

CHAPTER 266
HARBORS

Part I. Generally

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Note

Large capacity ferry vessel requirements. L Sp 2007 2d, c 2.

Case Notes

Although this chapter did not explicitly confer authority over the Kewalo basin harbor on the Hawaii community development authority (HCDA), it was undisputed that (1) the legislature conveyed title to the fast and submerged lands within an area that includes the harbor to HCDA; (2) HCDA was given the mandate to redevelop the area that includes the harbor; and (3) HCDA was given broad rulemaking powers over its projects and properties to implement its mandate pursuant to §§206E-33 and 206E-4(5); thus, circuit court did not err by failing to find that the department of transportation had exclusive jurisdiction over harbor. 124 H. 313 (App.), 243 P.3d 273 (2010).

"[PART I. GENERALLY]

Revision Note

Part I designation added by revisor in view of addition of Part II by L 1980, c 126, §2.

§266-1 Department of transportation; harbors; jurisdiction. All commercial harbors and roadsteads, and all commercial harbor and waterfront improvements belonging to or controlled by the State, and all vessels and shipping within the commercial harbors and roadsteads shall be under the care and control of the department of transportation.

For the purpose of this chapter, "commercial harbor" means a harbor or off-shore mooring facility which is primarily for the movement of commercial cargo, passenger and fishing vessels entering, leaving, or traveling within the State, and facilities and supporting services for loading, off-loading, and handling of cargo, passengers, and vessels. [L 1911, c 163, §1; am L 1915, c 169, §1; ratified, March 28, 1916, c 54, 39 Stat 39; RL 1925, §832; RL 1935, §1730; am L 1941, c 142, §1; RL 1945, §4981; am L 1951, c 22, §1; RL 1955, §112-1; am L Sp 1959 2d, c 1, §26; HRS §266-1; am L 1985, c 104, §1; am L 1986, c 57, §1; am L 1991, c 272, §8]

Note

Further requirements on conveyance of parcels at Piers 1 and 2. L 2006, c 165, §5.

Cross References

Functions, generally, see §26-19.

Attorney General Opinions

Title to land formerly below high-water mark reclaimed by riparian owner belongs to State. Att. Gen. Op. 62-16.

Case Notes

State has care and control of all water and ocean below the high-water mark (or vegetation line). 66 H. 55, 656 P.2d 1336. Cited: 73 H. 359, 833 P.2d 70.

" **[\$266-1.5] Honolulu harbor Piers 1 and 2; jurisdiction.** Any law to the contrary notwithstanding, the department of transportation shall have jurisdiction and administrative authority over Honolulu harbor Piers 1 and 2 and the contiguous backup fast lands currently used for manifested cargo and passenger operations. This area is defined as all of lot 3 and parcels A and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; provided that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change. [L 2006, c 165, §3]

Note

Further requirements on conveyance of parcels at Piers 1 and 2. L 2006, c 165, §5.

Cross References

Foreign-trade zone; jurisdiction, see §212-5.5.

" **[\$266-1.6] Hana harbor; jurisdiction.** Notwithstanding any law to the contrary, the department of transportation shall have jurisdiction and administrative authority over Hana harbor, excluding its small boat ramp facility. The Hana harbor small boat ramp facility shall remain under the jurisdiction and

administrative authority of the department of land and natural resources. [L 2008, c 200, §8]

Note

Transfer of functions, duties, etc. L 2008, c 200, §§9 to 11.

" **§266-2 Powers and duties of department.** (a) The department of transportation shall:

- (1) Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same;
- (2) Have the authority to use and permit and regulate the use of the commercial docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor;
- (3) Subject to all applicable provisions of law, have the power to fix and regulate from time to time rates and charges for:
 - (A) Services rendered in mooring commercial vessels;
 - (B) The use of commercial moorings belonging to or controlled by the State;
 - (C) Wharfage or demurrage;
 - (D) Warehouse space, office space, and storage space for freight, goods, wares and merchandise; and
 - (E) The use of derricks or other equipment belonging to the State or under the control of the department;
- (4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, piers, quays, bulkheads, or landings;
- (5) Appoint and remove clerks, harbor agents and their assistants, and all such other employees as may be necessary, and to fix their compensation;
- (6) Adopt rules pursuant to chapter 91 and not inconsistent with law; and
- (7) Generally have all powers necessary to fully carry out this chapter.

(b) Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any commercial harbor facility

in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies.

