



GOV. MSG. NO. 1430

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 09, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

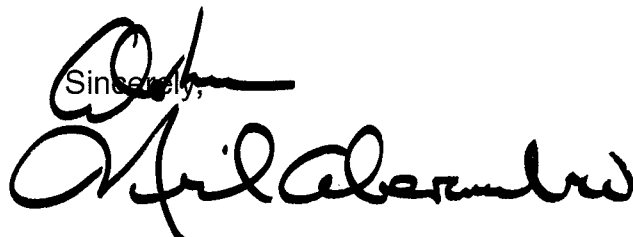
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 09, 2012, the following bill was signed into law:

SB2876 SD2 HD3

RELATING TO THE COMMERCIAL HARBORS.
Act 313 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUL 9 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 313

S.B. NO. 2876
S.D. 2
H.D. 3

A BILL FOR AN ACT

RELATING TO THE COMMERCIAL HARBORS.

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

SECTION 1. Chapter 266, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

"§266-A State harbors civil violations system; authorization. (a) There is established, within the department of transportation, a State harbors civil violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department of transportation shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this section.

(c) Rules adopted pursuant to subsection (b) may include, but are not limited to, the following:

(1) Requirements for notice of State harbors infraction;

(2) A form of the answer that shall be made pursuant to a notice of State harbors infraction, which answer may be an admission of the infraction, a denial of the



1 infraction, or an admission of the infraction with
2 mitigating circumstances;

3 (3) The action to be taken after an answer is received or
4 when a person fails to answer the notice of State
5 harbors infraction;

6 (4) Procedures for administrative hearings under this
7 section;

8 (5) The imposition and enforcement of monetary assessments
9 made pursuant to this section; and

10 (6) Means of assuring that the alleged violator who
11 answers the notice of State harbors infraction by an
12 admission of the infraction or an admission of the
13 infraction with mitigating circumstances has knowingly
14 and voluntarily elected to use the State harbors civil
15 violations system and waive the appeal provided for in
16 section 91-14.

17 (d) Notwithstanding any other provision of law to the
18 contrary, all State harbors infractions that the department of
19 transportation identifies as subject to administrative penalties
20 may be adjudicated pursuant to this section.

21 §266-B General administrative penalties. (a) Except as
22 otherwise provided by law, the department of transportation may

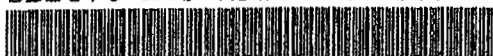


1 set, charge, and collect administrative fines or bring legal
2 action to recover administrative fees and costs as documented by
3 receipts or affidavit, including attorneys' fees and costs; or
4 bring legal action to recover administrative fines, fees, and
5 costs, including attorneys' fees and costs, or payment for
6 damages resulting from a violation of this chapter or any rule
7 adopted pursuant to this chapter. The administrative fines
8 shall not exceed \$10,000 for each day of violation.

9 (b) Any criminal action against a person for any violation
10 of this chapter or any rule adopted pursuant to this chapter
11 shall not be deemed to preclude the State from pursuing civil
12 legal action against that person. Any civil legal action
13 against a person to recover administrative fines and costs for
14 any violation of this chapter or any rule adopted pursuant to
15 this chapter shall not be deemed to preclude the State from
16 pursuing any criminal action against that person. Each day of
17 each violation shall constitute a separate offense."

18 SECTION 2. Section 266-19, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) There is created in the treasury of the State the
21 harbor special fund. All moneys received by the department of
22 transportation from the rates [~~and~~], fees, fines, and



1 administrative penalties pursuant to ~~[section]~~ sections 266-
2 17(a)(1), 266-25, 266-28, and 266-B shall be paid into the
3 harbor special fund. The harbor special fund and the second
4 separate harbor special fund heretofore created shall be
5 consolidated into the harbor special fund at such time as there
6 are no longer any revenue bonds payable from the second separate
7 harbor special fund. The harbor reserve fund heretofore created
8 is abolished.

