
A BILL FOR AN ACT

RELATING TO HARBORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 266-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§266-3 Rules. (a) The director of transportation may
4 adopt rules as necessary to:

5 (1) Regulate the manner in which all vessels may enter and
6 moor, anchor, or dock in the commercial harbors,
7 ports, and roadsteads of the State, or move from one
8 dock, wharf, pier, quay, bulkhead, landing, anchorage,
9 or mooring to another within the commercial harbors,
10 ports, or roadsteads;

11 (2) The examination, guidance, and control of harbor
12 masters and their assistants and their conduct while
13 on duty;

14 (3) The embarking or disembarking of passengers;

15 (4) The expeditious and careful handling of freight,
16 goods, wares, and merchandise of every kind which may
17 be delivered for shipment or discharged on the

1 commercial docks, wharves, piers, quays, bulkheads, or
2 landings belonging to or controlled by the State; and
3 (5) Defining the duties and powers of carriers, shippers,
4 and consignees respecting passengers, freight, goods,
5 wares, and merchandise in and upon the docks, wharves,
6 piers, quays, bulkheads, or landings within the
7 commercial harbors, ports, and roadsteads of the
8 State. The director may also make further rules for
9 the safety of the docks, wharves, piers, quays,
10 bulkheads, and landings on, in, near, or affecting a
11 commercial harbor and waterfront improvements
12 belonging to or controlled by the State.
13 (b) The director may also adopt, amend, and repeal such
14 rules as are necessary:
15 (1) For the proper regulation and control of all shipping,
16 traffic, and other related activities in the
17 commercial harbors belonging to or controlled by the
18 State; of the entry, departure, mooring, and berthing
19 of vessels therein; and of all other matters and
20 things connected with such activities;

- 1 (2) To establish safety measures and security requirements
2 in or about the commercial harbors, land, and
3 facilities belonging to or controlled by the State;
- 4 (3) To prevent the discharge or throwing into commercial
5 harbors of rubbish, refuse, garbage, or other
6 substances likely to affect water quality or that
7 contribute to making such harbors unsightly,
8 unhealthful, or unclean, or that are liable to fill up
9 shoal or shallow waters in, near, or affecting the
10 commercial harbors; and
- 11 (4) To prevent the escape of fuel or other oils or
12 substances into the waters in, near, or affecting
13 commercial harbors from any source point, including,
14 but not limited to, any vessel or pipes or storage
15 tanks upon the land.
- 16 (c) The director may also adopt, amend, and repeal such
17 rules as are necessary to require any person who uses or
18 occupies the commercial harbors, ports, roadsteads, harbor
19 buildings, and other harbor facilities of the State, including,
20 but not limited to, the docks, wharves, piers, quays, bulkheads,
21 or landings therein, to defend, indemnify, and hold harmless,
22 the State, and any of its agencies, officers, and employees,

H.B. NO. 979

1 from and against all liability, loss, damage, cost, and expense,
2 including all attorneys' fees, and all claims, suits, and
3 demands therefor, arising out of or resulting from such use or
4 occupation.

5 [~~e~~] (d) The rules shall be adopted in the manner
6 prescribed in chapter 91 and shall have the force and effect of
7 law."

8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY _____


BY REQUEST

JAN 22 2013

H.B. NO. 979

Report Title:

Harbors; Indemnification

Description:

Authorizes the Department of Transportation to adopt rules to impose upon private parties who use state commercial harbors the duty to defend, indemnify, and hold harmless the State against claims that arise from such use.

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

HB 979

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO HARBORS.

PURPOSE: To authorize the department to adopt rules that impose upon private persons who use the State's commercial harbors the duty to defend, hold harmless, and indemnify the State, and any of its agencies, officers, and employees, against all claims that arise from such use.

MEANS: Amend section 266-3, Hawaii Revised Statutes.