All moneys appropriated for commercial harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103D.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

(c) The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to commercial harbor improvements throughout the State. [L 1911, c 163, §3; am L 1913, c 150, §1; am L 1915, c 169, §2; ratified, March 28, 1916, c 54, 39 Stat 39; am imp July 9, 1921, c 42, §315, 42 Stat 120; 48 U.S.C. §545; RL 1925, §834; RL 1935, §1732; RL 1945, §4983; RL 1955, §112-3; am L Sp 1959 2d, c 1, §26; am imp L 1961, c 42, §1; HRS §266-2; am L 1978, c 231, §3; am L 1980, c 161, §2; am L 1991, c 34, §1 and c 272, §9; am L Sp 1993, c 8, §54]

Cross References

Regulation of pilots, see chapter 462A.

Attorney General Opinions

Expenditures for produce refrigeration systems at harbors are for a public purpose. Att. Gen. Op. 62-12.

Case Notes

Power to impose and collect tolls and tonnage charges. 31 H. 372.

Power to contract, etc.: limitation on power of board to bind the State. 43 H. 28.

Where the department of transportation's (DOT) governing statutes did not explicitly or implicitly authorize the DOT to issue administrative rules exonerating the State from the negligence of its employees, Hawaii administrative rule §19-41-7 did not bear a reasonable relationship to the DOT's statutory mandate, and the legislature's imposition of a statutory duty to defend and/or indemnify in other circumstances demonstrated the legislature's clear intent to reserve such power to itself, trial court erred in obligating appellants to defend and

indemnify the State against injured plaintiff's claims. 111 H. 144, 140 P.3d 377.

" **[\$266-2.2] Exemption from conservation district permitting and site plan approval requirements.** Notwithstanding any law to the contrary, all work involving submerged lands used for state commercial harbor purposes shall be exempt from any permitting and site plan approval requirements established for lands in a conservation district. [L 2013, c 86, §1]

" **[\$266-2.3] Kewalo basin use permit; Honolulu harbor use permit; portability.** (a) Notwithstanding any law to the contrary, the department of transportation shall allow, on a space available basis, a vessel with a use permit authorizing the vessel to moor in Kewalo basin to moor in Honolulu harbor at no additional cost and with no additional use permit required under the following conditions:

- (1) The manager of Kewalo basin prohibits entrance into Kewalo basin because of inclement weather or ocean conditions; provided that as soon as the manager of Kewalo basin opens the entrance to vessels, the vessel shall leave Honolulu harbor;
- (2) The owner or operator of a commercial fishing vessel desires to sell the owner's or operator's catch of fish to a business operating within Honolulu harbor or otherwise conduct business within Honolulu harbor; provided that the vessel shall not moor in Honolulu harbor for a period longer than is necessary to unload all or some of the catch of fish for sale or otherwise conduct business; and
- (3) The owner of the vessel is current in its payments of any moneys, rates, fees, dues, compensation, fines, or penalties assessed against the vessel that are due to the State.

(b) Notwithstanding any law to the contrary, the department with jurisdiction over Kewalo basin shall allow, on a space available basis, a vessel with a use permit authorizing the vessel to moor in Honolulu harbor to moor in Kewalo basin at no additional cost and with no additional use permit required subject to the discretion of the harbor manager of Kewalo basin.

(c) The director of transportation shall adopt rules pursuant to chapter 91, to implement this section. [L 2008, c 79, §2]

" **[\$266-2.5] Outdoor lighting.** To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any harbor rule or

standard relating to outdoor lighting at any harbor facility conflicts with any county ordinance or other rule regarding outdoor lighting, the more stringent requirement or standard shall govern all new installations of outdoor lighting. [L 2007, c 121, §4]

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

- (1) Regulate the manner in which all vessels may enter and moor, anchor or dock in the commercial harbors, ports, and roadsteads of the State, or move from one dock, wharf, pier, quay, bulkhead, landing, anchorage, or mooring to another within the commercial harbors, ports, or roadsteads;
- (2) The examination, guidance, and control of harbor masters and their assistants and their conduct while on duty;
- (3) The embarking or disembarking of passengers;
- (4) The expeditious and careful handling of freight, goods, wares, and merchandise of every kind which may be delivered for shipment or discharged on the commercial docks, wharves, piers, quays, bulkheads, or landings belonging to or controlled by the State; and
- (5) Defining the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the docks, wharves, piers, quays, bulkheads, or landings within the commercial harbors, ports, and roadsteads of the State. The director may also make further rules for the safety of the docks, wharves, piers, quays, bulkheads, and landings on, in, near, or affecting a commercial harbor and waterfront improvements belonging to or controlled by the State.

