

ACT 124

H.B. NO. 118

A Bill for an Act Relating to Statutory Revision: Amending or Repealing Various Provision of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors, Clarifying Language, Correcting References, and Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 11-17, Hawaii Revised Statutes, is amended to read as follows:

“§11-17 Removal of names from register [upon failure to vote;] ,when; reregistration. (a) The clerk [shall], not later than 4:30 p.m. on the sixtieth day after every general election, shall remove the name of any registered voter who did not vote in the election if the person also did not vote in the preceding primary election with the exception of (1) those who voted in the special election for election of members of the board of trustees of the office of Hawaiian affairs held in conjunction with the general election; or (2) those who submitted written requests for absentee ballots as provided in section 15-4. For this purpose “[to] vote” means the depositing of the ballot in the ballot box whether the ballot is blank or later rejected for any reason. In the case of voting machines “[to] vote” means that the voter has activated the proper mechanism and fed the vote into the machine.

The clerk shall also remove the name of any person registered to vote in the special election for election of members of the board of trustees of the office of Hawaiian affairs, who did not vote in the special election, did not vote in the general election held in conjunction with the special election, and did not vote in the preceding primary election.

(b) Any person whose name has been removed from the register [may], at any time prior to the closing of the register, as provided in section 11-24, may have that person's name restored in the register by presenting oneself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall require satisfactory evidence to establish the identity of the applicant. The names of all those persons shall be reentered in the register."

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, [cemetery and mortuary board,] board of [accountants,] public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, factory built housing advisory board, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of practicing psychologists, board of detectives and guards, real estate commission, board of veterinary examiners, and speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes."

SECTION 3. Section 89-3.5, Hawaii Revised Statutes, is amended to read as follows:

"[§89-3.5] Religious exemption from support of employee organization. Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support any employee organization as a condition of employment; except that an employee may be required in a contract between an employees' employer and employee organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) [of title 26] of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If an employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance-arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using the procedure."

SECTION 4. Section 124A-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person charged with desertion or absence [with] without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.”

SECTION 5. Section 176D-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§176D-4] General powers and duties of the board of land and natural resources.** The board of land and natural resources shall establish and administer the instream use protection program provided by this chapter for windward oahu districts. In carrying out [the provisions of] this chapter, the board [will] shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the board shall:

- (1) Establish instream flow standards for the windward oahu districts whenever necessary to protect the public interest in waters of the State.
 - (A) The board [may], on its own motion, may determine that the public interest in the waters of the State requires the establishment of an instream flow standard for streams in windward Oahu districts.
 - (B) In acting upon the establishment of instream flow standards, the board shall set forth in writing its conclusion that the public interest does or does not require, as is appropriate, an instream flow standard to be set for the stream, the reasons therefor, and the findings supporting the reasons.
 - (C) Each instream flow standard shall describe the flows necessary to protect the public interest in the particular stream. Flows shall be expressed in terms of variable flows of water necessary to protect adequately fishery, wildlife, recreational, aesthetic, scenic, or other beneficial instream uses in the stream in light of existing and potential water developments.
 - (D) Establishment or modification of an instream flow standard shall be initiated by the board by providing notice of its intention to set an instream flow standard in a newspaper of general circulation published in the vicinity of the stream in question, and to persons who have previously requested such notice.
 - (E) After giving notice of its intention to set an instream flow standard, the board or other agencies in participation with the board shall investigate the stream. During the process of this investigation, the board shall consult with and consider the recommendations of the department of health, the United States Fish and Wildlife Service, and other agencies having interest in or information on the stream, and may consult with and consider the recommendations of persons having interest in or information on the stream. In formulating the proposed standard the board shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water from the stream for non-instream purposes, including the economic

impact of restriction of such uses. In order to avoid or minimize the impact on existing uses of preserving, enhancing, or restoring instream values, the board shall consider physical solutions, including water exchanges, modifications of project operations, changes in points of diversion, changes in time and rate of diversion, and uses of water from alternative sources or any other solution.

- (F) Before adoption of an instream flow standard or modification of an established instream flow standard, the board shall give notice and hold a hearing on its proposed standard or modification.
- (2) Establish interim instream flow standards.
 - (A) Any person may petition the board to adopt an interim instream flow standard for streams of the windward Oahu districts in order to protect the public interest pending the establishment of a permanent instream flow standard.
 - (B) Any interim instream flow standard adopted under this section shall terminate upon the establishment of a permanent instream flow standard for the stream on which the interim standard was adopted.
 - (C) A petition to adopt an interim instream flow standard under this section shall set forth data and information concerning the need to protect and conserve beneficial instream uses of water, and any other relevant and reasonable information required by the board.
 - (D) In considering a petition to adopt an interim instream flow standard, the board shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes.
 - (E) The board shall grant or reject a petition to adopt an interim instream flow standard under this section within one hundred [eight] eighty days of the date the petition is filed. The one hundred eighty days may be extended a maximum of one hundred eighty days at the request of the petitioner and subject to the approval of the board.
- (3) Protect stream channels from alteration whenever practicable in windward Oahu to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.
 - (A) The board shall require persons to obtain a permit from the board prior to undertaking a stream channel alteration in windward Oahu.
 - (B) The board shall establish guidelines for processing and considering applications for stream channel alterations.
 - (C) The board shall require filing fees by users to accompany each application for stream channel alteration.
- (4) Establish an instream flow program for windward Oahu to protect, enhance, reestablish, where practicable, beneficial instream uses of water. The board shall conduct investigations, and collect instream

flow data including fishing, wildlife, aesthetic, recreational, water quality, and ecological information and basic streamflow characteristics necessary for determining instream flow requirements.”

