

ACT 16

S.B. NO. 2399

A Bill for an Act Relating to Statutory Revision: Amending 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.

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

SECTION 1. Section 10-27, Hawaii Revised Statutes, is amended to read as follows:

“[H§10-27[H] Covenants in resolution authorizing revenue bonds. Any resolution or resolutions authorizing the issuance of revenue bonds under this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of revenue bonds may be applied; the use and disposition of such proceeds; the investment thereof pending such use and disposition; and the use and disposition of the income from such investment;
- (2) The use and disposition of the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued are to be included; the use and disposition of the revenue of all office projects, and of the revenues of the office, including the creation and maintenance of reserves; the investment of such revenues and of the moneys in such reserves; and the use and disposition of the income from such investments;
- (3) The minimum amount of revenues to be produced by the office projects or the office, over and above the amount required to be produced by the first sentence and paragraphs (1) to (3) of section 10-31;
- (4) The use and disposition of the proceeds of the sale of any office project, or part thereof;
- (5) The construction and maintenance of any office project other than the office project or projects for the construction or maintenance of which revenue bonds are issued;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued or the revenue of the office or payable from the revenue of other office projects;
- (7) The maintenance of the office project, including the creation by the board of such supervisory positions, which shall not be subject to chapter 76, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;

- (8) The insurance to be carried on office projects and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the ~~[holder,]~~ holders, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of bonds evidencing the obligation to repay loans, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the office project or projects, maintain them, prescribe rents, fees, and charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power, to utilize, or permit the utilization of, any office project other than in a manner consistent with and in furtherance of the purposes of the office.

This part and any such resolution or resolutions shall be a contract with the holders of bonds issued under this part, and the duties of the board and any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.”

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended by amending the definition of “expenditure” to read as follows:

““Expenditure”:

(1) Means:

- (A) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
 - (i) Influencing the nomination for election, or election, of any person seeking nomination for election, or election, to office whether or not the person has filed the person’s nomination paper;
 - (ii) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
 - (iii) Use by any party or committee for the purposes set out in clause (i) or (ii);
- (B) The payment, by any person other than a candidate or committee, of compensation for the personal services of another person that are rendered to the candidate or committee for any of the purposes mentioned in subparagraph (A); or
- (C) The expenditure by a candidate of the candidate’s own funds for the purposes set out in ~~[F]~~subparagraph (A)~~[F]~~.

The term does not include volunteer personal services and voter registration efforts that are not partisan.

- (2) Does not include an individual or committee engaging in internet activities for the purpose of influencing an election if:
 - (A) The individual or committee is uncompensated for internet activities; or

- (B) The individual or committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services.

For purposes of this paragraph, “internet activities” includes sending or forwarding electronic messages; providing a hyperlink or other direct access to another person’s website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person’s website; and any other form of communication distributed over the Internet.

For purposes of this paragraph, “equipment and services” includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

This paragraph does not apply to any payment for an advertisement other than a nominal fee; the purchase or rental of an e-mail address list made at the direction of a committee; or an e-mail address list that is transferred to a committee.”

SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and ~~[485;]~~ 485A;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy;
- (19) By the office of elections;
- (20) By the campaign spending commission;
- (21) By the Hawaii tourism authority, as provided in section 201B-2.5; or

- (22) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

SECTION 4. Section 150A-5.3, Hawaii Revised Statutes, is amended to read as follows:

“[H]§150A-5.3[H] Inspection, quarantine, and eradication service fee and charge. There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any marine commercial container shipment, foreign or domestic, that is brought into the State. The fee shall be computed on the basis of \$1 for each twenty-foot equivalent unit per container. The department shall collect the fee at the port of disembarkation and deposit the fee into the pest [F]inspection[F], quarantine, and eradication fund under section 150A-4.5.”