(b) The director may also adopt, amend, and repeal such rules as are necessary:

- (1) For the proper regulation and control of all shipping, traffic, and other related activities in the commercial harbors belonging to or controlled by the State; of the entry, departure, mooring, and berthing of vessels therein; and of all other matters and things connected with such activities;
- (2) To establish safety measures and security requirements in or about the commercial harbors, land, and facilities belonging to or controlled by the State;
- (3) To prevent the discharge or throwing into commercial harbors of rubbish, refuse, garbage, or other substances likely to affect water quality or that

contribute to making such harbors unsightly, unhealthful, or unclean, or that are liable to fill up shoal or shallow waters in, near, or affecting the commercial harbors; and

- (4) To prevent the escape of fuel or other oils or substances into the waters in, near, or affecting commercial harbors from any source point, including, but not limited to, any vessel or pipes or storage tanks upon the land.

(c) The rules shall be adopted in the manner prescribed in chapter 91 and shall have the force and effect of law. [L 1911, c 163, §4; am L 1915, c 169, §3; ratified, March 28, 1916, c 54, 39 Stat 39; RL 1925, §836; RL 1935, §1734; RL 1945, §4984; RL 1955, §112-5; am L Sp 1959 2d, c 1, §26; am L 1965, c 96, §84 and c 115, §1; am L 1966, c 44, §§2, 3; HRS §266-3; am L 1978, c 231, §4; am L 1985, c 104, §2; am L 1986, c 57, §2; am L 1991, c 272, §10; am L 2009, c 16, §1]

Cross References

Agriculture department rules, see §§141-7, 142-2.
Forestry rules, see §183-4.

Case Notes

Where the department of transportation's (DOT) governing statutes did not explicitly or implicitly authorize the DOT to issue administrative rules exonerating the State from the negligence of its employees, Hawaii administrative rule §19-41-7 did not bear a reasonable relationship to the DOT's statutory mandate, and the legislature's imposition of a statutory duty to defend and/or indemnify in other circumstances demonstrated the legislature's clear intent to reserve such power to itself, trial court erred in obligating appellants to defend and indemnify the State against injured plaintiff's claims. 111 H. 144, 140 P.3d 377.

Cited: 60 H. 32, 586 P.2d 1037.

" **§266-4 Limitation of powers.** The jurisdiction and powers conferred on the department of transportation are subject to such restrictions as may be imposed by the statutes of the State, and shall be exercised in accordance with the provisions thereof. [March 28, 1916, c 54, §4, 39 Stat 41; RL 1925, §837; RL 1935, §1735; RL 1945, §4985; RL 1955, §112-6; am L Sp 1959 2d, c 1, §26; HRS §266-4]

" **[\$266-4.5 Disposition of public land; reservation of right of way.]** Whenever any disposition of public land is made by the department of transportation, under its powers relating to public lands under its jurisdiction, to any persons, organizations, associations, corporations or clubs for recreational or social purposes, such leases, licenses, permits or right-of-entry, or any extensions thereof, covering the disposition of public lands shall contain provisions reserving adequate public right of way or public access to adjacent public areas over and across the public land disposed. [L 1970, c 101, §3]

" **§266-5 REPEALED.** L 1985, c 22, §1.

" **§266-6 Expenditures.** Expenditures by the department of transportation shall be made upon vouchers signed by the director of transportation; provided that the director, may, in writing, designate a qualified subordinate to sign vouchers, make routine reports, and perform other routine business duties, subject to the direction of the director, for whose acts the director shall be responsible.

The department may cause work to be performed by day labor or by contract or by any other method deemed by the department to be most advantageous to the State. [L 1947, c 72, §4; RL 1955, §112-7; am L Sp 1959 2d, c 1, §26; HRS §266-6]

" **§266-7 Department; duties.** The department of transportation shall collect all moneys, fees, and dues paid to the State for wharfage, demurrage, and all other fees or compensation in respect to the entry, anchorage, and wharfage of all vessels and other craft entering into the ports of the State, and shall account for the same to the State as hereinafter provided. The department shall keep a full and complete record of the official acts of the department. [L 1911, c 163, §5; am L 1913, c 150, §3; RL 1925, §838; RL 1935, §1736; RL 1945, §4986; am L 1951, c 264, §2; RL 1955, §112-8; am L Sp 1959 2d, c 1, §26; HRS §266-7; am L 1978, c 231, §5; am L 1979, c 21, §1]

" **§§266-8 to 12 REPEALED.** L 1971, c 12, pt of §1.