9 All moneys derived pursuant to this chapter from harbor
10 properties of the statewide system of harbors [~~excluding~~
11 ~~properties principally used for recreation or the landing of~~
12 ~~fish, except properties located at Kewalo Basin, ewa of Ala~~
13 ~~Moana Park, Honolulu)~~] shall be paid into the harbor special
14 fund and each fiscal year shall be appropriated, applied, or
15 expended by the department of transportation for the statewide
16 system of harbors for any purpose within the jurisdiction,
17 powers, duties, and functions of the department of
18 transportation related to the statewide system of harbors
19 [~~excluding properties principally used for recreation or the~~
20 ~~landing of fish, except the properties located at Kewalo Basin,~~
21 ~~ewa of Ala Moana Park, Honolulu)~~], including, without
22 limitation, the costs of operation, maintenance, and repair of



1 the statewide system of harbors and reserves therefor, and
2 acquisitions (including real property and interests therein),
3 constructions, additions, expansions, improvements, renewals,
4 replacements, reconstruction, engineering, investigation, and
5 planning, for the statewide system of harbors, all or any of
6 which in the judgment of the department of transportation are
7 necessary to the performance of its duties or functions."

8 SECTION 3. Section 266-25, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**\$266-25 Violation of rules; penalty.** (a) In addition to
11 the reimbursement of fines and costs as provided in section 266-
12 28, any person who violates any rule made, adopted, and
13 published by the department of transportation as herein
14 provided, or who violates any lawful command of any harbor
15 master, harbor agent, facility security officer, or harbor
16 district manager, while in the discharge of the person's duty,
17 or who violates this chapter, except as provided in subsections
18 (b) and (c), shall be fined not more than \$1,000 or less than
19 \$50 for each violation, and any vessel, the agents, owner, or
20 crew of which violate the rules of the department or this part,
21 shall be fined not more than \$1,000 or less than \$50 for each
22 violation; provided that in addition to or as a condition to the



1 suspension of the fines and penalties, a court, the department,
2 or an administrative hearings officer may deprive the offender
3 of the privilege of entering the secured area of the port or
4 obtaining an operating or mooring permit for any vessel in state
5 waters for a period of not more than one year; provided further
6 that the offender, at the resumption of the privilege of
7 operating or mooring a vessel in state waters, shall assume the
8 last position on any waiting list.

9 (b) Any person who violates any rule adopted by the
10 department of transportation under this part regulating
11 vehicular parking or traffic movement shall have committed a
12 traffic infraction as set forth in chapter 291D, the
13 adjudication of which shall be subject to the provisions
14 contained therein. A person found to have committed such a
15 traffic infraction shall be fined not more than:

16 (1) \$100 for a first violation;

17 (2) \$200 for a second violation; and

18 (3) \$500 for a third or subsequent violation.

19 (c) Any person who violates any rule adopted by the
20 department of transportation relating to unauthorized discharge,
21 dumping, or abandoning any petroleum product, hazardous
22 material, or sewage in any state harbor facility or state waters



1 in violation of the state water quality standards established by
2 the department of health, shall be fined not more than \$10,000
3 for each [~~offense~~] day of violation, and any vessel, the agents,
4 owner, or crew of which violate the rules of the department of
5 transportation or this chapter, shall be fined not more than
6 \$10,000 for each day of violation; provided that in addition to
7 or as a condition to the suspension of the fines and penalties,
8 the court, department, or administrative hearing officer may
9 deprive the offender of the privilege of entering the secured
10 area of the port or obtaining an operating or mooring permit for
11 any vessel in state waters for a period of not more than [~~two~~
12 ~~years.~~] one year; provided further that the offender, at the
13 resumption of the privilege of operating or mooring a vessel in
14 state waters, shall assume the last position on any waiting
15 list."

16 SECTION 4. Section 266-28, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~[+]§266-28[+]~~ **Fines arising from environmental protection**
19 **and maritime transportation security violations.**

20 Notwithstanding any other law to the contrary, any commercial
21 harbor tenant or user, including any shipper or shipping agent,
22 who violates any federal, state, or county law or rule relating



1 to environmental protection [~~and~~] or maritime transportation
2 security pursuant to title 33 Code of Federal Regulations
3 chapter 1 and thereby causes a fine to be levied by the United
4 States Coast Guard upon the department, shall reimburse the
5 department for the entire amount of the fine. The department
6 may take such actions necessary to collect and deposit any
7 amount reimbursable under this section[7] into the harbor
8 special fund, and may also demand reimbursement for costs or
9 expenses incurred by the department resulting from enforcement
10 of this section."

11 SECTION 5. In codifying the new sections added by section
12 1 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

APPROVED this 9 day of JUL , 2012



GOVERNOR OF THE STATE OF HAWAII