SECTION 5. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator’s service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any

amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property^{[:] where:}
~~[(A) To a licensed seller engaged in a service business or calling; provided that:~~
 - ~~(i) The property is not consumed or incidental to the performance of the services;~~
 - ~~(ii) There is a resale of the article at the retail rate of four per cent; and~~
 - ~~(iii) The resale of the article is separately charged or billed by the person rendering the services;~~~~(B) Where:~~
 - ~~(i) (A) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;~~
 - ~~[(ii) (B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and~~
 - ~~[(iii) (C) The cost of the tangible personal property does not constitute overhead to the licensed seller;~~~~the sale shall be subject to section 237-13.3; [or~~
 - ~~(C) Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraphs (A) and (C) shall be repealed on January 1, 2006];¹~~
- (9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;
- (10) Sales of services to a licensed seller engaging in a business or calling whenever:
 - (A) Either:
 - (i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

- (ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;
 - (iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or
 - (iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
 - (B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;
 - (C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;
 - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;
 - (E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and
 - (F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.
- Sales subject to this paragraph shall be subject to section 237-13.3;
- (11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;
 - (12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;
 - (13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:
 - (A) Either:
 - (i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
 - (ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or

- (iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;
- (B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;
- (C) The cost of the amusement does not constitute overhead to the licensed seller;
- (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;
- (E) The gross income of the licensed seller is not subject to a deduction under this chapter; and
- (F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and

- (14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials."

SECTION 6. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"§237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.
 - (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
 - (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
 - (C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State,

whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;
 - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;
 - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and
 - (iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if

sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
- (F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
 - (i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the addi-

- tional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business.
 - (B) In computing the tax levied under this paragraph, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A), on:
 - (i) Another taxpayer who is a contractor, as defined in section 237-6;
 - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
 - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.
 - (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
 - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and
 - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.
 - (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the

improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

- (4) Tax upon theaters, amusements, radio broadcasting stations, etc.
 - (A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.
 - (B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
 - (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
 - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.
- (6) Tax on service business.
 - (A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business.

Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

- (B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
 - (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
 - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.
- ~~[(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.]~~
- ~~(D)~~ (C) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.
- ~~[(E)]~~ (D) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the in-

come from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under ~~[section 237-13(6)(D).]~~ subparagraph (C). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

- (7) Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.
- (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 7. Section 237-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding section 237-14, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable un-

der section [237-13(6)(D);] 237-13(6)(C), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 239; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of this chapter [237] from the parts subject to taxation under any other provision of this chapter [237].”

SECTION 8. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “gross income” to read as follows:

““Gross income” means the gross income from public service company business as follows:

- (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
- (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
 - (A) Originating and terminating within this State;
 - (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
 - (C) By means of plant or equipment located in the State, between points in the State;
- (3) Gross income from the transportation of freight by motor carriers (other than as stated in paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in paragraph (2) or (5));
- (4) Gross income from the operation of a private sewer company or private sewer facility; or
- (5) With respect to a home service provider of mobile telecommunications services, “gross income” includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. “Gross income” shall not include:
 - (A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;
 - (B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer; and
 - (C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section [237-13(6)(E);]

237-13(6)(D), as determined by the home service provider's books and records kept in the ordinary course of business.

For the purposes of this paragraph, "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

The words "gross income" and "gross income from public service company business" shall not be construed to include dividends (as defined by section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. "Affiliated public service company group" means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. "Member of an affiliated public service company group" means a corporation (including the parent corporation) that is included within an affiliated public service company group.

Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carrier's respective portion of the proceeds.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person's respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as the accounts reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph, "tourism related services" means motor carriers of passengers regulated by the public utilities commission."

SECTION 9. Section 239-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding section 239-4, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable under section ~~[237-13(6)(D)]~~, 237-13(6)(C), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 237; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of this chapter ~~[239]~~ from the parts subject to taxation under any other provision of this chapter ~~[239]~~."

SECTION 10. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding subsection (a), the rate of tax upon the portion of the gross income of:

- (1) A public utility that consists of the receipts from the sale of its products or services to another public utility that resells such products or services shall be one-half of one per cent; or
- (2) A public utility engaged in the business of selling telecommunication services to a person defined in section ~~[237-13(6)(D)]~~ 237-13(6)(C) who resells such products or services, shall be as follows:
 - (A) In calendar year 2000, 5.5 per cent;
 - (B) In calendar year 2001, 5.0 per cent;
 - (C) In calendar year 2002, 4.5 per cent;
 - (D) In calendar year 2003, 4.0 per cent;
 - (E) In calendar year 2004, 3.5 per cent;
 - (F) In calendar year 2005, 3.0 per cent;
 - (G) In calendar year 2006, 2.5 per cent; and
 - (H) In calendar year 2007, and thereafter, 0.5 per cent;

provided that the resale of the products, services, or telecommunication services is subject to taxation under this section or subject to taxation at the highest rate under section 237-13(6); and provided further that the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income described herein bears to its total public utility gross income. Whenever the public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility or a person subject to section ~~[237-13(6)(D)]~~ 237-13(6)(C) shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income. The department shall have the authority to implement the tax rate changes in paragraph (2) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes."