" **§266-13 Dockage.** (a) All watercraft:
(1) Lying idle alongside any wharf, pier, bulkhead, quay, or landing belonging to or controlled by the State; or
(2) Discharging or receiving freight or passengers on or from any wharf, pier, bulkhead, quay, or landing belonging to or controlled by the State, while made

fast or lying alongside of the wharf, pier, bulkhead, quay, or landing; shall pay to the department of transportation such rates of dockage as shall be fixed by the department.

(b) All watercraft that receive or discharge freight or passengers:

(1) From or upon any wharf, pier, bulkhead, quay, or landing, by means of boats, lighters, or otherwise, while lying at anchor or under steam in any bay, harbor, or roadstead; or

(2) While lying in any slip or dock belonging to or controlled by the State, but not made fast to or lying alongside any wharf, pier, bulkhead, quay, or landing;

shall pay such rates of dockage as shall be fixed by the department.

(c) Notwithstanding subsections (a) and (b), the department may waive dockage and other charges at any wharf, pier, bulkhead, quay, landing, slip, or dock belonging to or controlled by the State whenever:

(1) The governor declares a state of emergency; and

(2) The department determines that the waiver of dockage fees and other charges is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.

(d) Any watercraft leaving any wharf, pier, bulkhead, quay, landing, slip, dock, basin, or waters belonging to or controlled by the State without paying dockage and other charges, with intent to evade the payment thereof, shall be liable to pay double rates. [L 1913, c 150, §5; am L 1915, c 169, §4; RL 1925, §841; am L 1929, c 162, §1; RL 1935, §1739; RL 1945, §4991; RL 1955, §112-14; am L Sp 1959 2d, c 1, §26; HRS §266-13; am L 1995, c 99, §2]

" **§266-14 Demurrage, lien, foreclosure.** When any freight has remained upon any wharf, pier, bulkhead, quay, or landing for more than twenty-four hours, the department of transportation, in its discretion, may make demurrage charges for each subsequent day or part thereof that in its opinion are just and equitable.

The amount payable by any shipper or consignee for demurrage or other charges in respect of any freight shall be a lien on the freight, and the department may take and hold possession of any freight to secure the payment of the amount, and for the purpose of the lien, shall be deemed to have possession of the freight until the amount has been paid. If the charges due on freight are not paid within thirty days after being landed, the department may sell the freight at public

auction and out of the proceeds retain the charges accrued, including the costs of public notice and sale, which latter shall be prorated upon the articles or lots sold in proportion to the amount received for each article or lot. Before any sale is made, the department shall give public notice of the time and place of sale at least once each week for three successive weeks in the county in which the place is located to which the freight is consigned or addressed, or by posting this notice at the courthouses of the district in which the place is located to which the freight is consigned or addressed. The notice shall contain a description of the property as near as may be, the name of the owner or consignee if known, the amount of charges due thereon, together with the time and place of sale. Any freight in its nature perishable may be sold by the department either at public or private sale as soon as its condition makes a sale necessary.

The surplus, if any, received from the sale, after paying any accrued freight charges on the freight, shall be paid to the owner or consignee, if known, and if not known, shall be deposited in the state treasury as a special fund. The fund shall consist of the surplus received from sales made under this section. At any time within one year thereafter, upon written demand and proof of identity satisfactory to the director, the director of finance shall pay the owner thereof the surplus. If this surplus is not claimed by the owner within one year after the date of sale it shall thereupon escheat to the State, and be transferred to the general fund of the State. [L 1915, c 169, §5; RL 1925, §842; RL 1935, §1740; RL 1945, §4992; am L 1955, c 53, §1; RL 1955, §112-15; am L Sp 1959 2d, c 1, §§14, 26; am L 1963, c 114, §1; HRS §266-14; gen ch 1985; am L 1998, c 2, §80]

" **§266-15 REPEALED.** L 1971, c 12, pt of §1.

" **§266-16 REPEALED.** L 1991, c 272, §16.

" **§266-17 Rates, how fixed.** (a) The department of transportation shall adjust, fix, and enforce the rates assessable and chargeable by it in respect to dockage, wharfage, demurrage, and other rates and fees pertaining to harbors, wharves, and properties managed and operated by it so as to produce from the rates and fees, in respect to all harbors, wharves, and other properties, except those that are principally used for recreation or the landing of fish, revenues sufficient to:

- (1) Pay when due the principal of and interest on all bonds and other obligations for the payment of which the revenue is or has been pledged, charged, or

otherwise encumbered, or which are otherwise payable from the revenue or from a special fund maintained or to be maintained from the revenue, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds or other revenue obligations and interest thereon, which are payable from the special fund, including reserves therefor;

- (2) Provide for all expenses of operation and maintenance of the properties, including reserves therefor, and the expenses of the department in connection with operation and maintenance; and
- (3) Reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements, or to refund any of the improvement bonds, excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties.

