

ACT 311

H.B. NO. 2552

A Bill for an Act Relating to Government.

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

PART I.

SECTION 1. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

“§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;

- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77;
- (15) The charging of fees to at least partially defray the costs of administering sections 6E-3(13), 6E-8, and 6E-42 of this chapter;
- [(15)] (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- [(16)] (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.”

SECTION 2. Section 6E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a Hawaii historic preservation special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund;
- (2) Gifts, donations, and grants from public agencies and private persons; and
- (3) All proceeds collected by the department derived from historic preserve user fees, historic preserve leases or concession fees, fees charged to carry out the purposes of this chapter, or the sale of goods.

All interest earned or accrued on moneys deposited in the fund shall become part of the fund. The fund shall be administered by the department; provided that the department may contract with a public or private agency to provide the day-to-day management of the fund.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses.

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the community colleges and the department of education;

- (3) Special funds of the student housing, summer session, college of continuing education and community service, campus center, Kau‘iokahaloa Iki faculty housing development, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) The University of Hawaii tuition and fees special fund; [and]
- (17) Division of community hospitals’ special funds; and
- (18) Department of commerce and consumer affairs’ special funds;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 92-21, Hawaii Revised Statutes, is amended to read as follows:

“§92-21 Copies of records; other costs and fees. Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. The cost of reproducing any government record, except geographic information system digital data, shall not be less than [25] 50 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include, but shall not be limited to, labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33.”

SECTION 5. Section 184-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall expend the moneys from the aina hoomalu special fund after July 1, 1992. The funds shall be used for the following purposes:

- (1) Permanent staff positions;
- (2) Planning and development of interpretive programs;
- (3) Construction of interpretive facilities;
- (4) Repairs, replacements, additions, and extensions; [and]
- (5) Operation and maintenance costs of programs[.]; and
- (6) Administrative costs of the division of state parks.”

SECTION 6. Section 302A-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The price for the school lunch shall be [set by the department to ensure that moneys received from the sale of the lunches shall be one-third of the cost of preparing the school lunch, rounded to the nearest 25 cents, adjusted during the first year of each fiscal biennium. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding the second year of the biennium.] no more than \$1 per child; provided that the department by rule shall provide a lower rate or free lunches to children based on their economic need.”

SECTION 7. Section 338-14.5, Hawaii Revised Statutes, is amended to read as follows:

“**§338-14.5 Copies of certificate; fees.** The fees for certified copies of birth, marriage, divorce, or death certificates issued by the department of health shall consist of \$10 for the first copy issued and \$4 for each copy issued thereafter. These fees shall be collected for each single request for certified copies. All fees received for the issuance of certified copies of birth, marriage, divorce, or death certificates shall be remitted to the director of health. Upon the receipt of remittances under this section, the director of health shall deposit:

- (1) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 346-7.5;
- (2) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 601-3.6;
- (3) \$1 for each certified copy to the credit of the domestic violence prevention special fund established under section 321-1.3;
- (4) \$1 for each certified copy to the credit of the vital statistics improvement special fund established under section 338-14.6; and
- (5) The remainder of the fee for each certified copy to the credit of the state general fund.”

SECTION 8. Section 572-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The department of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this chapter in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant for the license [\$25,] \$50, of which the agent, except those provided for in

subsection (b), shall retain ~~[\$8]~~ \$9 for the agent's benefit and compensation and shall remit ~~[\$17]~~ \$41 to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit ~~[\$8];~~

- (1) \$32 for each license issued to the credit of the general fund of the State[, shall deposit];
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5[, and shall deposit]; and
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6.

(b) The department may appoint, as regular employees under the civil service and classification laws, the number of suitable persons as agents authorized to grant marriage licenses for whom provision has been made in the general appropriation act. In the case of these agents, the full amount collected from applicants shall be remitted to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit ~~[\$16];~~

- (1) \$41 for each license issued to the credit of the general fund of the State[, shall deposit]
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5[, and shall deposit]
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6."

SECTION 9. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The filing fee of ~~[\$50]~~ \$100 shall accompany the petition when submitted and shall not be refundable."