SECTION 11. Section 286-56, Hawaii Revised Statutes, is amended to read as follows:

"§286-56 Official cars. All motor vehicles owned by any foreign government or by a consul or other official representative thereof, or by the United States government, or by the State or any political subdivision thereof, shall be registered as herein required by the person having the custody thereof, and the custodian shall display official registration by distinguishing marks thereon which shall be furnished by the director of finance, free of charge, and where motor vehicles are owned by the State or any of its municipal subdivisions, the motor vehicle shall bear the inscription provided for in sections 105-6 to ~~[105-9.]~~ 105-8."

SECTION 12. Section 302B-3, Hawaii Revised Statutes, is amended to read as follows:

"§302B-3 Charter school review panel; establishment; powers and duties. (a) There is established the charter school review panel, which shall be placed within the department for administrative purposes only. The panel shall be accountable to the charter schools and the board. Notwithstanding section 302B-9, the panel shall be subject to chapter 92.

(b) The panel shall consist of twelve members, and shall include:

- (1) Two licensed teachers regularly engaged in teaching; provided that one teacher is employed at a start-up charter school, and one teacher is employed at a conversion charter school;

- (2) Two educational officers; provided that one educational officer is employed at a start-up charter school, and one educational officer is employed at a conversion charter school;
- (3) One member or former member of a charter school local school board;
- (4) The chair of the board of education or the chair's designee;
- (5) A representative of Hawaiian culture-focused charter schools;
- (6) Two representatives of the University of Hawaii who are not affiliated with charter schools;
- (7) One member with a background in business or accounting who is not affiliated with charter schools;
- (8) One member with a background in the building trades or real estate who is not affiliated with charter schools; and
- (9) A representative from the Hawaii Association of Independent Schools;

provided that the initial appointments for representatives in paragraphs (7) to [(9)] shall be made by September 1, 2007. From June 1, 2007, until such time that the panel has twelve members, five members of the panel shall constitute a quorum to conduct business and a concurrence of at least five members shall be necessary to make any action of the panel valid; provided that, upon filling the twelve seats as required under this subsection, a majority of the panel shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the panel is entitled shall be necessary to make any action of the panel valid.

(c) The board shall appoint the remaining members of the panel other than the chair of the board.

(d) Appointed panel members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms of the appointed members that commence after June 30, 2006, shall be staggered as follows:

- (1) Four members to serve three-year terms;
- (2) Four members to serve two-year terms; and
- (3) Three members to serve a one-year term.

(e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, non-participation, or upon request of a majority of panel members.

(f) Panel members shall receive no compensation. When panel duties require that a panel member take leave of the panel member's duties as a state employee, the appropriate state department shall allow the panel member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that panel member's duties. Panel members shall be reimbursed for necessary travel expenses incurred in the conduct of official panel business.

(g) The panel shall establish operating procedures that shall include conflict of interest provisions for any member whose school of employment or local school board membership is before the panel.

(h) The chair of the panel shall be designated by the members of the panel for each school year beginning July 1 and whenever there is a vacancy. If the panel does not designate its chair for the next school year by July 1, the board shall designate the panel chair. When the panel chair is vacant, the board shall designate an interim chair to serve until the panel designates its chair.

(i) The powers and duties of the panel shall be to:

- (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;
- (2) Review, approve, or deny charter applications for new charter schools in accordance with [[section]] 302B-5 for the issuance of new char-

ters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;

- (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
 - (4) Adopt reporting requirements for charter schools;
 - (5) Review annual self-evaluation reports from charter schools and take appropriate action;
 - (6) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include probation or revocation;
 - (7) Periodically adopt improvements in the panel's monitoring and oversight of charter schools; and
 - (8) Periodically adopt improvements in the office's support of charter schools and management of the charter school system.
- (j) In the case that the panel decides not to issue a new charter, or to approve significant amendments to detailed implementation plans, the board may adopt rules for an appeals process pursuant to section 302B-3.5.
- (k) The office shall provide for the staff support and expenses of the panel.
- ~~[(l) The panel shall be exempt from chapter 92.]~~

