

A Bill for an Act Relating to Audit and Accounting.

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

SECTION 1. Section 40-35, Hawaii Revised Statutes, is amended to read:

“§40-35 Payment to State under protest. (a) Any disputed portion of moneys representing a claim in favor of the State may be paid under protest to a public accountant of the department, board, bureau, commission, or other agency of the State with which the claimant has the dispute. The protest shall be in writing, signed by the person making the payment, or by his agent, and shall set forth the grounds of protest. If any payment, or any portion of any payment, is made under protest, the public accountant to whom the payment is made shall hold that portion of the moneys paid under protest in a trust account in the state treasury for a period of thirty days from the date of payment.

(b) Action to recover moneys paid under protest or proceedings to adjust the claim may be commenced by the payer or claimant against the public accountant to whom the payment was made, in a court of competent jurisdiction, within thirty days from the date of payment. If no suit or proceeding is brought within the thirty-day period, the money paid under protest shall be deposited into the appropriate account in the treasury of the State by the accountant and the amount deposited shall thereupon become a government realization. Any action to recover payment of taxes under protest shall be commenced in the tax appeal court.

(c) If action to recover the money paid under protest or a proceeding to adjust the claim is commenced within the thirty-day period, the amount paid under protest shall, pending final decision of the cause, be deposited by the public accountant into the state treasury, in a fund to be known as the “litigated claims fund”, together with subsequent payments or portions thereof, made to the accountant under the same protest. If judgment is rendered in favor of the claimant, the claimant shall be paid the amount of the judgment out of the litigated claims fund, by warrants signed by the comptroller upon vouchers approved by the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute. If the amount of money in the litigated claims fund is insufficient to pay the judgment, the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute shall include in their respective budget requests to the department of budget and finance an amount necessary to pay the judgment, plus interest, as provided herein. Interest at the rate of two per cent a year from the date of

each payment under protest shall also be paid out of the amount appropriated for the judgment payable to the claimant; provided that if the claim is for the recovery of taxes paid under protest by the claimant, the rate of interest and the overpayment of taxes shall be refunded in the manner provided in section 231-23(d) and (e). The amount of the judgment to be paid to the claimant shall be ascertained by the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute from a certified copy of the judgment, which shall be the authority for making payment to the claimant. If judgment is rendered against the claimant, the amount of money paid by the claimant under protest which is in the litigated claims fund shall be deposited into the appropriate account in the treasury of the State and the amount shall become a government realization.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.