

Honolulu, Hawaii

March 16, 2012

RE: S.B. No. 2876
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 2876, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE COMMERCIAL HARBORS,"

begs leave to report as follows:

The purpose of this measure is to assist the Department of Transportation's Harbors Division in addressing the management and operations of its commercial harbor facilities by, among other things:

- (1) Establishing that citations for non-criminal violations issued by enforcement officers or harbor agents shall be adjudicated through an administrative hearing process;
- (2) Stipulating that fines and penalties for non-criminal matters are to be deposited into the Harbor Special Fund;
- (3) Removing jurisdictional references to recreational properties, properties used for the landing of fish, and Kewalo Basin as Kewalo Basin is currently under the jurisdiction of the Hawaii Community Development Authority;



- (4) Clarifying that citations and violations for traffic code and other criminal statutes shall be issued by law enforcement officers conferred with police powers by the Director of Transportation;
- (5) Allowing the courts or administrative hearings officer to deprive an individual violating any rule of the Department of Transportation of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more than one year;
- (6) Stipulating that an individual deprived of operating or mooring any vessel in state waters that is allowed to resume these activities after the penalty period is completed shall assume the last position on any waiting list for such activities; and
- (7) Requiring commercial harbor tenants and users who violate any federal maritime transportation security law or rule that results in the Department of Transportation being assessed a fine by the United States Coast Guard to reimburse the Department of Transportation for the fine.

The Department of Transportation testified in support of this measure.

The Director of Transportation currently has the authority to adopt rules to regulate vessels, passengers, freight, carriers, shippers, and consignees; can adopt rules for the safety of docks, wharves, piers, quays, bulkheads, and landings within commercial harbors; and has the explicit authority to regulate traffic and other activities in the State's commercial harbors, including the waters of the commercial harbors. However, according to the Department of Transportation, violations of laws and rules, occurring in areas under the jurisdiction of the Department of Transportation's Harbors Division are currently adjudicated in the courts, even for non-criminal violations. Also, penalties and fines assessed for these violations are not deposited into the Harbor Special Fund. This measure addresses these issues.



Your Committee has amended this measure by:

- (1) Requiring that a purported violator:
 - (A) Remit a fee to the Harbor Special Fund in lieu of appearing at an administrative hearing to contest the charges and forfeit the opportunity to appear at the administrative hearing; or
 - (B) Appear before an administrative hearing and answer to the charge against the purported violator;
- (2) Clarifying that the purported violator shall have ten calendar days after receipt of the notice of the violation to make a written request for an administrative hearing in the event the purported violator elects to appear before an administrative hearing;
- (3) Clarifying that the administrative hearing shall be held solely for the purpose of allowing the purported violator to contest the basis of the given notice of violation by the Department of Transportation; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committee notes that, although this measure establishes an administrative procedure to address the enforcement of rules adopted by the Department of Transportation, it does not preclude an individual from appealing an adverse decision through the court system.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2876, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2876, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.



Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



State of Hawaii
House of Representatives
The Twenty-sixth Legislature

Record of Votes of the Committee on Transportation

Bill/Resolution No.: SB 2876, SD2	Committee Referral: TRN, JUD, FIN	Date: 3/12/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)	✓			
2. ICHIYAMA, Linda (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. CULLEN, Ty	✓			
5. LEE, Marilyn B.	✓			
6. LUKE, Sylvia	✓			
7. OKAMURA, Tom				
8. SAIKI, Scott K.				✓
9. TAKUMI, Roy M.	✓			
10. YAMASHITA, Kyle T.	✓			
11. FONTAINE, George R.	✓			
12. JOHANSON, Aaron Ling	✓			
TOTAL (12)	10			1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align:center; font-size: small;">committee acronym(s)</div>				
Vice Chair's or designee's signature: <u><i>Linda Ichiyama</i></u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				