JUSTIFICATION: Section 19-41-7, Hawaii Administrative Rules (HAR), imposed a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from such activities, except where the State is proven to be solely and legally negligent. In William Haole v. State of Hawaii, 111 Haw. 144 (2006), the Hawaii Supreme Court concluded that the department's governing statutes did not explicitly or implicitly authorize the department to issue administrative rules allowing the department to impose upon private parties a duty to defend or indemnify the State. In Haole, a stevedore employed by a third party was injured while riding as a passenger in an automobile being unloaded by another stevedore employed by the same third party. The injured stevedore brought a personal injury action against Matson Terminals, which had subcontracted with the third party to conduct cargo loading

and unloading, and the department. The State, in turn, cross claimed against Matson and the third party seeking to enforce section 19-41-7, HAR, and the rule's duty to defend and indemnify the department. In October 2004, the Circuit Court of the First Circuit entered its order granting partial summary judgment in favor of the State in the action brought by the injured stevedore. On appeal, the Hawaii Supreme Court held that the circuit court erred and vacated the judgment, remanding the case to the circuit court for further proceedings. The Hawaii Supreme Court decision rendered section 19-41-7, HAR, unenforceable. As a result, the State bears considerable financial exposure in being held as a responsible party for the plaintiff's injuries. The Haole case was settled in 2009 with the State paying for damages.

Impact on the public: This bill will provide the department with the authority to adopt rules to impose the duty to defend, hold harmless, and indemnify through administrative rules. This will reduce costly lawsuits against the State. Users of harbor facilities should be held responsible for the safe operation of maritime and maritime related activities on harbor lands. While this duty to defend or indemnify the State is already imposed upon tenants under lease agreements, other commercial activities take place within our harbors which do not require written agreements or in which written agreements are impracticable. As tariffs control the fees charged to most users of port facilities and services, written agreements are not executed by all users. This bill will provide more protection to

the State in situations where such use is not covered by a written agreement.

Impact on the department and other agencies: This bill will authorize the department to adopt administrative rules that can extend to other state departments that may be affected by activities engaged in by private parties in the commercial harbors.

GENERAL FUND:

OTHER FUNDS:

PPBS PROGRAM
DESIGNATION:

TRN 301-395

OTHER AFFECTED
AGENCIES:

EFFECTIVE DATE:

Upon approval.



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

February 13, 2013
10:00 am
State Capitol, Room 309



H.B. 979
RELATING TO HARBORS

House Committee on Transportation

The Department of Transportation (DOT) **strongly supports** this Administration bill. This bill will expressly authorize the DOT to impose upon private parties who use our commercial harbors, the duty to defend, indemnify and hold harmless the State against claims that arise from such use.

Section 19-41-7, Hawaii Administrative Rules (HAR), imposed a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from such activities, except where the State was proven to be solely and legally negligent. However, the Hawaii Supreme Court's decision in William Haole v. State of Hawaii, 111 Haw. 144 (2006), rendered Section 19-41-7, unenforceable. The Court ruled, in pertinent part, that:

"DOT's governing statutes do not explicitly or implicitly authorize the DOT to issue administrative rules exonerating the State from the negligence of its employees (i.e., they do not allow the DOT to impose upon private parties a duty to defend or indemnify the State)."

As a result of the Haole decision, the State, as the landowner, has and will continue to bear considerable financial exposure in costly lawsuits filed against the State for injury caused to plaintiffs by the negligent acts of the users of our harbor facilities.

This bill will provide the DOT with the express authority to impose, via the Hawaii Administrative Rules, a duty to defend, hold harmless and indemnify the State. Users of commercial harbor piers and properties should be held responsible for the safe operation of maritime and maritime-related activities on harbor lands. While the duty to defend, hold harmless and indemnify is already imposed upon tenants under written lease agreements, other commercial activities take place within our harbors, such as on our general purpose piers, for which written agreements are impracticable and/or do not exist. Because tariffs presently control the fees charged to most users of commercial harbor facilities and services, written agreements are not executed by all users as a matter of custom and practice. This Administration Measure will provide protection to

HB 979

Page 2

the State in situations where such historical uses are not covered by a written agreement.

Accordingly, we ask for your favorable consideration of this bill.

Thank you for the opportunity to testify.

