority may employ executive officers, including a chief procurement officer, appointed by the chief executive officer who are qualified to fill positions established in the bylaws of the authority adopted by the board of directors, to perform functions and exercise powers assigned by the bylaws or delegated by the board or the chief executive officer. The other executive officers of the authority, and up to seven additional specially qualified employees appointed by the chief executive officer shall be exempt from chapters 76 and 89. All other persons employed by the authority shall be subject to chapters 76 and 89, and rules adopted to implement those provisions, unless expressly exempted from the civil service under chapter 76 or excluded from collective bargaining under chapter 89. The officers and personnel of the authority shall be included in all benefit programs applicable to officers and employees of the State.

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

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

PART II. BUDGET AND FINANCE

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

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

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

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

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

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

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

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

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

§ -8 Issuance of bonds. On an annual basis, and upon request of the authority, the legislature shall authorize one lump sum for each means or source of funds for each of the following types of bonds to be issued by the authority: revenue bonds, refunding revenue bonds, and special facility revenue bonds.
§ 9 Audits. The state auditor shall conduct management and financial audits of the authority for fiscal year 2023 and every second year thereafter."

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

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

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

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

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

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

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

1. By amending subsection (a) to read:

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

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

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

(3) By the legislative reference bureau;

(4) By any compilation commission that may be constituted
from time to time;
(5) By the real estate commission for any action involving
the real estate recovery fund;
(6) By the contractors license board for any action
involving the contractors recovery fund;
(7) By the office of Hawaiian affairs;
(8) By the department of commerce and consumer affairs for
the enforcement of violations of chapters 480
and 485A;
(9) As grand jury counsel;
(10) By the Hawaii health systems commission, or
its regional system boards, or any of their
facilities;
(11) By the auditor;
(12) By the office of ombudsman;
(13) By the insurance division;
(14) By the University of Hawaii;
(15) By the Kahoolawe island reserve commission;
(16) By the division of consumer advocacy;
(17) By the office of elections;
(18) By the campaign spending commission;
(19) By the Hawaii tourism authority, as provided in section 201B-2.5;

(20) By the division of financial institutions;

(21) By the office of information practices; [strike]

(22) By the Kawaihapaia airfield authority; or

(23) By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section."

2. By amending subsection (c) to read:

"(c) Every attorney employed by any department on a full time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems commission or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the office of information practices, the Kawaihapaia airfield
authority, or as grand jury counsel, shall be a deputy attorney general."

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

"Jurisdiction" means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, the Kawaihapa airfield authority, and the Hawaii health systems authority."

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

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

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

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

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

(4) Positions filled by the legislature or by either house or any committee thereof;
(5) Employees in the office of the governor and office
of the lieutenant governor, and household employees
at Washington Place;
(6) Positions filled by popular vote;
(7) Department heads, officers, and members of any board,
commission, or other state agency whose
appointments are made by the governor or are required
by law to be confirmed by the senate;
(8) Judges, referees, receivers, masters, jurors,
notaries public, land court examiners, court
commissioners, and attorneys appointed by a state
court for a special temporary service;
(9) One bailiff for the chief justice of the supreme court
who shall have the powers and duties of a court
officer and bailiff under section 606-14; one
secretary or clerk for each justice of the supreme
court, each judge of the intermediate appellate court,
and each judge of the circuit court; one secretary
for the judicial council; one deputy administrative
director of the courts; three law clerks for the chief
justice of the supreme court, two law clerks for each
associate justice of the supreme court and each judge
of the intermediate appellate court, one law clerk
for each judge of the circuit court, two additional
law clerks for the civil administrative judge of the
circuit court of the first circuit, two additional
law clerks for the criminal administrative judge of
the circuit court of the first circuit, one additional
law clerk for the senior judge of the family court of
the first circuit, two additional law clerks for the
civil motions judge of the circuit court of the first
circuit, two additional law clerks for the criminal
motions judge of the circuit court of the first
circuit, and two law clerks for the administrative
district court of the first circuit; and
judge of the district court of the first circuit; and
one private secretary for the administrative director
of the courts, the deputy administrative director of
the courts, each department head, each deputy or
first assistant, and each additional deputy, or
assistant deputy, or assistant defined in
paragraph(16);
(10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;

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

(B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists,
alternative school project coordinators,
and communications aides in the department of education;
(C) The special assistant to the state librarian
and one secretary for the special assistant to the state librarian; and
(D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
(12) Employees engaged in special, research, or demonstration projects approved by the governor;
(13) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;
(B) Positions filled with students in accordance with guidelines for established state employment programs; and
(C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;

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

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

(16) Positions of first deputies or first assistants of each department head appointed under or in the manner...
provided in section 6, article V, of the Hawaii State Constitution; [three] two additional deputies or assistants either in charge of the highways, harbors, and airfields divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;

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

(A) Any exemption created after July 1, 2014, shall expire three years after its enactment unless affirmatively extended by an act of the legislature; and
(B) All of the positions defined by paragraph (9) shall be included in the position classification plan;

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

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

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

(21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's workforce in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
(22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;

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

(24) The sheriff;

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

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

(27) In the state energy office in the department of business, economic development, and tourism, all energy program managers, energy program specialists, energy program assistants, and energy analysts; [and]

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

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

[+] (31) [+]

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

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

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

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

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

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

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

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

(2) The Kaho‘olawe island reserve commission, except as
    provided by section 6K-4.5[—]; or
(3) The Kawaihapaia airfield authority; provided that the
airfield authority adopts rules that meet the
requirements of section -3."