(b) When weather, road closures due to special events, or road repairs do not permit the loading or unloading of passengers at Kewalo Basin, cruise boats holding a Kewalo Basin sublease approved by the State shall be allowed to use Honolulu Harbor facilities on a space available basis, and the fees for the use of facilities shall be in accordance with the Hawaii administrative rules of the department of transportation relating to fees for use of facilities for private gain. [L 1931, JR 1; RL 1935, §1742; am L 1935, c 133, §1; RL 1945, §4996; am L 1947, c 72, §1; am L 1951, c 239, §1; RL 1955, §112-18; am L 1959, c 265, §15(a); am L Sp 1959 2d, c 1, §§14, 26; am L 1963, c 114, §1; am L 1967, c 221, §5; HRS §266-17; am L 1972, c 136, §1 and c 180, §3; am L 1976, c 221, §5; am L 1998, c 114, §1]

" **§266-18 REPEALED.** L 1991, c 272, §17.

" **§266-19 Creation of harbor special fund; disposition of harbor special fund.** (a) There is created in the treasury of the State the harbor special fund. All moneys received by the department of transportation from the rates, fees, fines, and administrative penalties pursuant to sections 266-17(a)(1), 266-25, 266-28, and 266-30 shall be paid into the harbor special fund. The harbor special fund and the second separate harbor special fund heretofore created shall be consolidated into the harbor special fund at such time as there are no longer any

revenue bonds payable from the second separate harbor special fund. The harbor reserve fund heretofore created is abolished.

All moneys derived pursuant to this chapter from harbor properties of the statewide system of harbors shall be paid into the harbor special fund and each fiscal year shall be appropriated, applied, or expended by the department of transportation for the statewide system of harbors for any purpose within the jurisdiction, powers, duties, and functions of the department of transportation related to the statewide system of harbors, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of harbors and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, for the statewide system of harbors, all or any of which in the judgment of the department of transportation are necessary to the performance of its duties or functions.

(b) At any time the director of transportation may transfer from the harbor special fund created by paragraph (a) of this section, all or any portion of available moneys on deposit in the harbor special fund determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the harbor special fund as permitted by and in accordance with section 37-53. For purposes of such determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the harbor special fund during such period, amounts on deposit in the harbor special fund which are encumbered or otherwise obligated, budgeted amounts payable from the harbor special fund during such period, and revenues anticipated to be received by and expenditures to be made from the harbor special fund during such period based on existing agreements and other information for the ensuing twelve months, and such other factors as the director of transportation shall deem appropriate.

(c) All expenditures by the department shall be made on vouchers duly approved by the director of transportation or such other officer as may be designated by the director of transportation. [L 1941, c 142, §2; am L 1943, c 97, §1; RL 1945, §4998; am L 1945, c 112, §2; am L 1947, c 72, §3; RL 1955, §112-20; am L 1967, c 221, §6; HRS §266-19; am L 1979, c 105, §25; am L 1989, c 309, §7; am L 1998, c 114, §2; am L 2012, c 313, §2]

Cross References

Transfer from harbor special fund, see §36-29.

" **§266-19.5 Private financing of harbor improvements.** (a)

Notwithstanding any law to the contrary, the department of transportation may enter into a capital advancement contract with a private party for any public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State, if the director of transportation determines that a capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the department of transportation; provided that all related transactions shall be subject to state audit.

(d) The department of transportation may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the department of transportation shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the department pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this section:

"Capital advancement contract" means an agreement between the department of transportation and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State and in return for which the private party may be reimbursed in a manner to be determined by the department.

"Total value" includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project. [L 2001, c 285, §3; am L 2002, c 16, §11]

Cross References

Private financing of small boat harbor improvements, see §200-19.

" **§§266-20, 21 REPEALED.** L 1991, c 272, §§18, 19.

" **§§266-21.1 to 21.3 REPEALED.** L 1991, c 272, §§20 to 22.

" **§266-21.4 Marine inspections.** (a) The department shall (1) develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state commercial harbors, (2) approve qualified marine surveyors to inspect vessels seeking permits to moor in state commercial harbors, and (3) approve a fee schedule for marine surveyors' inspections.

(b) Vessels failing the marine inspection for a permit or a permit renewal shall have thirty days to correct deficiencies and complete the inspection.

