

Honolulu, Hawaii
Feb 16, 2006

RE: H.B. No. 2476

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2476 entitled:

"A BILL FOR AN ACT RELATING TO STATUTORY REVISION: AMENDING, REENACTING, OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS,"

begs leave to report as follows:

The purpose of this bill is to amend various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii pursuant to chapter 23G, Hawaii Revised Statutes, to correct errors, update references, clarify language, and delete obsolete or unnecessary language.

Your Committee finds that all of the statutory amendments proposed by the measure are of a purely technical nature and either contain no substantive changes to the law or, if they have any substantive effect, are done simply to correct the types of errors noted in this report.

Your Committee finds the reasons for the respective technical amendments made in the bill are as follows:

Section 1. L 2005, c 128, §3 amended section 6E-11, HRS, by adding subsection (e), which provides in part "... human skeletal remains, as defined in chapter 6E ...". "Human skeletal remains" are defined in section 6E-2, HRS.



Section 6E-11(e), HRS, should be amended to refer to section 6E-2, HRS, as the section defining "human skeletal remains".

Section 2. Section 40-82, HRS, was amended by Acts 102 and 154, Session Laws of Hawaii 2005. Act 102 amended subsections (b) and (c), more specifically, by substituting the term "delinquent receivables" for "fine or restitution". Act 102 also added the definition of "delinquent receivables" to include "fines, restitution, and other collectibles".

Act 154, on the other hand, deleted subsection (c) and renumbered the remaining subsections (d) and (e) as (c) and (d) respectively. Act 154 also made minor style changes throughout the section, including the substitution of the term "fine or restitution" for "account" in subsection (b); the same term that was deleted and replaced by Act 102.

To give effect to the substantive amendment of subsection (b) made by Act 102, the revisor did not substitute the term "fine or restitution" for "account" and instead retained the word "account" within brackets.

Section 40-82(b), HRS, should be amended to delete the brackets around "account" to ratify the revisor's retention of the word.

Section 3. As enacted by L 2005, c 245, §2, section 87D-6(c)(2), HRS, read "If, by the fiduciary's failure to comply with subsection (a) or (b), the fiduciary has been enabled such other fiduciary to commit breach; or...".

Section 87D-6(c)(2), HRS, should be amended by deleting the brackets around the words "has enabled" to ratify the revisor's substitution of the words "has enabled" for "has been enabled".

Section 4. L 2003, c 178, §§4 and 60 repealed sections 201G-401 to 403, subpart N of part III of chapter 201G, Hawaii Revised Statutes, and section 201G-341, subpart I of part III of chapter 201G, Hawaii Revised Statutes, respectively. L 2002, c 178, §10 repealed section 201G-421, HRS, and L 2003, c 178, §64 repealed section 201G-422, HRS, which together comprised subpart P of part III of chapter 201G, Hawaii Revised Statutes. These repealed subparts and sections are still referenced in section 201G-441, HRS.

Section 201G-441, HRS, should be amended by deleting reference to these repealed subparts and sections.

Section 5. Section 302A-1133.5(b), HRS, provides in relevant part: "Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the



student's parent, parents, or guardian to proceedings under section 302A-1130 or 302A-1153, as appropriate". L 2004, c 220 deleted from section 302A-1130, HRS, the department of education's authorization to charge students for damaging school books, supplies, or equipment and giving the students and their parents an opportunity to be heard regarding such charges and added somewhat similar deleted language to section 302A-1130.5, HRS.

Section 302A-1133.5(b), HRS, should be amended by changing section "302A-1130" to "302A-1130.5" to properly reflect the section under which a student's parents will be subject to proceedings relating to destruction of school property by a student.

Section 6. L 2005, c 87, §7 amended section 302A-1186(b), HRS, and in so doing, created four paragraphs, three of which contain subparagraphs numbered (1) through (4), (1) through (5), and (1) through (11). Referencing or citing the subparagraphs is ambiguous and confusing because, for example, a reference to "section 302A-1186(b)(1)" could mean any of three different subparagraphs in the same subsection that are all numbered "(1)".

Section 302A-1186(b), HRS, should be amended by reorganizing the subsection and redesignating these subparagraphs.

Section 7. L 2005, c 189, §§6 and 7, amended section 302A-1312, HRS, one by amending to the Hawaii Revised Statutes section itself and the other by amending L 2004, c 164, §9. Section 11 of Act 189 provides that sections 6 and 7 shall not take effect if the contingent amendment addressed in section 35(5) of Act 164, Session Laws of Hawaii 2004, does not take effect on July 1, 2005. Act 164, which was to take effect on July 1, 2005, and the contingent amendment addressed in section 35(5), was amended by L 2005, c 93, §7, to take effect on July 1, 2006.

On July 1, 2006, section 302A-1312, HRS, as amended by L 2004, c 164, §9 will effectively "repeal" the amendments made to section 302A-1312, HRS, by L 2005, c 189, §7, unless the Act 189 amendments are reenacted to that July 1, 2006 date.

This problem can be solved by reenacting section 302A-1312, HRS, in its present form, effective July 1, 2006. This will preserve the amendments made by Act 189.

