

S.B. NO. 2876

JAN 25 2012

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 to part I a new section to be appropriately designated and to read as follows:

"§266- Enforcement of Rules. Any employee or officer, or representative of the department conferred by the director as an enforcement officer or harbor agent, shall enforce any rule adopted pursuant to this part, with the issuance of a notice of violation to the purported violator. The printed notice of violation shall inform the purported violator to:

1) remit a fee to the harbors special fund, written on the notice of violation, to forfeit appearing before an administrative hearing to contest the charge against the purported violator as written on the form, or,

2) appear before an administrative hearings and answer to the charge against the purported

In the event the purported violator elects to appear before an administrative hearing, the purported violator shall have ten

1 calendar days after receipt of the notice of the violation to
2 request in writing an administrative hearing. The
3 administrative hearing is solely for the purpose of allowing the
4 purported violator to contest the basis of the given notice of
5 violation by the department. The department shall schedule the
6 administrative hearing within thirty days of the department's
7 receipt of the written request, excluding Saturdays, Sundays,
8 and holidays designated under section 8-1."

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

11 "(a) There is created in the treasury of the State the
12 harbor special fund. All moneys received by the department of
13 transportation from the rates [and], fees, fines, and penalties
14 pursuant to section 266-17(a)(1), section 266-25, and section
15 266-28 shall be paid into the harbor special fund. The harbor
16 special fund and the second separate harbor special fund
17 heretofore created shall be consolidated into the harbor special
18 fund at such time as there are no longer any revenue bonds
19 payable from the second separate harbor special fund. The
20 harbor reserve fund heretofore created is abolished.

21 All moneys derived pursuant to this chapter from harbor
22 properties of the statewide system of harbors [~~excluding~~

1 ~~properties principally used for recreation or the landing of~~
2 ~~fish, except properties located at Kewalo Basin, ewa of Ala~~
3 ~~Moana Park, Honolulu)]~~ shall be paid into the harbor special
4 fund and each fiscal year shall be appropriated, applied, or
5 expended by the department of transportation for the statewide
6 system of harbors for any purpose within the jurisdiction,
7 powers, duties, and functions of the department of
8 transportation related to the statewide system of harbors
9 [~~(excluding properties principally used for recreation or the~~
10 ~~landing of fish, except the properties located at Kewalo Basin,~~
11 ~~ewa of Ala Moana Park, Honolulu)]~~, including, without
12 limitation, the costs of operation, maintenance, and repair of
13 the statewide system of harbors and reserves therefor, and
14 acquisitions (including real property and interests therein),
15 constructions, additions, expansions, improvements, renewals,
16 replacements, reconstruction, engineering, investigation, and
17 planning, for the statewide system of harbors, all or any of
18 which in the judgment of the department of transportation are
19 necessary to the performance of its duties or functions."

20 SECTION 3. Section 266-24.1, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "§266-24.1 Arrest or citation. ~~[Except when required by~~
2 ~~state law to take immediately]~~ Any employee or officer, or
3 representative of the department conferred by the director as a
4 law enforcement officer with police powers shall enforce any
5 rule adopted pursuant to Part I and state law pursuant to
6 Chapters 287 through 291E, 705, 707 through 710, 712, and
7 712A, Hawaii Revised Statutes, as amended. The law enforcement
8 officer shall take immediately before a district judge, a person
9 issued a citation or arrested for a violation of any provision
10 of this part, including any rule ~~[or regulation]~~ adopted ~~[and~~
11 ~~promulgated]~~ pursuant to ~~[this part,]~~ Part I. Any [any] person
12 authorized under this section with police powers to enforce the
13 provisions of this part, hereinafter referred to as law
14 enforcement officer, upon issuing a citation or arresting a
15 person for ~~[violation of]~~ violating any provision of this part,
16 including any rule ~~[or regulation]~~ adopted and promulgated
17 pursuant to this part, shall, in the discretion of the law
18 enforcement officer, either (1) issue to the purported violator
19 a summons or citation, printed in the form hereinafter
20 described, warning the purported violator to appear and answer
21 to the charge against the purported violator at a certain place
22 and at a time within seven days after such arrest, or (2) take

1 the purported violator without unnecessary delay before a
2 district judge.

3 The summons or citation shall be printed in a form
4 comparable to the form of other summonses and citations used for
5 arresting offenders and shall be designed to provide for
6 inclusion of all necessary information. The form and content of
7 such summons or citation shall be adopted or prescribed by the
8 district courts.

9 The original of a summons or citation shall be given to the
10 purported violator and the other copy or copies distributed in
11 the manner prescribed by the district courts; provided that the
12 district courts may prescribe alternative methods of
13 distribution for the original and any other copies.

14 Summonses and citations shall be consecutively numbered and
15 the carbon copy or copies of each shall bear the same number.