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

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

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

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

(3) Lands being used for roads and streets;
(4) Lands to which the United States relinquished the
absolute fee and ownership under section 91 of the
Hawaiian Organic Act prior to the admission of Hawaii
as a state of the United States unless subsequently
placed under the control of the board of land and
natural resources and given the status of public lands
in accordance with the state constitution, the
Hawaiian Homes Commission Act, 1920, as amended, or
other laws;

(5) Lands to which the University of Hawaii holds title;

(6) Lands to which the Hawaii housing finance and
development corporation in its corporate capacity
holds title;

(7) Lands to which the Hawaii community development
authority in its corporate capacity holds title;

(8) Lands set aside by the governor to the Hawaii public
housing authority or lands to which the Hawaii public
housing authority in its corporate capacity holds
title;

(9) Lands to which the department of agriculture holds
title by way of foreclosure, voluntary surrender, or
otherwise, to recover moneys loaned or to recover
debts otherwise owed the department under chapter 167;

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

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

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

[and]

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

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

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

"§26-35.5 Members of boards and commissions; immunity from or indemnification for civil liability; defense of members. (a) For purposes of this section, "member" means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the governing board of any charter school established under chapter 302D, council, authority, committee, or commission, established by law or elected to the board of
trustees of the employees' retirement system under section 88-24, the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5, or members of the Kawaihapai Airfield Authority board; provided that "member" shall not include any person elected to serve on a board or commission in accordance with chapter 11.

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

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

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

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

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

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

(e) The attorney general, or in the case of the board of regents of the University of Hawaii, its university general counsel, or in the case of the board of directors of the Hawaii health systems corporation under section 323F-3 or its regional system boards under [section] 323F-3.5, the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards under section 323F-9, shall represent and defend a member in any civil action for which immunity is conferred under subsection (b), or when the attorney general, or, if the action involves a member of the board of regents, the university general counsel, or, if the action involves a member of the board of directors of the Hawaii health systems corporation or its regional system boards, the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards, determines that indemnification is available to the member under subsection (c), and the member against whom the action is brought has submitted a written request for representation and has provided the attorney general, the university general
counsel in the case of an action involving a member of the board of regents, or the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards in the case of an action involving a member of the board of directors of the Hawaii health systems corporation or its regional system boards with all process or complaint served upon the member within a reasonable period of time, but not more than five days after being served with the process or complaint. The attorney general, the university general counsel, or an attorney retained by the board of directors of the Hawaii health systems corporation or its regional system boards may terminate the representation and defense of the member at any time if, after representation and defense is accepted, the attorney general, the university general counsel, or an attorney retained by the board of directors of the Hawaii health systems corporation or one of its regional system boards determines that indemnification would not be available to the member under subsection (c).

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

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

(h) If the attorney general, or the university general
counsel in the case of a member of the board of regents, denies
representation to the member under subsection (e) and the member
proceeds to judgment in the action for which representation was
denied, the member may commence an action against the State or
the University of Hawaii in the case of a member of the board of
regents, in the circuit court to recover reasonable costs and
fees incurred by the member in defending against that action,
including attorney's fees, court costs, investigative costs, and
expert witness fees. The State or the University of Hawaii in
the case of a member of the board of regents, shall pay the
judgment or reimburse the member if the member has satisfied the
judgment in an action for which representation was denied;
provided the member was found not liable in that action or the
member establishes by a preponderance of the evidence that the
member is entitled to indemnification under subsection (c). A
finding of negligence against the member in the civil action for
which representation was denied shall not be binding upon the
circuit court in any action brought under this subsection. The
member shall commence any action under this subsection no later
than two years after entry of judgment in the action for which
the member was denied representation if no appeal is filed, or
two years after the conclusion of the final appeal from that
judgment if an appeal is filed.

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

(j) Any moneys which the State is required to pay to a
member under this section shall be paid from an appropriation
made by the legislature at the next session after the
requirement to pay inures to the member. The appropriation
shall be sufficient to include any post judgment interest which
the member was required to pay if the member has personally
satisfied the judgment, or at the rate specified in section 478-3
for the period from the entry of judgment for which
indemnification is available until the appropriation is enacted
if the judgment was not satisfied. Any bill necessary to effect
a payment required by subsections (h) and (i) shall be submitted
by the member to a legislator; all other bills necessary to
effect payments required by this section shall be initiated by
the attorney general.
(k) This section shall not be construed as eliminating, waiving, reducing, or limiting any defense, immunity, or jurisdictional bar conferred upon or available to a member or the State by any other statute or by case law."

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

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

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

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

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

The sum appropriated shall be expended by the Kawaihapa airfield authority to implement the provisions of this Act.

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

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

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

INTRODUCED BY: [Signature]

JAN 27 2021
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.