SECTION 13. Section 304A-104.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The candidate advisory council shall consist of seven members to be appointed without regard to section 26-34 as follows:

- (1) One member shall be appointed by the president of the senate;
- (2) One member shall be appointed by the speaker of the house of representatives;
- (3) One member shall be appointed by the governor;
- (4) One member shall be appointed by one of the co-chairs of the All Campus Council of Faculty Senate Chairs of the University of Hawaii;
- (5) One member shall be appointed by the chairperson of the Executive Council of the University of Hawaii Student Caucus;
- (6) One member shall be appointed by the chairperson of the Association of Emeritus Regents; and
- (7) One member shall be appointed by the president of the University of Hawaii Alumni Association;

provided that members appointed under paragraphs (4) to (7) shall be selected from the general public and may include members of the constituencies represented; provided further that each appointee satisfies the requirements for appointment provided in this subsection, except that individuals who are or have served as members of the executive councils or boards for the organizations under paragraphs (4) and (5) within the last five years immediately preceding the establishment of or a vacancy on the candidate advisory council for which the persons may be qualified to fill shall not be eligible to serve as members of the candidate advisory council.

The candidate advisory council shall be selected in a wholly nonpartisan manner. If any member has not been appointed within one hundred eighty days of [the] May 1, 2007, the sitting members on the candidate advisory council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant

seat as provided in this subsection. Appointees to the candidate advisory council shall have a general understanding of the purposes of higher education, the mission of the University of Hawaii system, and the responsibilities of the board of regents. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.”

SECTION 14. Section 342G-81, Hawaii Revised Statutes, is amended by amending the definition of “deposit glass beverage container” to read as follows:

““Deposit glass beverage container” means:

- (1) The individual, separate, sealed, glass container used for containing, at the time of import, ~~[sixty-four]~~ sixty-eight fluid ounces or less of a beverage; or
- (2) The empty, individual, separate glass container that will be filled with ~~[sixty-four]~~ sixty-eight fluid ounces or less of a beverage and sealed in this State, so that these glass beverage containers will be subject to [F] part VIII[?].”

SECTION 15. Section 346-51, Hawaii Revised Statutes, is amended to read as follows:

“§346-51 Public assistance and child welfare services administered by department. The department of human services shall administer public assistance and child welfare services in the several counties except for payments administered under the Federal Supplemental Security Income Program or its successor agency. No person shall be denied the right to petition the department for additional assistance as established under section ~~[346-53(e)]~~ 346-53(f).”

SECTION 16. Section 421-26, Hawaii Revised Statutes, is repealed.

SECTION 17. Act 57, Session Laws of Hawaii 2004, as amended by Act 22, Session Laws of Hawaii 2005, section 49, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval; provided that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when section 28-8.3, Hawaii Revised Statutes, is reenacted on June 30, ~~[2007]~~ 2010, pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004.”

SECTION 18. Act 245, Session Laws of Hawaii 2005, as amended by Act 294, Session Laws of Hawaii 2007, section 2, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary employees’ beneficiary association trust pilot program in March, 2006, and shall be repealed on July 1, 2009; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act[-]; and provided further that the amendments made to section 89-6, Hawaii Revised Statutes, by Act 202, Session Laws of Hawaii 2005, shall not be repealed when that section is reenacted on July 1, 2009.”

SECTION 19. Act 85, Session Laws of Hawaii 2007, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. [~~Section 291-D;~~] Chapter 291D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:”

SECTION 20. Act 197, Session Laws of Hawaii 2007, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2007, and shall be repealed on July 1, 2009; provided that sections 445-231, 445-233, and 445-235, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 21. Act 262, Session Laws of Hawaii 2007, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by designating [~~section 179-1 to 179-9~~] sections 179D-1 to 179D-9 as part I, entitled:”

SECTION 22. Act 264, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2007, and shall be repealed on June 30, 2011[-]; provided that section 328L-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 23. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 2008, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 24. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 25. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2008; and provided further that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2010, pursuant to section 1 of Act 306, Session Laws of Hawaii 2006.

(Approved April 15, 2008.)

Notes

1. Semicolon should be bracketed and stricken.
2. Edited pursuant to HRS §23G-16.5.