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# 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 conferred by the director as  
6 a law enforcement officer or harbor agent, shall enforce any  
7 rule adopted pursuant to this part, with the issuance of a  
8 notice of violation to the purported violator. The printed  
9 notice of violation shall identify the charge against the  
10 purported violator and direct the purported violator to:

11 (1) Appear before an administrative hearing and answer to  
12 the charge against the purported; or

13 (2) Remit a fee, the amount of which shall be written on  
14 the notice of violation, to the harbor special fund,  
15 in lieu of paragraph (1).

16 The purported violator shall have ten calendar days after  
17 receipt of the notice of the violation to make a written request  
18 for an administrative hearing. The administrative hearing is



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

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

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

19 All moneys derived pursuant to this chapter from harbor  
 20 properties of the statewide system of harbors [~~excluding~~  
 21 ~~properties principally used for recreation or the landing of~~  
 22 ~~fish, except properties located at Kewalo Basin, ewa of Ala~~



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

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

20 **"§266-24.1 Arrest or citation.** [~~Except when required by~~  
21 ~~state law to take~~] Any employee, officer, or representative of  
22 the department conferred by the director with police powers,



1 hereinafter referred to as law enforcement officer, shall  
 2 enforce any rule adopted pursuant to this part and chapters 287  
 3 through 291E, 705, 707 through 710, 712, and 712A. The law  
 4 enforcement officer shall take immediately before a district  
 5 judge, a person issued a citation or arrested for a violation of  
 6 any provision of this part, including any rule [~~or regulation~~]  
 7 adopted [~~and promulgated~~] pursuant to this part[, ~~any person~~  
 8 ~~authorized to enforce the provisions of this part, hereinafter~~  
 9 ~~referred to as enforcement officer,~~]. Any law enforcement  
 10 officer upon issuing a citation or arresting a person for  
 11 [~~violation of~~] violating any provision of this part, including  
 12 any rule [~~or regulation~~] adopted [~~and promulgated~~] pursuant to  
 13 this part [~~shall~~], in the discretion of the law enforcement  
 14 officer, shall either:

- 15 (1) [~~issue~~] Issue to the purported violator a summons or  
 16 citation, printed in the form hereinafter described,  
 17 warning the purported violator to appear and answer to  
 18 the charge against the purported violator at a certain  
 19 place and at a time within seven days after such  
 20 arrest[~~;~~]; or
- 21 (2) [~~take~~] Take the purported violator without unnecessary  
 22 delay before a district judge.



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

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

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

14 ~~[Any]~~ Except for the enforcement of chapters 287 through  
15 291E, 705, 707 through 710, 712, and 712A, any person who fails  
16 to appear at the place and within the time specified in the  
17 summons or citation issued to the person by the law enforcement  
18 officer, upon the person's arrest for violation of any provision  
19 of this part, including any rule ~~[or regulation promulgated]~~  
20 adopted pursuant to this part, shall be guilty of a misdemeanor  
21 and, on conviction, shall be fined not more than \$1,000, or be  
22 imprisoned not more than six months, or both.



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

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

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

16 **"§266-25 Violation of rules; penalty.** In addition to the  
17 reimbursement of fines and costs as provided in section 266-28,  
18 any person who violates any rule made, adopted, and published by  
19 the department of transportation as herein provided, or who  
20 violates any lawful command of any harbor master, harbor agent,  
21 facility security officer, or harbor district manager, while in  
22 the discharge of the person's duty, or who violates this



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

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

15 "**[+]§266-28[+] Fines arising from environmental protection**  
16 **and maritime transportation security violations.**

17 Notwithstanding any other law to the contrary, any commercial  
18 harbor tenant or user, including any shipper or shipping agent,  
19 who violates any federal, state, or county law or rule relating  
20 to environmental protection and maritime transportation security  
21 pursuant to 33 Code of Federal Regulations chapter 1 and thereby  
22 causes a fine to be levied by the United States Coast Guard upon



1 the department, shall reimburse the department for the entire  
2 amount of the fine. The department may take such actions  
3 necessary to collect and deposit any amount reimbursable under  
4 this section[~~7~~] into the harbor special fund, and may also  
5 demand reimbursement for costs or expenses incurred by the  
6 department resulting from enforcement of this section."

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 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:**

Amends chapter 266, Hawaii Revised Statutes, to clarify that persons cited for non-criminal violations may appeal through an administrative hearing; 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 the department of transportation to seek reimbursement from tenants or harbor users that violate security rules in harbor-secured areas. 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. (SD1)

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

