



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 22, 2012

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2876, SD2, HD1
RELATING TO THE COMMERCIAL HARBORS

HOUSE COMMITTEE ON JUDICIARY

The Department of Transportation (DOT) supports this administration bill to amend Chapter 266 to clarify that persons cited for non-criminal violations may appeal the citation and penalties pursuant to administrative procedures and not directly to District Court. Current procedures to enforce and collect penalties for traffic violations or criminal matters remain unchanged and appearances to answer these violations remain at the District Court.

In developing the administrative rules to implement Act 16, 2009 SLH, for the Director to regulate "safety and security requirements" and "other related activities", the DOT believes that §266-24.1, HRS should be amended to clarify that a purported violator may contest a safety and security violation at an administrative hearing and not answer the charge before the District Court.

In simplifying the DOT proposed amendments, the Attorney General (AG) requested the DOT to amend the bill by adopting an administrative civil procedure similar to Department of Land and Natural Resources Chapter 199D, Civil Natural Resource Violations Act. The AG amendment adds a new section to Chapter 266 titled "266-__ State Harbors civil violations system authorization." The new civil procedure distinguishes civil matters from the existing Section 266-24.1 which is a criminal enforcement statute; Section 266-24.1 would remain unchanged thus simplify the

understanding of the bill. The AG also requested the DOT to adopt a new section modeled after Section 195-8, titled "\$266- _ General administrative penalties."

The DOT reviewed the AG's proposed amendments and agree that the provisions of the DLNR chapters would simplify its proposed amendments to Chapter 266. Attached is a draft of the bill incorporating the proposed AG amendments.

The proposal's intent remains the same which is to de-criminalize certain violations, and for the reasons stated above, the DOT requests that the committee adopt the draft revisions in passing out this bill.

Thank you for the opportunity to provide testimony.



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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 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, ewa 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~~

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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 finances 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:

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.