Section 8. The last sentence of section 325-9, HRS, provides in part that "The department or it's agent, in effecting any removal or quarantine under this [section] or section 325-8, may require any sheriff...".

Section 325-9, HRS, should be amended by deleting the brackets around "section" to ratify the revisor's insertion of the



word "section" to allow proper reference to section 325-9 itself and section 325-8.

Section 9. The first sentence of section 353-61, HRS, provides in relevant part "Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, ... a member from the general public to be appointed by the governor and the president of the Hawaii chapter of the national association of social workers." The end of the preceding sentence incorrectly makes it appear that one member of the panel will be from the general public and appointed by the governor and the president of the Hawaii chapter of the national association of social workers. This unintended ambiguity can be properly clarified by adding a comma.

Also, the fourth sentence of section 353-61, HRS, provides that "Of the members first appointed after May 13, 1976, the member designated as chairperson shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one member shall be appointed for a term of two years; ...". This phrase should be deleted as functus, as such membership terms were fulfilled.

Section 353-61, HRS, should be amended by adding a comma after the word "governor" to clarify that the members on the panel will include someone from the public and also the president of the Hawaii chapter of the national association of social workers, and deleting reference to the appointment terms of members first appointed after May 13, 1976.

Section 10. Section 501-6, HRS, outlines the appointment and duties of the registrar and assistants for the land court. The section heading to describe this section separates the independent clauses of "registrar and assistant" from the words "appointment, tenure, powers, and duties" with a comma.

Section 501-6, HRS, should be amended by replacing the comma after "registrar and assistant" with a semicolon to emphasize the relationship between the two phrases.

Section 11. Section 501-23, HRS, should be amended to update obsolete dates (i.e., providing for signature in the year "19__") and remove gender specific terms.

This and other sections of the Hawaii Revised Statutes are included in this revision bill to gender neutralize sections that the revisor felt were not within the revisor's authority to make under section 23G-15(8), HRS, that is, to substitute a gender neutral term for a gender specific one "without altering the sense, meaning, or effect of any act".



Section 12. Section 501-41, HRS, should be amended to update obsolete dates and remove gender specific terms.

Section 13. Section 501-71, HRS, should be amended to remove gender specific terms.

Section 14. Section 501-139, HRS, should be amended to remove gender specific terms.

Section 15. Section 501-186, HRS, should be amended to remove gender specific terms.

Section 16. Section 501-217, HRS, should be amended to remove gender specific terms.

Section 17. Section 502-16, HRS, references section 502-15 and then refers to section 502-15 as "the section", thus causing confusion as to which section is being referred to.

Section 502-16, HRS, should be amended to clarify that the references to "the section" are to "section 502-15".

Section 18. Section 502-41, HRS, should be amended to update obsolete dates, remove gender specific terms, and make minor style changes for purposes of clarity.

Section 19. Section 502-43, HRS, should be amended to update an obsolete date and remove gender specific terms.

Section 20. The last paragraph of section 502-85, HRS, should be a new subsection as it is not part of the definitions of subsection (c). Rather, it provides for what happens if a claimant's claim or lien upon the real estate covered by the agreement of sale is extinguished according to section 502-85 before the claimant actually receives satisfaction of the claim or lien.

Section 502-85, HRS, should be amended by designating the last paragraph of subsection (c) as subsection (d).

Section 21. In section 507-49(a), HRS, the first sentence of the second paragraph states that "the issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section 507-43(c)...". The return day hearing is covered under section 507-43(a). In addition, subsection (b) contains gender specific terms.



Section 507-49, HRS, should be amended to reference the correct subsection for return day hearings and to remove gender specific terms.

Section 22. Section 514B-32(a), HRS, should be amended by moving the exception language following the semicolon in subsection (a)(13)(B) out to the left to properly modify the entire paragraph (13).

Section 23. Section 514B-91, HRS, should be amended by moving the second and third sentences in paragraph (2) out to the left margin to modify the entire section.

Section 24. L 2005, c 157, §4, amended section 514B-140, HRS, by amending L 2004, c 164, §2. Act 157 took effect on September 1, 2005. Act 164, which was to take effect on July 1, 2005, was amended by L 2005, c 93, §7, to have a delayed effective date of July 1, 2006. On July 1, 2006, section 514B-140, HRS, as enacted by L 2004, c 164, §2 will effectively "repeal" the amendments made to section 514B-140, HRS, by L 2005, c 157, §4, unless the Act 157 amendments are reenacted to that July 1, 2006 date.

This reenactment of section 514B-140, HRS, effective July 1, 2006, will preserve the Act 157 amendments. Section 514B-140 is being "amended" solely for the purpose of deleting the brackets around the section number. The substance of the section is being reenacted.

Section 25. Section 514B-149(c), HRS, contains two sets of paragraphs numbered (1) to (4) and (1) to (3). Referencing or citing these paragraphs causes confusion because, for example, a reference to "section 514B-149(c)(1)" could mean either of two different paragraphs numbered "(1)" within the same subsection.