SECTION 10. Section 846-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except for services provided to criminal justice agencies and state or county agencies for employment purposes, the Hawaii criminal justice data center and state and county criminal justice agencies shall assess the following fees for services provided or to be provided, which shall be deposited into the criminal history record improvement revolving fund:

- (1) For each criminal history record name check, conducted by the data center, and other state and county agencies, ~~[\$10;]~~ \$15;
- (2) For each criminal history record name check, via a public access terminal, for which a printout is requested, ~~[\$5]~~ \$10 per printout;
- (3) For each fingerprint-based search of the automated fingerprint identification system or manual fingerprint files, ~~[\$15;]~~ \$25;
- (4) For processing of each application for the expungement of arrest records, ~~[\$15;]~~ \$25;
- (5) For certification of documents, ~~[\$5]~~ \$10 per document;
- (6) For each duplicate expungement certificate requested, ~~[\$10;]~~ \$15; and
- (7) For each complete set of fingerprints taken, ~~[\$10.]~~ \$15."

SECTION 11. Section 846-23, Hawaii Revised Statutes, is amended to read as follows:

"**\$846-23 Rules.** For the purpose of carrying out this part the attorney general, subject to chapter 91, shall prescribe rules having the force and effect of law

including rules assessing reasonable fees for the services provided under this part. The rules shall provide for a waiver of any fee in cases of extreme hardship. Until rules establishing the fees are adopted, the fee for each service provided under this part shall be [\$10,] \$15, which fee may be waived in cases of extreme hardship.”

PART II.

SECTION 12. The purpose of this Part is to rename the “environmental health program enhancement and education fund” to the “environmental health education fund,” amend its funding and make it permanent.

SECTION 13. Section 321-11.5, Hawaii Revised Statutes, is amended to read as follows:

“§321-11.5 Establishment of fees. The department of health, by rules adopted pursuant to chapter 91, may establish reasonable fees for facilities seeking licensure or certification by the department for the issuance or renewal of licenses, permits, variances, and various certificates required by law or by the department’s rules. The fees may include the cost of related examinations, inspections, investigations, and reviews. All fees paid and collected under this section and [sections] section 321-15[, 342F-14, 466J-4, and 466J-5] shall be deposited into the environmental health [program enhancement and] education fund established under section 321-27.”

SECTION 14. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health, in accordance with the rules of the department, before February 1 of each year and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person’s license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the environmental health [program enhancement and] education fund established under section 321-27.”

SECTION 15. Section 321-27, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b)¹ to read as follows:

“[[§321-27]] Environmental health [program enhancement and] education fund. (a) There is established within the department of health an environmental health [program enhancement and] education fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections 321-11.5[, and 321-15], 342F-14, 466J-4, and 466J-5].

(b) Moneys in the fund shall be expended by the department for the purpose of enhancing the capacity of environmental health programs to:

- (1) Improve public outreach efforts[;] and consultations to industries regulated;
- (2) Educate the public [and], staff[;], and industries regulated thereunder;
- (3) Plan for future growth and expansion to meet emerging needs; and

- (4) Provide training opportunities to ensure the maintenance of professional competence among environmental health staff and administrators.

Not more than \$90,000 of the fund may be utilized during any fiscal year for fund administration, including the hiring of not more than two full-time equivalent personnel, and the purchase of office and electronic equipment.

(c) Any amount in the fund in excess of \$300,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the environmental health [program enhancement and] education fund, including, but not limited to, the amount of moneys taken in by and expended from the fund, and the sources of receipts and uses of expenditures, not less than twenty days prior to the convening of each regular session.”

SECTION 16. Section 9 of Act 169, Session Laws of Hawaii 1994, as amended by section 10 of Act 143, Session Laws of Hawaii 1995, and as amended by section 1 of Act 164, Session Laws of Hawaii 1996, is amended to read as follows:

“SECTION 9. This Act shall take effect on July 1, 1994 [and shall be repealed on July 1, 2000; provided that:

- (1) Sections 321-11.5, 321-15, 342F-14, 466J-4 and 466J-5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1994;²
- (2) The director of health shall transfer to the credit of the state general fund, all unexpended or unencumbered balances remaining in the environmental health program enhancement and education fund, prior to June 30, 2000].”

PART III.

SECTION 17. The purpose of this Part is to establish the “noise, radiation, and indoor air quality special fund” with moneys collected from fees relating to noise pollution, asbestos, radiation therapists, radiographers, and nuclear medicine technologists.

SECTION 18. Chapter 342P, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§342P- Noise, radiation, and indoor air quality special fund; established. (a) There is established within the department of health a noise, radiation, and indoor air quality special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, certificates, notifications, variances, investigations, and review, pursuant to sections 342F-14, 342P-28, 466J-4, and 466J-5.