(c) Owners of vessels that fail the marine inspection may contest the inspection at an arbitration board of three approved inspectors and the original inspector. [L 1976, c 221, §8; am L 1991, c 272, §11]

" **[§266-21.5] Biosecurity, inspection, and cargo support facilities.** (a) The department of transportation shall provide space at commercial harbors for biosecurity and inspection facilities and to facilitate the safe and efficient movement of maritime cargo through the commercial harbors.

(b) The department and department of agriculture shall plan, design, and construct biosecurity, inspection, consolidation, deconsolidation, and treatment facilities for use by the department of agriculture to enhance the efficient and

safe movement of imported and exported marine cargo, to include food [safety] and food security guidelines and standards. [L 2011, c 202, §3]

" **§266-22 Maintenance of fire boat.** The cost of operating and maintaining the fire boat shall be borne by the department of transportation. The department shall pay annually from its special fund for the operation and maintenance costs. [L 1951, c 175, §3; RL 1955, §112-22; am L Sp 1959 2d, c 1, §26; am L 1963, c 171, §1; HRS §266-22; am L 2012, c 69, §1]

" **§266-23 Acceptance of gifts.** The director of transportation may, with the approval of the governor, accept and receive gifts of personal property, which gifts shall be used for harbor purposes; provided that moneys received by the director, pursuant to the authority granted herein, shall be deposited into an appropriate fund or account before being used for harbor purposes. [L 1965, c 28, §2; Supp, §112-24; HRS §266-23]

" **§266-24 Enforcement.** (a) The director of transportation shall enforce this chapter and all rules thereunder, except for the rules relative to the control and management of the beaches encumbered with easements in favor of the public and ocean waters which shall be enforced by the department of land and natural resources. For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter, the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. The director of transportation and any employee, agent, or representative of the department of transportation appointed as enforcement officers by the director, and every state and county officer charged with the enforcement of any law, statute, rule, regulation, ordinance, or order, shall enforce and assist in the enforcement of this chapter and of all rules and orders issued pursuant thereto, and in carrying out the responsibilities hereunder, each shall be specifically authorized to:

- (1) Conduct any enforcement action hereunder in any commercial harbor area and any area over which the department of transportation and the director of transportation has jurisdiction under this chapter;
- (2) Inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where

harbors or harbor facilities are situated, or where harbor-related activities are operated or conducted; and

- (3) Subject to limitations as may be imposed by the director of transportation, serve and execute warrants, arrest offenders, and serve notices and orders.

For purposes of this subsection, the term "agents and representatives" includes persons performing services at harbors or harbor areas under contract with the department of transportation.

(b) The department of transportation, in the name of the State, may enforce this chapter and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of the State. [L 1967, c 68, §1; HRS §266-24; gen ch 1985; am L 1987, c 364, §2; am L 1988, c 62, §1; am L 1991, c 272, §12; am L 1996, c 128, §3 and c 296, §4]

Case Notes

Mentioned: 10 H. App. 220, 864 P.2d 1109.

" **§266-24.1 Arrest or citation.** Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this part, including any rule or regulation adopted and promulgated pursuant to this part, any person authorized to enforce the provisions of this part, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this part, including any rule or regulation adopted and promulgated pursuant to this part shall, in the discretion of the enforcement officer, either (1) issue to the purported violator a summons or citation, printed in the form hereinafter described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after such arrest, or (2) take the purported violator without unnecessary delay before a district judge.

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

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the

district courts may prescribe alternative methods of distribution for the original and any other copies.

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

Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this part, including any rule or regulation promulgated pursuant to this part, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000, or be imprisoned not more than six months, or both.

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

When a complaint is made to any prosecuting officer of the violation of any provision of this part, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department of transportation whose names have been submitted to the prosecuting officer and who have been designated by the director of transportation to administer the same. [L 1969, c 243, §1; am L 1970, c 188, §39; am L 1974, c 58, §2; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§266-24.2 Vessels or property taken into legal custody; unauthorized control.** No person shall exercise control over a vessel or other property that is under legal custody, seizure, or detention by the department of transportation, with intent to defeat the custody, seizure, or detention, or impede, oppose, or defeat the process whereby the vessel or other property is under custody, seizure, or detention. [L 1978, c 82, §1]

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

(b) and (c), shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, a court, the department, or an administrative hearings officer may deprive the offender 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; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list.

