

ACT 313

S.B. NO. 2876

A Bill for an Act Relating to the Commercial Harbors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 266, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**“§266-A 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.

**§266-B 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."

SECTION 2. Section 266-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 ~~and~~, fees, fines, and administrative penalties pursuant to ~~section~~ sections 266-17(a) (1), 266-25, 266-28, and 266-B 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 ~~[(excluding properties principally used for recreation or the landing of fish, except properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu)]~~ 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 ~~[(excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu)]~~, 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."

SECTION 3. Section 266-25, Hawaii Revised Statutes, is amended to read as follows:

**§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 that 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 [offense] 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 hearing 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 [~~two years.~~] 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."

SECTION 4. Section 266-28, Hawaii Revised Statutes, is amended to read as follows:

**“[§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 [~~and~~] 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.”

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

**Note**

1. Edited pursuant to HRS §23G-16.5.