

JAN 30 2026

A BILL FOR AN ACT

RELATING TO THE PROCEDURE FOR PAYMENT UNDER PROTEST LAWSUITS.

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

1 SECTION 1. The legislature finds that in Grace Business
2 Development Corporation v. Kamikawa, 92 Haw. 608, 994 P.2d 540
3 (2000), the supreme court of Hawaii held that if a taxpayer pays
4 money to the State under protest but sues for a refund before
5 the applicable agency has formally taken a position on whether
6 the money is due, there is no actual dispute for purposes of
7 section 40-35, Hawaii Revised Statutes, and the appeal must be
8 dismissed.

9 The legislature recognizes that, as result of this
10 interpretation of section 40-35, Hawaii Revised Statutes, after
11 it is too late for the person to refile the claim, situations
12 may arise in which a person's lawsuit is dismissed, but the
13 agency subsequently decides, that the person does indeed owe tax
14 to the State. This potentially allows the State to keep the
15 disputed money without allowing the person an opportunity to
16 obtain a judicial ruling on the merits of the person's claim.



1 The legislature believes that action is necessary to
2 prevent the possibility of these injustices from occurring, and
3 to ensure that courts can evaluate the merits of payments made
4 to the State under protest, even if a claim for a refund is
5 filed prior to the agency's final determination.

6 Accordingly, the purpose of this Act is to clarify and add
7 procedural safeguards to section 40-35, Hawaii Revised Statutes.

8 SECTION 2. Section 40-35, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§40-35 Payment to State under protest.** (a) Any disputed
11 portion of moneys representing a claim in favor of the State may
12 be paid under protest to a public accountant of the department,
13 board, bureau, commission, or other agency of the State with
14 which the claimant has the dispute. The protest shall be in
15 writing, signed by the person making the payment, or by the
16 person's agent, and shall set forth the grounds of protest. If
17 any payment, or any portion of any payment, is made under
18 protest, the public accountant to whom the payment is made shall
19 hold that portion of the moneys paid under protest in a trust
20 account in the state treasury for a period of thirty days from
21 the date of payment.



1 (b) Action to recover moneys paid under protest or
2 proceedings to adjust the claim may be commenced by the payer or
3 claimant against the public accountant to whom the payment was
4 made, in a court of competent jurisdiction, ~~[within]~~ no later
5 than thirty days from the date of payment. If no suit or
6 proceeding is brought within the ~~[thirty-day period,]~~ that time,
7 the money paid under protest shall be deposited into the
8 appropriate account in the treasury of the State by the
9 accountant and the amount deposited shall thereupon become a
10 government realization. Any action to recover payment of taxes
11 under protest shall be commenced in the tax appeal court.

12 (c) If action to recover the money paid under protest or a
13 proceeding to adjust the claim is timely commenced [~~within the~~
14 ~~thirty-day period~~], the amount paid under protest shall, pending
15 final decision of the cause, be deposited by the public
16 accountant into the state treasury, in a fund to be known as the
17 "litigated claims fund", together with subsequent payments or
18 portions thereof, made to the accountant under the same protest.
19 If judgment is rendered in favor of the claimant, the claimant
20 shall be paid the amount of the judgment out of the litigated
21 claims fund by warrants signed by the comptroller upon vouchers



1 approved by the head of the department, board, bureau,
2 commission, or other agency with which the claimant had the
3 dispute. If the amount of money in the litigated claims fund is
4 insufficient to pay the judgment the head of the department,
5 board, bureau, commission, or other agency with which the
6 claimant had the dispute shall include in their respective
7 budget requests to the department of budget and finance an
8 amount necessary to pay the judgment, plus interest, as provided
9 herein. Interest ~~at the rate of two per cent a year~~ earned on
10 the payment by the litigated claims fund from the date of each
11 payment under protest shall also be paid out of the amount
12 appropriated for the judgment payable to the claimant; provided
13 that if the claim is for the recovery of taxes paid under
14 protest by the claimant, the rate of interest and the
15 overpayment of taxes shall be refunded in the manner provided in
16 section 231-23(c) and (d). The amount of the judgment to be
17 paid to the claimant shall be ascertained by the head of the
18 department, board, bureau, commission, or other agency with
19 which the claimant had the dispute from a certified copy of the
20 judgment, which shall be the authority for making payment to the
21 claimant. If judgment is rendered against the claimant, the



1 amount of money paid by the claimant under protest which is in
2 the litigated claims fund shall be deposited into the
3 appropriate account in the treasury of the State and the amount
4 shall become a government realization. If the court determines
5 that the claimant's suit has been brought prematurely because
6 the agency had not rendered a final decision when the suit was
7 filed, the claimant's payment shall be retained in the litigated
8 claims fund; provided that:

9 (1) If the agency subsequently renders a final decision,
10 the claimant may, within thirty days after notice of
11 the decision, refile the action for a refund of the
12 payment that is in the litigated claims fund,
13 whereupon the court shall have jurisdiction over the
14 action;

15 (2) If no action is filed within thirty days after notice
16 of the decision, the payment shall become a government
17 realization; or

18 (3) If the agency has not rendered a final decision within
19 one hundred eighty days after the date of the
20 claimant's payment, the agency shall refund the
21 payment to the claimant with interest the same as if



1 judgment had been rendered for the claimant, and shall
2 certify to the court that it has done so."

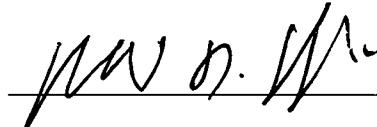
3 SECTION 3. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.

9

INTRODUCED BY:



By Request



S.B. NO. 3301

Report Title:

Lawsuits; Disputes; Courts; Appeals; Payment to State; Protest

Description:

Clarifies and adds procedural safeguards to section 40-35, HRS, which relates to payments to the State under protest.

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