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# A BILL FOR AN ACT

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RELATING TO THE COMMERCIAL HARBORS.

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

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

4       "§266- State harbors civil violations system  
5 authorization. (a) There is established, within the department  
6 of transportation, a State harbors civil violations system,  
7 whose purpose shall be to process violations of departmental  
8 regulations for which administrative penalties have been  
9 authorized by law or rules adopted thereunder.

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

12       (c) The rules may include, but are not limited to, the  
13 following:

14       (1) Notice of State harbors infraction;

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

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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) Administrative hearings under this section;

7           (5) The imposition and enforcement of monetary assessments

8           made pursuant to this section; and

9           (6) Means of assuring that the alleged violator who

10          answers the notice of State harbors infraction by an

11          admission of the infraction or an admission of the

12          infraction with mitigating circumstances has knowingly

13          and voluntarily elected to use the State harbors civil

14          violations system and waive the appeal provided for in

15          section 91-14.

16          (d) Notwithstanding any other provision of law to the

17          contrary, all State harbors infractions that the department

18          identifies as subject to administrative penalties may be

19          adjudicated pursuant to this section."

20          SECTION 1. Chapter 266, Hawaii Revised Statutes, is

21          amended by adding to part I a new section to be appropriately

22          designated and to read as follows:

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1       "§266- General administrative penalties. (a) Except as  
2 otherwise provided by law, the department may set, charge, and  
3 collect administrative fines or bring legal action to recover  
4 administrative fees and costs as documented by receipts or  
5 affidavit, including attorneys' fees and costs; or bring legal  
6 action to recover administrative fines, fees, and costs,  
7 including attorneys' fees and costs, or payment for damages  
8 resulting from a violation of this chapter or any rule adopted  
9 pursuant to this chapter. The administrative fines shall not  
10 exceed \$10,000 for each day of violation.

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

20       SECTION 3. Section 266-19, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

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1       "(a) There is created in the treasury of the State the  
2 harbor special fund. All moneys received by the department of  
3 transportation from the rates [and], fees, fines, and  
4 administrative penalties pursuant to section 266-17(a)(1),  
5 section 266-25, section 266- , and section 266-28 shall be  
6 paid into the harbor special fund. The harbor special fund and  
7 the second separate harbor special fund heretofore created shall  
8 be consolidated into the harbor special fund at such time as  
9 there are no longer any revenue bonds payable from the second  
10 separate harbor special fund. The harbor reserve fund  
11 heretofore created is abolished.

12       All moneys derived pursuant to this chapter from harbor  
13 properties of the statewide system of harbors [~~excluding~~  
14 ~~properties principally used for recreation or the landing of~~  
15 ~~fish, except properties located at Kewalo Basin, cwa of Ala~~  
16 ~~Moana Park, Honolulu)~~] shall be paid into the harbor special  
17 fund and each fiscal year shall be appropriated, applied, or  
18 expended by the department of transportation for the statewide  
19 system of harbors for any purpose within the jurisdiction,  
20 powers, duties, and functions of the department of  
21 transportation related to the statewide system of harbors  
22 [~~excluding properties principally used for recreation or the~~

1 ~~landing of fish, except the properties located at Kewalo Basin,~~  
2 ~~ewa of Ala Moana Park, Honolulu)]~~, including, without  
3 limitation, the costs of operation, maintenance, and repair of  
4 the statewide system of harbors and reserves therefor, and  
5 acquisitions (including real property and interests therein),  
6 constructions, additions, expansions, improvements, renewals,  
7 replacements, reconstruction, engineering, investigation, and  
8 planning, for the statewide system of harbors, all or any of  
9 which in the judgment of the department of transportation are  
10 necessary to the performance of its duties or functions."

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

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

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1 which violate the rules of the department or this part, shall be  
2 fined not more than \$1,000 or less than \$50 for each violation;  
3 provided that in addition to or as a condition to the suspension  
4 of the fines and penalties, the court, department, or  
5 administrative hearings officer may deprive the offender of the  
6 privilege of entering the secured area of the port or obtaining  
7 an operating or mooring permit for any vessel in state waters  
8 for a period of not more that one year; provided further that  
9 the offender at the resumption of the privilege of operating or  
10 mooring a vessel in state waters shall assume the last position  
11 on any waiting list.

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

19 (1) \$100 for a first violation;

20 (2) \$200 for a second violation; and

21 (3) \$500 for a third or subsequent violation.

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1       (c) Notwithstanding the provisions of subsection (a)  
2       establishing a fine of not more than \$1,000 or less than \$50 for  
3       each violation, any person who violates any rule adopted by the  
4       department relating to unauthorized discharge, dumping, or  
5       abandoning, in any state harbor facility or state waters, of any  
6       petroleum product, hazardous material, or sewage in violation of  
7       the state water quality standards established by the department  
8       of health, shall be fined not more than \$10,000 for each  
9       ~~[offense]~~ day of violation, and any vessel, the agents, owner,  
10      or crew of which violate the rules of the department shall be  
11      fined not more than \$10,000 for each day of violation; provided  
12      that in addition to or as a condition to the suspension of the  
13      fines and penalties, the court, department, or administrative  
14      hearings officer may deprive the offender of the privilege of  
15      entering the secured area of the port or obtaining an operating  
16      or mooring permit for any vessel in state waters for a period of  
17      not more than ~~[two years.]~~ one year; provided further that the  
18      offender at the resumption of the privilege of operating or  
19      mooring a vessel in state waters shall assume the last position  
20      on any waiting list."

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

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1 " ~~[+]~~ §266-28 ~~[+]~~ Fines arising from environmental protection  
2 and maritime transportation security violations.

3 Notwithstanding any other law to the contrary, any commercial  
4 harbor tenant or user, including any shipper or shipping agent,  
5 who violates any federal, state, or county law or rule relating  
6 to environmental protection ~~[and]~~ or maritime transportation  
7 security pursuant to Title 33 Code of Federal Regulations  
8 Chapter 1 and thereby causes a fine to be levied upon the  
9 department, shall reimburse the department for the entire amount  
10 of the fine. The department may take such actions necessary to  
11 collect and deposit any amount reimbursable under this  
12 section~~[7]~~ into the harbor special fund, and may also demand  
13 reimbursement for costs or expenses incurred by the department  
14 resulting from enforcement of this section."

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.

18

19 INTRODUCED BY: \_\_\_\_\_

20

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 give the Department of Transportation the authority to implement an administrative penalty system for minor violations; provides that penalties, fines, and costs 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 upon the Department of Transportation.

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