

Honolulu, Hawaii

April 5, 2012

RE: S.B. No. 2876
S.D. 2
H.D. 3

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

Sir:

Your Committee on Finance, to which was referred S.B. No. 2876, S.D. 2, H.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 an administrative hearing process for non-criminal violations issued by enforcement officers or harbor agents;
- (2) Stipulating that fines and penalties for non-criminal matters shall be deposited into the Harbor Special Fund;
- (3) Including recreational properties and properties used for the landing of fish within the jurisdiction of the Department of Transportation, and removing references to Kewalo Basin as Kewalo Basin is currently under the jurisdiction of the Hawaii Community Development Authority;



- (4) Clarifying that citations and violations of the traffic code and other criminal statutes shall be issued by law enforcement officers conferred with police powers by the Director of Transportation;
- (5) Authorizing the courts or administrative hearings officers 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 provided comments on this measure.

Your Committee has amended this measure by:

- (1) Establishing a state harbors civil violations system to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder to address civil matters occurring within the harbors rather than attempting to establish such a system under current criminal enforcement statutes;
- (2) Establishing general administrative penalties provisions that would allow the Department of Transportation to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages



resulting from a violation of law or rules governing Hawaii's harbors;

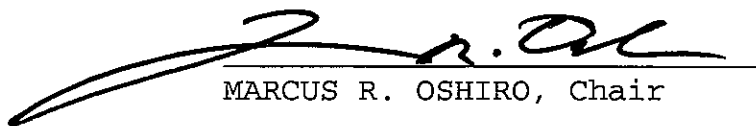
- (3) Stipulating that administrative fines shall not exceed \$10,000 for each day of violation;
- (4) Specifying that the State shall retain the right to pursue civil action for a violation of laws or rules governing Hawaii's harbors even if criminal actions have been pursued for the violation, and to pursue criminal action even if civil action has been pursued;
- (5) Clarifying that moneys received by the Department of Transportation from specified rates, fees, fines, and administrative penalties shall be deposited into the Harbor Special Fund;
- (6) Establishing minimum and maximum fines for violations of harbor laws, rules, or lawful commands of certain personnel;
- (7) Stipulating that violations of rules regulating vehicular parking or traffic movement shall be considered traffic infractions and shall be adjudicated as such;
- (8) Establishing graduated fines for the commission of traffic infractions;
- (9) Establishing minimum and maximum fines for each violation of any rule adopted by the Department of Transportation relating to unauthorized discharge, dumping, or abandoning, in any state harbor facility or state waters, of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the Department of Health and stipulating that the fines shall not be more than \$10,000 per day of violation;
- (10) Stipulating that any vessel, the agents, owner or crew of which violates any rule of the Department of Transportation shall not be fined more than \$10,000 for each day of violation;



- (11) Clarifying that the Department of Transportation is also authorized to deprive an individual violating any rule of the Department 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;
- (12) Changing its effective date to upon approval; and
- (13) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2876, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2876, S.D. 2, H.D. 3.

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


MARCUS R. OSHIRO, Chair