(b) Any person who violates any rule adopted by the department of transportation under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

(c) Any person who violates any rule adopted by the department of transportation relating to unauthorized discharge, dumping, or abandoning any petroleum product, hazardous material, or sewage in any state harbor facility or state waters in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department of transportation or this chapter, shall be fined not more than \$10,000 for each day of violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court, department, or administrative [hearings] officer may deprive the offender 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; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list. [L 1911, c 163, §9; RL 1925, §844; RL 1935, §1744; RL 1945, §4995; RL 1955, §112-23; am L Sp 1959 2d, c 1, §26; HRS §266-25; am L 1984, c 187, §2; am L 1987, c 361, §2; am L 2007, c 139, §3; am L 2012, c 313, §3]

Case Notes

Penalties authorized in this section are criminal penalties, making defendant potentially eligible for a jury trial. 84 H. 65, 929 P.2d 78.

Where no term of imprisonment was authorized under this section for violation of administrative rule regulating boat moorings, violation a presumptively petty offense for which constitutional right to jury trial did not attach; consideration of other relevant factors failed to overcome presumption. 84 H. 65, 929 P.2d 78.

Penalties authorized by this section are criminal penalties for a penal offense. 10 H. App. 220, 864 P.2d 1109.

Cited: 49 H. 651, 657, 426 P.2d 626.

" **[\$266-26 Responsibility of vessel owner; evidence of unauthorized mooring.]** In any proceeding for violation of any statute or any rule adopted by the department pursuant to chapter 91 governing the mooring or placement of a vessel in the State, proof of ownership through:

- (1) The state registration number; or
- (2) The documented name or number of a vessel; or
- (3) Any other identifying name or number;

affixed to a vessel involved in such violation shall constitute prima facie evidence that the owner of the vessel was the person who moored or placed the vessel at the point where, and during the time when, such violation occurred. [L 1977, c 54, §1]

" **§266-27 Mooring of unauthorized vessel in state harbors; impoundment and disposal proceedings.** (a) No person shall moor a vessel in a state commercial harbor without obtaining a use permit; nor shall a person continue to moor a vessel in any state commercial harbor if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (e).

(b) The department shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if such a vessel is not removed after the seventy-two-hour period or if during said period the vessel is removed and re-

moored in said harbor or any other state commercial harbor without a use permit.

(d) Custody of an impounded vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by a court. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel. The owner or operator of an impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The administrative hearing must be held within five days of the department's receipt of the written request, excluding Saturdays, Sundays, and holidays designated under section 8-1. The department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner, or a lien holder for more than thirty days, may be sold by the department at public auction. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency. [L 1980, c 34, §1; am L 1988, c 103, §1; am L 1991, c 272, §§13, 14; am L 1994, c 117, §1; am L 1995, c 113, §1]

" **§266-28 Fines arising from environmental protection and maritime transportation security violations.** Notwithstanding any other law to the contrary, any commercial harbor tenant or user, including any shipper or shipping agent, who violates any federal, state, or county law or rule relating to environmental protection or maritime transportation security pursuant to title 33 Code of Federal Regulations chapter 1 and thereby causes a fine to be levied by the United States Coast Guard upon the department, shall reimburse the department for the entire amount of the fine. The department may take such actions necessary to collect and deposit any amount reimbursable under this section into the harbor special fund, and may also demand reimbursement for costs or expenses incurred by the department resulting from enforcement of this section. [L 2007, c 139, §2; am L 2012, c 313, §4]

" **[§266-29] State harbors civil violations system; authorization.** (a) There is established, within the department

of transportation, a state harbors civil violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department of transportation shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this section.

(c) Rules adopted pursuant to subsection (b) may include, but are not limited to, the following:

- (1) Requirements for notice of state harbors infraction;
- (2) A form of the answer that shall be made pursuant to a notice of state harbors infraction, which answer may be an admission of the infraction, a denial of the infraction, or an admission of the infraction with mitigating circumstances;
- (3) The action to be taken after an answer is received or when a person fails to answer the notice of state harbors infraction;
- (4) Procedures for administrative hearings under this section;
- (5) The imposition and enforcement of monetary assessments made pursuant to this section; and
- (6) Means of assuring that the alleged violator who answers the notice of state harbors infraction by an admission of the infraction or an admission of the infraction with mitigating circumstances has knowingly and voluntarily elected to use the state harbors civil violations system and waive the appeal provided for in section 91-14.