SECTION 6. Section 176D-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§176D-7]]~~ **[Administrative and judicial] Judicial review.** Any person who is aggrieved or adversely affected by an order or action by the board shall be entitled to judicial review in accordance with chapter 91.”

SECTION 7. Section 205A-1, Hawaii Revised Statutes, is amended by amending the definition of “coastal zone management area” to read:

“(2) “Coastal zone management area” means the special management area after compliance pursuant to section 205A-23 [of this chapter], and the waters from the shoreline to the seaward limit of the State’s jurisdiction and any other area which the [head] lead agency may designate for the purpose of administering the coastal zone management program;”

SECTION 8. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of “valuation” to read:

“(9) “Valuation” shall be determined by the authority and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined in paragraph ~~[[§](3)(A)]~~ above, the fair market value of the development.”

SECTION 9. Section 377-4.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§377-4.5]]~~ **Religious exemption from labor organization membership.** Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that an employee may be required in a contract between an employees’ employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) [of title 26] of the Internal Revenue Code, chosen by an employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If any employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee’s behalf, the labor organization is authorized to charge the employee for the reasonable cost of using the procedure.”

SECTION 10. Section 383-29.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For purposes of this section, the term “suitable employment” means with respect to an individual, work of a substantially equal or higher skill level than

the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than ~~[[eighty]]~~ per cent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974."

SECTION 11. Section 417-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any corporation organized or existing under the laws of this State or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of the other state or jurisdiction permit a merger, owning at least ninety per cent of the outstanding shares of each class of the stock of each of two or more other corporations organized or existing under the laws of this State, or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of the other state or jurisdiction permit such a merger, may file in the office of the director of [regulatory agencies] commerce and consumer affairs a certificate of such ownership and of merger of the subsidiary corporations in its name and under its corporate seal and in the name of the surviving subsidiary corporation and under its corporate seal. The certificate shall be signed by any two authorized officers, who are not the same person, of each of the parent corporation and the surviving subsidiary corporation and shall set forth a copy of the resolutions of each of the board of directors of the parent corporation and the board of directors of the surviving subsidiary corporation to merge one or more of the subsidiary corporations into the other and surviving subsidiary corporation and to cause the surviving subsidiary corporation to assume all of the other subsidiary corporation's or corporations' obligations and the date of the adoption thereof; provided that if the parent corporation does not own all the outstanding stock of the subsidiary corporation parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including, if such is the case, the securities, cash, or other consideration into which shares of stock of the subsidiary corporation or corporations not owned by the parent corporation are to be converted."

SECTION 12. Section 560:5-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In a proceeding for the appointment or removal of a guardian of the person of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of the time and place of hearing shall be given by the petitioner to each of the following:

- (1) The ward or the person concerning whom the proceeding has been commenced and the [ward] ward's or person's spouse, legal parents, and adult children;
- (2) Any person who is serving as the guardian of the [ward] ward's or person's estate or who has care and custody of the ward or person; and
- (3) In case no other person is notified under paragraph (1), at least one of the [ward] ward's or person's closest adult relatives, if any can be found."

SECTION 13. Section 581-1, Hawaii Revised Statutes, is amended to read as follows:

"§581-1 Office of children and youth; appointments. [[]](a) There is established within the office of the governor, an office of children and youth.[[]]

(b) The director of the office shall be known as the director of the office of children and youth, hereinafter referred to as director. The director shall have training [and/]or experience, or both, in the field of social work, education, public health, or other related fields; direct experience in programs and services related to children and youth; and experience in a supervisory, consultative, or administrative position. The director shall be appointed by the governor without regard to chapters 76 and 77. [Effective July 1, 1981, the salary of the director shall be \$41,250.] Effective July 1, 1982, the salary of the director shall be \$44,550. The director shall be included in any benefit program generally applicable to the officers and employees of the State."

SECTION 14. Section 704-402, Hawaii Revised Statutes, is amended by amending the title to read:

"§704-402 Physical or mental disease, disorder, or defect excluding responsibility is [a] an affirmative defense; form or verdict and judgment when finding of irresponsibility is made."

SECTION 15. Act 191, Session Laws of Hawaii 1977, is amended by amending section 2 to read as follows:

"SECTION 2. The Hawaii Revised Statutes[, as amended, are further amended] is amended by amending the words ["Fireman and Policeman"] "fireman" and "policeman" to read ["Firefighters and Police Officers"] "firefighters" and "police officers" wherever the same appear therein."

SECTION 16. Act 185, Session Laws of Hawaii 1981, is amended by amending section 1 to read as follows:

"SECTION 1. The [purpose of this Act is to amend the] Hawaii Revised Statutes is amended by deleting the terms "leprosy" and "leprosy patient", and substituting in lieu thereof the [term] terms "Hansen's disease" and "Hansen's disease sufferer".

SECTION 17. Act 204, Session Laws of Hawaii 1982, is amended by amending section 8 to read as follows:

"SECTION 8. The Hawaii Revised Statutes is amended by amending the title "department of regulatory agencies" wherever it appears therein to "department of commerce and consumer affairs"[.] and by amending the title "director of regulatory agencies" wherever it appears therein to "director of commerce and consumer affairs" as the context requires."

SECTION 18. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1983, whether enacted before or after the effective date of this Act, unless such other acts specifically provide otherwise.

SECTION 19. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 20. This Act shall take effect upon its approval.

(Approved May 26, 1983.)