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H.B. NO. 1221

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

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

SECTION 1. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall acquire the ownership of a firearm, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the chief of police of the county of [[the person’s place of business or, if there is no place of business, the person’s residence or, if there is neither place of business nor residence, the person’s place of sojourn,[]] a permit to acquire the ownership of a firearm as prescribed in this section; provided that when title to any firearm is acquired by inheritance or bequest, the foregoing permit shall be obtained before taking possession of a firearm.”

SECTION 2. Section 155-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a special fund to be known as the agriculture loan revolving fund, from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the agriculture loan revolving fund to [the agricultural products revolving fund or] the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to [chapters 153 and] chapter 219, [respectively,] and may transfer moneys from [those] that revolving [funds] fund to the agriculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;

- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made [among] between the agriculture loan revolving fund[, the agricultural products revolving fund,] and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire on June 16, 1995.’’

SECTION 3. Section 171-58.5, Hawaii Revised Statutes, is amended to read as follows:

“**§171-58.5 Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The taking from seaward of the shoreline of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline, or construction or maintenance of state approved lagoons, harbors, launching ramps or navigational channels with a permit authorized under [section 183-41;] chapter 183C;
- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity.’’

SECTION 4. Section 183-42, Hawaii Revised Statutes, is amended to read as follows:

“**§183-42 Strip mining; prior approval of license or permit.** No original permit or license for strip mining on land within the forest reserve boundaries shall be issued by any officer or agency of the State without the prior approval and concurrence of the department. In determining whether to grant or withhold such approval, the department shall be guided by the standards set forth in [section 183-41.] chapter 183C.’’

SECTION 5. Section 183-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of land and natural resources shall adopt rules concerning the application and issuance of permits for the repair, strengthening, reinforcement, and maintenance of fishponds pursuant to [section 183-41.] chapter 183C. The rules shall specify the extent:

- (1) Of repairs, strengthening, reinforcement, and maintenance for which no permit is necessary, but for which the owner shall be required to notify the board in writing of the owner’s intent to perform them which notification shall be submitted not less than ten days before performing the repairs, strengthening, reinforcement, or maintenance, and for

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- which receipt and lack of action by the board within the ten-day notice period shall constitute approval;
- (2) Of repairs, strengthening, reinforcement, and maintenance for which a permit shall be required which shall be requested in writing by the owner.”

SECTION 6. Section 183-45, Hawaii Revised Statutes, is amended to read as follows:

“**§183-45 Accreted land.** No structure, retaining wall, dredging, grading, or other use which interferes or may interfere with the future natural course of the beach, including further accretion or erosion, shall be permitted on accreted land as judicially decreed under section 501-33 or 669-1(e). This [provision] section shall not in any way be construed to affect state or county property.

Any structure or action in violation of this [provision] section shall be immediately removed or stopped and the property owner shall be fined in accordance with section [183-41(e).] 183C-7. Any action taken to impose or collect the penalty provided for in this [subsection] section shall be considered a civil action.”

SECTION 7. Section 188-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The intentional taking, breaking, or damaging with crowbar, chisel, or any other implement of any rock or coral to which marine life is visibly attached or affixed, or live stony coral of the taxonomic order, Madreporaria, including the Fungidae or Pocilloporidae families, is prohibited except with a permit authorized under section 187A-6 or [section 183-41] chapter 183C or by the department under rules adopted pursuant to chapter 91 necessary for collecting marine life visibly attached to rocks placed in the water for a commercial purpose.”

SECTION 8. Section 190D-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall process the conservation district use application pursuant to [section 183-41] chapter 183C and rules adopted under this chapter. Within sixty days after the submission of a conservation district use application with a request for a lease for marine activities in state marine waters or submerged lands and the receipt of the related environmental assessment or environmental impact statement, the department shall issue a public notice that the application has been received. The public notice shall describe the marine waters or submerged lands, or both, for which application has been made, the nature of the exclusive use sought, and the purpose for which the application has been made. The notice shall be published on three separate days in a newspaper of general distribution in the State and in the county nearest the marine waters or submerged lands for which application has been made. The public notice shall invite public comment.”

SECTION 9. Section 195F-2, Hawaii Revised Statutes, is amended by amending the definition of “potential natural area reserve” to read as follows:

““Potential natural area reserve” means land or water areas within the protective subzone of the conservation district established pursuant to [section 183-41.] chapter 183C, intact native natural communities identified by the heritage program under chapter 195, and other lands or waters meeting criteria established by the natural area reserves system commission.”

SECTION 10. Section 205-5.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board’s assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:

- (1) The area’s potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Social and environmental impacts;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;
- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries with the uses permitted under [sections 183-41] chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the board shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and [the provisions of] chapter 226.”