(d) Notwithstanding any other provision of law to the contrary, all state harbors infractions that the department of transportation identifies as subject to administrative penalties may be adjudicated pursuant to this section. [L 2012, c 313, pt of §1]

" **[§266-30] General administrative penalties.** (a) Except as otherwise provided by law, the department of transportation may 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 this chapter or any rule adopted pursuant to this chapter. The administrative fines shall not exceed \$10,000 for each day of violation.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter

shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense. [L 2012, c 313, pt of §1]

"[PART II.] SPECIAL FACILITY PROJECTS

§266-51 Definitions. For the purpose of this part, if not inconsistent with the context:

- (1) "Special facility" means one or more buildings, structures, or facilities on land owned by the State for maritime and marine operations, including cargo handling and control; storage, repair, maintenance, and servicing of marine and marine-related equipment; processing and canning of fish and fish products; and offices and accommodations for the personnel and employees of persons engaged in maritime and maritime-related operations which are the subject of a special facility lease.
- (2) "Special facility lease" includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the special facility.
- (3) "Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment, or extension of a special facility. [L 1980, c 126, pt of §2; am L 1984, c 203, §1]

" **§266-52 Powers.** In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated;
- (2) With the approval of the governor:

- (A) Issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this subparagraph shall not exceed \$100,000,000; and
- (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2) (A);
- (3) Perform and carry out the terms and provisions of any special facility lease;
- (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
- (5) Construct any special facility on land owned by the State; and
- (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. [L 1980, c 126, pt of §2; am L 1984, c 203, §2; am L 1993, c 2, §1 as superseded by c 212, §1; am L Sp 1993, c 8, §55; am L 2004, c 216, §33]

" **§266-53 Findings and determination for special facility leases.** The department shall not enter into any special facility lease unless the department shall first find and determine that:

- (1) The special facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies, or facilities which are then adequately being made available through the harbors system of the State;

- (2) The use or occupancy of the special facility under such special facility lease would not result in the reduction of the revenues derived from the harbors system to an amount below the amount required to be derived therefrom by section 39-61; and
- (3) The entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State and the department then outstanding. [L 1980, c 126, pt of §2; am L 1993, c 2, §2 and c 212, §2]

" **[\$266-54] Special facility lease.** (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall contain provisions obligating the other person to the special facility lease:

- (1) To pay to the department during the term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at such time or times and in such amount or amounts as will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for the special facility, to establish or maintain any reserves for such payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility.
- (2) To pay to the department a ground rental equal to the fair market rental of the land, if the special facility is situated on land owned by the department.
- (3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility.

(b) Any moneys derived by the department pursuant to subsection (a)(1) shall be deemed revenues of the special facility. Any moneys received by the department pursuant to subsection (a)(2) and (3) shall be paid into the harbor special fund and shall not be nor be deemed to be revenues of the special facility.

(c) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the reasonable life of the special facility which is the subject of such special

facility lease, as estimated by the department at the time of the entering into thereof, or thirty-five years, whichever is less.

(d) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain such other terms and conditions as the department deems advisable to effectuate the purposes of this part. [L 1980, c 126, pt of §2]

" **§266-55 Special facility revenue bonds.** All special facility revenue bonds, including special facility revenue refunding bonds, authorized to be issued shall be issued pursuant to part III of chapter 39, except as follows:

- (1) No such revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which such revenue bonds are to be issued.
- (2) Such revenue bonds shall be issued in the name of the department, and not in the name of the State.
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for such issuance.
- (4) Such revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section 266-51(1).
- (5) The final maturity date of such revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease.
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the United States Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with such trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such trustee shall be appointed, any trust

indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or agreement". Such covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder.

- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the second sentence of section 39-68 the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the revenue bonds, or may elect to limit the functions the director shall perform as such fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as such fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons which have been paid, and the supervision and destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the trustee, or granted in sections 36-3 and 39-13 and the third sentence of section 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and

registrars for the revenue bonds or to authorize and empower such fiscal agents, paying agents, and registrars to perform the functions referred to in such paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director shall perform as such fiscal agent, as the director of finance may deem necessary, advisable, or expedient.

- (8) The department may sell such revenue bonds either at public or private sale.
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing such revenue bonds.
- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, signatures of the officers of the State upon such bonds and the coupons thereof as required by section 39-56 may be evidenced by their facsimile signatures.
- (11) The proceeds of such revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs.
- (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of such lease, at the other person's expense, such requirement shall constitute compliance by the department with section 39-61(a)(2), and none of the revenues derived by the department from such special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease. [L 1980, c 126, pt of §2; am L 1993, c 2, §3 and c 212, §3]

" §266-56 REPEALED. L 1993, c 2, §4 and c 212, §4.