16 [Any] Except for the enforcement of state law pursuant to
17 chapters 287 through 291E, 705, 707 through 710, 712, and 712A]
18 any person who fails to appear at the place and within the time
19 specified in the summons or citation issued to the person by the
20 law enforcement officer, upon the person's arrest for violation
21 of any provision of this part, including any rule [~~or~~
22 ~~regulation~~]-promulgated adopted pursuant to this part, shall be

1 guilty of a misdemeanor and, on conviction, shall be fined not
2 more than \$1,000, or be imprisoned not more than six months, or
3 both.

4 In the event any person fails to comply with a summons or
5 citation issued to such person, or if any person fails or
6 refuses to deposit bail as required, the enforcement officer
7 shall cause a complaint to be entered against such person and
8 secure the issuance of a warrant for the person's arrest.

9 When a complaint is made to any prosecuting officer of the
10 violation of any provision of this part, including any rule [~~or~~
11 ~~regulation~~] promulgated adopted thereunder, the law enforcement
12 officer who issued the summons or citation shall subscribe to it
13 under oath administered by another official of the department of
14 transportation whose names have been submitted to the
15 prosecuting officer and who have been designated by the director
16 of transportation to administer the same."

17 SECTION 4. Section 266-25, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§266-25 Violation of rules; penalty.** In addition to the
20 reimbursement of fines and costs as provided in section 266-28,
21 any person who violates any rule made, adopted, and published by
22 the department of transportation as herein provided, or who

1 violates any lawful command of any harbor master, harbor agent,
2 facility security officer, or harbor district manager, while in
3 the discharge of the person's duty, or who violates this
4 chapter, shall be fined not more than \$10,000 for each offense,
5 and any vessel, the agents, owner, or crew of which violate the
6 rules of the department or this chapter, shall be fined not more
7 than \$10,000 for each violation; provided that in addition to or
8 as a condition to the suspension of the fines and penalties, the
9 court or administrative hearings officer may deprive the
10 offender of the privilege of entering the secured area of the
11 port or obtaining an operating or mooring permit for any vessel
12 in state waters for a period of not more than [~~two years~~] one
13 year; provided further that the offender at the resumption of
14 the privilege of operating or mooring a vessel in state waters
15 shall assume the last position on any waiting list."

16 SECTION 5. Section 266-28, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~f~~]§266-28[~~f~~] 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 maritime transportation security
2 pursuant to 33 CFR Chapter 1 and thereby causes a fine to be
3 levied by the United States Coast Guard upon the department,
4 shall reimburse the department for the entire amount of the
5 fine. The department may take such actions necessary to collect
6 and deposit any amount reimbursable under this section[7] into
7 the harbors special fund, and may also demand reimbursement for
8 costs or expenses incurred by the department resulting from
9 enforcement of this section."

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

15

BY REQUEST

Report Title:

Department of Transportation, Harbors; Administrative Violations of Rules; Reimbursement from Tenant for Security Violations

Description:

Amends chapter 266, Hawaii Revised Statutes, to clarify that persons cited for non-criminal violations are subject to administrative appeal and the not District Court; clarifies that enforcement agents such as the harbor master, harbor agents, facility security officer, or district manager can issue citations for non-criminal violations; provides that penalties and fines are deposited into the Harbor Special Fund; allows Department of Transportation to seek reimbursement from tenants or harbor users that violate security rules in harbor secured areas thereby causes a fine or penalty from the U.S. Coast Guard upon the Department of Transportation.

The issuance of citations for traffic code violations and other criminal statutes are restricted to law enforcement officers and fines and penalties remain in the jurisdiction of the District Courts.

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

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL HARBORS.

PURPOSE: To clarify that citations for non-criminal violations are issued by enforcement officers and adjudicated , through an administrative hearing with fines and penalties for non-criminal matters are to be deposited into the Harbors Special Fund, clarifies that citations and violations for traffic code and other criminal statutes are issued by law enforcement officers, remove jurisdiction and references to Kewalo Basin that is currently under the jurisdiction of the HCDA, and to allow reimbursement from harbor users or agents that violate maritime security that result in a fine by the U.S. Coast Guard upon the Department of Transportation.

MEANS: Add a new section to part I of the chapter 266 and amend sections 266-19(a), 266-24.1, 266-25, and 266-28, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Currently the statute provides that violations of chapter 266, HRS, and administrative rules be presented to the courts for adjudication; the chapter is not clear whether administrative hearings can be held on non-criminal violations. Fees and penalties arising from the work in prosecuting the violation are not deposited into the Harbors Special Fund. Current law limits reimbursements for tenant violations to environmental violations and should also include tenant violations of the maritime transportation security act.

The bill clarifies and provides for the administrative hearings on non-criminal rules violations, to allow fines and penalties to be retained by the Department of Transportation, and to allow for the reimbursement from a harbor tenant or user for security violation levied by the U.S. Coast Guard upon the Department of Transportation.

Impact on the public:

Impact on the department, and any other agencies:

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	TRN-395.
OTHER AFFECTED AGENCIES:	Judiciary.
EFFECTIVE DATE:	Upon approval.