SECTION 11. Section 205-15, Hawaii Revised Statutes, is amended to read as follows:

“**§205-15 Conflict.** Except as specifically provided by this chapter and the [regulations] rules adopted thereto, neither the authority for the administration of [the provisions of section 183-41] chapter 183C nor the authority vested in the counties under [the provisions of] section 46-4 shall be affected.”

SECTION 12. Section 205A-41, Hawaii Revised Statutes, is amended by amending the definition of “board approval” to read as follows:

““Board approval” means approval by the board of land and natural resources pursuant to [section 183-41.] chapter 183C.”

SECTION 13. Section 205A-43.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under [section 183-41] chapter 183C shall not be diminished by [a manmade] an artificial structure in violation of this part.”

SECTION 14. Section 219-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a special fund to be known as the aquaculture loan revolving fund from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the aquaculture loan revolving fund to [the agricultural products revolving fund or] the agriculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to [chapters 153 and] chapter 155, [respectively,] and may

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transfer moneys from [those] that revolving [funds] fund to the aquaculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made [among] between the aquaculture loan revolving fund[, the agricultural products revolving fund,] and the agriculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire on June 16, 1995.”

SECTION 15. Section 220-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of land and natural resources shall adopt rules for review of applications, and issuance of permits for aquaculture farms, pursuant to [section 183-41.] chapter 183C. The rules shall specify permitted uses; provided that all uses endorsed by the board of agriculture pursuant to chapter 219 shall be permitted uses; uses for which an environmental impact statement shall be necessary, pursuant to chapter 343, as well as those actions of repair and maintenance which shall not be subject to the permit and environmental impact statement provisions, including but not limited to emergency repairs.”

SECTION 16. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“**§237-24.7 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

“Owner” means the fee owner or lessee under a recorded lease of a hotel;

- (2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator’s operation;

- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

“Operator” means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

“Owner” means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means an employee directly engaged in the day to day operations of the orchard properties and employed by the operator.

“Operator” means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

“Orchard property” means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

“Owner” means a fee owner or lessee under a recorded lease of orchard property; and

- (5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities.
- (6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2.”

SECTION 17. Section 323-74, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There are established three collections revolving funds, one fund for Maui Memorial Hospital, one fund for Hilo [Hospital,] Medical Center, and one fund for Kona Community Hospital, to expedite the collection of patient bills and the refunding of credit balances. Payments of bills of less than \$1,000, from patients and health insurance providers, shall be deposited into the revolving fund. Expenditures

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from the revolving fund shall be used for the purpose of making refunds of credit balances of less than \$1,000.”

SECTION 18. Section 421H-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application or enforcement of this chapter or the corporation’s charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the real estate commission and the provisions of chapter 658; provided that the [Horizontal] Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658, chapter 658 shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties; provided further that the proceedings shall be concluded ninety days after the commencement of the arbitration unless extended by mutual consent of the parties involved and their counsel. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.”

SECTION 19. Section 514A-121, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At the request of any party, any dispute concerning or involving one or more apartment owners and an association of apartment owners, its board of directors, managing agent, or one or more other apartment owners relating to the interpretation, application or enforcement of chapter 514A or the association’s declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and the provisions of chapter 658; provided that the [Horizontal] Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658, chapter 658 shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.”

SECTION 20. Act 238, Session Laws of Hawaii 1993, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. Section 31 of Act 2, First Special Session Laws of Hawaii 1986, as amended by section 2 of Act 300, Session Laws of Hawaii 1989, as amended by section 1 of Act 62, Session Laws of Hawaii 1991, is amended to read as follows:”

SECTION 21. Act 281, Session Laws of Hawaii 1994, is amended by amending section 12 to read as follows:

“SECTION 12. This Act shall take effect upon its approval; provided that:

- (1) Sections 1, 2, and 3 shall be repealed two years after the approval of this Act; [and]
- (2) On the repeal of [Sections] sections 1, 2, and 3 of this Act, [Sections] sections 37-32 and 37-41, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act[.]; and
- (3) Section 4 of this Act shall take effect on June 29, 1994.”

SECTION 22. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1995, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 23. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 24. This Act shall take effect upon its approval; provided that:

- (1) The amendment to section 237-24.7(5), Hawaii Revised Statutes, in section 16 of this Act shall take effect ~~retro~~active to July 1, 1993, or the effective date of reimbursement changes referred to in section 346E-14, Hawaii Revised Statutes, whichever is later;
- (2) The amendment to section 237-24.7(6), Hawaii Revised Statutes, in section 16 of this Act shall take effect retroactive to May 1, 1993, and shall be applied retroactively to September 11, 1992;
- (3) Section 20 of this Act shall take effect retroactive to June 18, 1993; and
- (4) Section 21 of this Act shall take effect ~~retro~~active to June 29, 1994.

(Approved April 7, 1995.)