(b) Moneys in the fund shall be expended by the department to:

- (1) Partially fund the operating costs of the program mandated activities and functions;
- (2) Fund statewide education, demonstration, and outreach programs;
- (3) Provide training opportunities to ensure the maintenance of professional competence among staff and administrators; and
- (4) Plan for future growth and expansion to meet emerging needs.

§342P- Variances. (a) Every application for a variance shall be made on a form furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and any other information that the department may require by rule.

(b) Each application for a variance shall be reviewed by the department. Additional information may be requested by the department for review.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the deviation from established asbestos or lead-based paint hazards standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the deviation from asbestos or lead standards occurring or proposed to occur by the granting of the variance is in the public interest;
- (2) The authorized variance occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which a variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal of a variance shall be granted within the requirements of this section, and for time periods consistent with the reasons given within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the asbestos or lead involved, it shall be only until the necessary means for prevention, control, or abatement becomes practicable. The variance shall be granted subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the asbestos or lead hazards involved;
- (2) The director may issue a variance for a period not exceeding six months; and
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air or dust sampling and report the results of the sampling to the department.

(e) Any variance granted pursuant to this section may be renewed for periods not exceeding six months on terms and conditions which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance. No renewal shall be granted without an application. Any renewal application shall be made at least sixty days prior to the expiration of the variance. The director shall act on an application for renewal within sixty days of the receipt of the application.

(f) The director may allow a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance shall be construed to prevent or limit the application of any emergency provision or procedure provided by law.

(h) Any application for a variance may be subject to public participation. The contents of the public notice for a variance application shall include at least:

- (1) The name, address, and phone number of the agency issuing the public notice;
- (2) The name and address of the applicant;

- (3) A brief description of the applicant's activities or operations which result in asbestos or lead hazards, or other activity described in the variance application;
- (4) A short description of the location of each asbestos or lead-based paint hazard indicating whether the hazard is new or existing;
- (5) A brief description of the public participation procedures, including the comment period, which shall be for a period of not less than thirty days following the date of the public notice, and other means by which interested persons may comment on the variance application and the department's proposed action; and
- (6) The address and phone number of the state agency at which interested persons may obtain further information and may inspect a copy of the variance application and supporting and related documents."

SECTION 19. Section 342F-14, Hawaii Revised Statutes, is amended to read as follows:

"§342F-14 Fees. The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). All fees collected pursuant to this section shall be deposited into the [environmental health program enhancement and education fund established under section 321-27.] noise, radiation, and indoor air quality special fund established pursuant to section 342P-_____."

SECTION 20. Section 342P-28, Hawaii Revised Statutes, is amended to read as follows:

"[§342P-28] Fees. The director may establish reasonable fees for the issuance of notifications, certificates, [and] licenses, permits, and variances to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits[,] and variances not including court costs or other costs associated with any formal enforcement action. The fees shall be deposited to the credit of the [general fund.] noise, radiation, and indoor air quality special fund."

SECTION 21. Section 466J-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Every person licensed as a radiographer, as a radiation therapist, or as a nuclear medicine technologist shall be subject to a biennial license fee (initial and renewal) payable to the department. The failure of any licensee to pay the licensee's fee shall be grounds for revocation of the licensee's license. All fees collected by the board pursuant to this section shall be deposited into the [environmental health program enhancement and education fund established under section 321-27.] noise, radiation, and indoor air quality special fund established pursuant to section 342P-_____.

After July 1, 1998, the license period shall be biennial. The biennial period shall begin thirty days after the end of the licensee's birth month."

SECTION 22. Section 466J-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The applicant applying for a license to practice as a radiographer, as a radiation therapist, or as a nuclear medicine technologist shall pay a nonrefundable application fee to the department. All fees received by the department pursuant to this section shall be deposited into the [environmental health program enhancement and education fund established under section 321-27;] noise, radiation, and indoor air quality special fund established pursuant to section 342P-; provided that any other moneys collected pursuant to this chapter shall be deposited with the director of finance to the credit of the general fund, unless otherwise provided by law.”

PART IV.

SECTION 23. All acts passed by the legislature during this Regular Session of 1998, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 25. This Act shall take effect on July 1, 1998.

Note

(Became law on July 21, 1998, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. So in original.
2. Prior to amendment “and” appeared here.
3. Edited pursuant to HRS §23G-16.5.