
A BILL FOR AN ACT

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

4 "§266- Enforcement of rules. Any employee or officer,
5 or representative of the department of transportation conferred
6 by the director of transportation as an enforcement officer or
7 harbor agent, shall enforce any rule adopted pursuant to this
8 part, with the issuance of a notice of violation to the
9 purported violator. The printed notice of violation shall
10 inform the purported violator in writing:

11 (1) Of the charge against the purported violator; and

12 (2) That the purported violator shall either:

13 (A) Remit a fee to the harbor special fund in lieu of
14 appearing at an administrative hearing to contest
15 the charge against the purported violator,
16 whereupon the purported violator will forfeit the
17 opportunity to appear at an administrative
18 hearing; or



1 (B) Appear before an administrative hearing and
2 answer to the charge against the purported
3 violator.

4 In the event the purported violator elects to appear before an
5 administrative hearing, the purported violator shall have ten
6 calendar days after receipt of the notice of the violation to
7 request in writing an administrative hearing. The
8 administrative hearing is solely for the purpose of allowing the
9 purported violator to contest the basis of the given notice of
10 violation by the department of transportation. The department
11 of transportation shall schedule the administrative hearing
12 within thirty days of the department's receipt of the written
13 request, excluding Saturdays, Sundays, and holidays designated
14 under section 8-1."

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

17 "(a) There is created in the treasury of the State the
18 harbor special fund. All moneys received by the department of
19 transportation from the rates [and], fees, fines, and penalties
20 pursuant to section 266-17(a)(1), section 266-25, and section
21 266-28 shall be paid into the harbor special fund. The harbor
22 special fund and the second separate harbor special fund



1 heretofore created shall be consolidated into the harbor special
2 fund at such time as there are no longer any revenue bonds
3 payable from the second separate harbor special fund. The
4 harbor reserve fund heretofore created is abolished.

5 All moneys derived pursuant to this chapter from harbor
6 properties of the statewide system of harbors [~~excluding~~
7 ~~properties principally used for recreation or the landing of~~
8 ~~fish, except properties located at Kewalo Basin, ewa of Ala~~
9 ~~Moana Park, Honolulu)~~] shall be paid into the harbor special
10 fund and each fiscal year shall be appropriated, applied, or
11 expended by the department of transportation for the statewide
12 system of harbors for any purpose within the jurisdiction,
13 powers, duties, and functions of the department of
14 transportation related to the statewide system of harbors
15 [~~excluding properties principally used for recreation or the~~
16 ~~landing of fish, except the properties located at Kewalo Basin,~~
17 ~~ewa of Ala Moana Park, Honolulu)~~], including, without
18 limitation, the costs of operation, maintenance, and repair of
19 the statewide system of harbors and reserves therefor, and
20 acquisitions (including real property and interests therein),
21 constructions, additions, expansions, improvements, renewals,
22 replacements, reconstruction, engineering, investigation, and



1 planning, for the statewide system of harbors, all or any of
2 which in the judgment of the department of transportation are
3 necessary to the performance of its duties or functions."

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

6 "**§266-24.1 Arrest or citation.** [~~Except when required by~~
7 ~~state law to take immediately~~] (a) Any employee or officer, or
8 representative of the department of transportation conferred by
9 the director of transportation as a law enforcement officer with
10 police powers shall enforce any rule adopted pursuant to part I
11 and state law pursuant to chapters 287 through 291E, 705, 707
12 through 710, 712, and 712A. The law enforcement officer shall
13 take immediately before a district judge, a person issued a
14 citation or arrested for a violation of any provision of this
15 part, including any rule [~~or regulation~~] adopted [~~and~~
16 promulgated] pursuant to this part[, any]. Any person
17 authorized under this section with police powers to enforce the
18 provisions of this part, hereinafter referred to as law
19 enforcement officer, upon issuing a citation or arresting a
20 person for [~~violation of~~] violating any provision of this part,
21 including any rule [~~or regulation~~] adopted [~~and promulgated~~]
22 pursuant to this part, shall, in the discretion of the law



1 enforcement officer, either (1) issue to the purported violator
2 a summons or citation, printed in the form hereinafter
3 described, warning the purported violator to appear and answer
4 to the charge against the purported violator at a certain place
5 and at a time within seven days after such arrest, or (2) take
6 the purported violator without unnecessary delay before a
7 district judge.

8 **(b)** The summons or citation shall be printed in a form
9 comparable to the form of other summonses and citations used for
10 arresting offenders and shall be designed to provide for
11 inclusion of all necessary information. The form and content of
12 such summons or citation shall be adopted or prescribed by the
13 district courts.

14 **(c)** The original of a summons or citation shall be given
15 to the purported violator and the other copy or copies
16 distributed in the manner prescribed by the district courts;
17 provided that the district courts may prescribe alternative
18 methods of distribution for the original and any other copies.

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

21 ~~[Any]~~ **(d)** Except for the enforcement of state law pursuant
22 to chapters 287 through 291E, 705, 707 through 710, 712, and



1 712A, any person who fails to appear at the place and within the
2 time specified in the summons or citation issued to the person
3 by the law enforcement officer, upon the person's arrest for
4 violation of any provision of this part, including any rule [~~or~~
5 ~~regulation promulgated~~] adopted pursuant to this part, shall be
6 guilty of a misdemeanor and, on conviction, shall be fined not
7 more than \$1,000, or be imprisoned not more than six months, or
8 both.

9 [~~In the event~~] (e) If any person fails to comply with a
10 summons or citation issued to such person, or if any person
11 fails or refuses to deposit bail as required, the law
12 enforcement officer shall cause a complaint to be entered
13 against [~~such~~] the person and secure the issuance of a warrant
14 for the person's arrest.

15 (f) When a complaint is made to any prosecuting officer of
16 the violation of any provision of this part, including any rule
17 [~~or regulation promulgated~~] adopted thereunder, the law
18 enforcement officer who issued the summons or citation shall
19 subscribe to it under oath administered by another official of
20 the department of transportation whose names have been submitted
21 to the prosecuting officer and who have been designated by the
22 director of transportation to administer the same."



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

3 **"§266-25 Violation of rules; penalty.** In addition to the
4 reimbursement of fines and costs as provided in section 266-28,
5 any person who violates any rule made, adopted, and published by
6 the department of transportation as herein provided, or who
7 violates any lawful command of any harbor master, harbor agent,
8 facility security officer, or harbor district manager, while in
9 the discharge of the person's duty, or who violates this
10 chapter, shall be fined not more than \$10,000 for each offense,
11 and any vessel, the agents, owner, or crew of which violate the
12 rules of the department or this chapter, shall be fined not more
13 than \$10,000 for each violation; provided that in addition to or
14 as a condition to the suspension of the fines and penalties, the
15 court or administrative hearings officer may deprive the
16 offender of the privilege of entering the secured area of the
17 port or obtaining an operating or mooring permit for any vessel
18 in state waters for a period of not more than [~~two years.~~] one
19 year; provided further that the offender at the resumption of
20 the privilege of operating or mooring a vessel in state waters
21 shall assume the last position on any waiting list."



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

3 "~~§~~266-28 Fines arising from environmental protection
4 and maritime transportation security violations.

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

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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



Report Title:

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

Description:

Clarifies that non-criminal violations are subject to administrative appeal and that enforcement agents can issue citations for criminal violations. Requires penalties and fines to be deposited into the Harbor Special Fund. Allows the Department of Transportation (DOT) to seek reimbursement from tenants or harbor users for security violations resulting in a fine or penalty on the DOT from the U.S. Coast Guard. (HB2614 HD2)

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