Section 514B-149(c), HRS, should be amended by redesignating the same numbered paragraphs to prevent confusion or ambiguity.

Section 26. L 2005, c 83, §2(2) amended the definition of "blanket lien" in section 514E-1, HRS, to take effect upon approval (May 27, 2005). L 2004, c 164, §21 also amended the definition of "blanket lien" but with a delayed effective date of July 1, 2005. L 2005, c 93, §7 amended L 2004, c 164, §35 to further delay the Act 164 amendment to July 1, 2006. On July 1, 2006, the amended definition of "blanket lien" by L 2004, c 164, §21 will effectively "repeal" the amendments made by L 2005, c 83, §2(2) unless the Act 83 amendments are reenacted to that July 1, 2006 date.



This reenactment of "blanket lien", effective July 1, 2006, will preserve the Act 83 amendments.

Section 27. Section 516-28, HRS, should be amended to remove a gender specific term.

Section 28. Section 523A-23, HRS, relating to the deposit of funds under the unclaimed property act, chapter 523A, was repealed by L 2003, c 115, §2, and replaced by section 523A-23.5, HRS, the unclaimed property trust fund. Section 523A-22(d), HRS, still contains reference to repealed section 523A-23, HRS.

Section 523A-22(d), HRS, should be amended by replacing reference to repealed section 523A-23, HRS, with section 523A-23.5, HRS.

Section 29. L 1990, c 184 authorized the counties to establish a general excise and use tax surcharge through, among other things, the enactment of sections 46-16.7, 235-16, 237-8.5, 238-2.5, and 248-2.5, HRS. The authorization to establish the surcharge was granted only if the counties adopted an ordinance before October 1, 1992, to take effect on January 1, 1993, and remain in effect for ten years through December 31, 2002. Since the county was not successful in adopting an ordinance to establish this surcharge at that time, sections 235-16, 237-8.5, 238-2.5, and 248-2.5, HRS, were subsequently repealed as functus by L 2003, c 135. Section 46-16.7, HRS, was not included in the repeal of these surcharge sections.

Section 46-16.7, HRS, should also be repealed as functus. The repeal of this provision should not be confused with similar provisions contained in section 46-16.8, HRS, that was enacted by L 2005, c 247, which authorizes the counties to levy a county surcharge to fund public transportation systems.

Section 30. The prefatory language of L 2005, c 33, §1 purports to amend section 291E-61, HRS, in its entirety as it states: "Section 291E-61, Hawaii Revised Statutes, is amended to read as follows"; however, it sets out only subsection (b) of section 291E-61, HRS. Read literally, this has the unintended effect of repealing all of section 291E-61 except subsection (b).

The prefatory language of L 2005, c 33, §1 should be amended to state that only "subsection (b)" of section 291E-61, HRS, was amended, to clarify that the other subsections of section 291E-61, HRS, are not impliedly repealed.

Section 31. The prefatory language of L 2005, c 129, §2 provides that "Act 261, Session Laws of Hawaii 2000, as amended by



Act 68, Session Laws of Hawaii 2002, section 2, as amended by Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:..." Act 68, Session Laws of Hawaii 2002, section 2, was not amended by Act 103, Session Laws of Hawaii 2002, section 1. Section 5 of Act 261, Session Laws of Hawaii 2000 was amended by Acts 68 and 103, Session Laws of Hawaii 2002.

To eliminate any possible ambiguity, the prefatory language of L 2005, c 129, §2 should be amended to state that section 5 of Act 261, Session Laws of Hawaii 2000 was amended by Act 68 and Act 103, Session Laws of Hawaii 2002.

Section 32. L 2005, c 202, §3 amended section 89-6(f), HRS. L 2005, c 245, §5 also amended section 89-6, HRS, by adding a new subsection (f) and redesignating the existing subsection (f) as subsection (g). The amendments made by Act 245 are subject to repeal and reenactment by L 2005, c 245, §8 on July 1, 2008 and section 89-6, HRS, is reenacted in the form it read on July 11, 2005 (the effective date of Act 245). Unless excepted, the Act 202 amendments will be subject to Act 245's repeal and reenactment provisions.

L 2005, c 202, §5 should be amended to exempt the amendments that Act 202 made to section 89-6, HRS, from the repeal and reenactment provision of L 2005, c 245, §8 .

Section 33. L 2005, c 236, §§20 and 24 amended L 2004, c 45, §§36 and 39 to clarify, respectively, that appropriations out of the emergency and budget reserve fund for fiscal year 2004-2005 was to the Boys and Girls Club of Hawaii to assist in the completion and operation of the Teen Center at Nanakuli high and intermediate school, and to Ho'omau Ke Ola for the Weed and Seed Program to collaborate with and support existing programs on the Waianae Coast, effective July 1, 2005. Section 2 of Act 236 extended the lapse date of this as well as other appropriations from June 30, 2005, to June 30, 2007.

L 2005, c 236 should be amended by amending section 27 to provide that the amendments made to sections 20 and 24 take effect the same time as section 2, to avoid any confusion as to the correct entity to whom the funds were appropriated.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2476 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.



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



SYLVIA LUKE, Chair



