

STAND. COM. REP. NO.

807

Honolulu, Hawaii

March, 2007

RE: H.B. No. 1108

H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1108 entitled:

"A BILL FOR AN ACT RELATING TO STATUTORY REVISION: AMENDING 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,"

begs leave to report as follows:

The purpose of this bill is to amend various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii pursuant to chapter 23G, Hawaii Revised Statutes, to correct errors, update references, clarify language, and delete obsolete or unnecessary language.

Your Committee finds that all of the statutory amendments proposed by the measure are of a purely technical nature and either contain no substantive changes to the law, or, if they have any substantive effect, are done simply to correct the types of errors noted in this report.

Your Committee finds the reasons for the respective technical amendments made in the bill are as follows:

**Section 1.** The amendment made by L 2006, c 45, §2 to section 6E-11(a), HRS, inadvertently omitted the existing phrase "controlled by the State or any of its political subdivisions," in

HB1108 HD1 HSCR LRB 07-1928.doc



the second sentence. Section 6E-11, HRS, should be amended to ratify the revisor's reinstatement of the omitted language, which is indicated by brackets.

**Section 2.** Section 36-27, HRS, was amended by Acts 75, 305, and 316 in 2006. The amendment made by L 2006, c 316, §4 inadvertently omitted the ending of the section, without which the section lacked substance. Section 36-27, HRS, should be amended by deleting the brackets around the referenced text at the ending of the section to ratify the revisor's insertion of the language.

In addition, section 36-27(16), HRS, refers to section 231-3.2, HRS, regarding the integrated tax information management systems special fund. Section 231-3.2, HRS, is being repealed as functus in section 21 of this bill. To conform to this repeal, section 36-27, HRS, should be amended to delete the reference to the integrated tax information management systems special fund.

Lastly, section 36-27(23), HRS, refers to the center for nursing special fund under "section [304A-2163]". Act 75 amended section 36-27(23), HRS, by changing the section number pertaining to the center for nursing special fund to the section number in the new chapter (304A) created by the Act. The revisor renumbered some of the sections of the new chapter and, accordingly, changed the section number in section 36-27(23), HRS, to make the proper reference. Section 36-27, HRS, should be amended by deleting the brackets around "section [304A-2163]" to ratify the revisor's insertion of the correct section number.

**Section 3.** Section 36-30(a), HRS, was amended by Acts 75, 305, and 316 in 2006. The amendment made by L 2006, c 316, §5 inadvertently omitted the ending of the section, without which the section lacked substance. Section 36-30(a), HRS, should be amended by deleting the brackets around the referenced text at the end of the section to ratify the revisor's insertion of the language.

In addition, section 36-30(a)(15), HRS, refers to section 231-3.2, HRS, regarding the integrated tax information management systems special fund. Section 231-3.2, HRS, is being repealed as functus in section 21 of this bill. To conform to this repeal, section 36-30(a), HRS, should be amended to delete the reference to the integrated tax information management systems special fund.

Lastly, section 36-30(a)(20), HRS, refers to the center for nursing special fund under "section [304A-2163]". Act 75 amended section 36-30(a)(20), HRS, by changing the section number pertaining to the center for nursing special fund to the section number in the new chapter (304A) created by the Act. The revisor renumbered some of the sections of the new chapter and,



accordingly, changed the section number in section 36-30(a)(20), HRS, to make the proper reference. Section 36-30, HRS, should be amended by deleting the brackets around "section [304A-2163]" to ratify the revisor's insertion of the correct section number.

**Section 4.** Section 27-42, HRS, relating to the governor's special advisory council for technology development, is repealed as functus in section 20 of this bill.

To conform to this repeal, section 84-17(c), HRS, should be amended to delete the council reference.

**Section 5.** L 2006, c 183, amended chapter 132D, HRS, by, among other things, changing the term "special fireworks" to "display fireworks". Act 183 amended section 132D-16, HRS, to reflect the change to "display fireworks", but inadvertently retained the term "special fireworks" in the last paragraph of subsection (c).

Section 132D-16(c), HRS, should be amended by deleting the brackets around the word "display" to ratify the revisor's substitution of the word "display" for "special".

**Section 6.** L 2006, c 27, §1(2) amended section 134-2(e), HRS, by changing the reference to the "United States Department of the Treasury" to the "United States Department of Justice". Section 134-2(a), HRS, should also be amended to refer to the "United States Department of Justice". The Attorney General's justification sheet for Act 27 (SB 2263) notes that "the federal department with authority over firearms is no longer the Department of the Treasury, it is the Department of Justice".

In addition, in the last sentence of section 134-2(e), HRS, because the phrase "the applicant is not a citizen of the United States" appears twice, the latter phrase should be deleted as redundant.

**Section 7.** L 2006, c 27, §1(2) amended section 134-2(e), HRS, by changing the reference to the "United States Department of the Treasury" to the "United States Department of Justice". Subsections (c) and (d) of section 134-3, HRS, should also be amended to refer to the "United States Department of Justice". The Attorney General's justification sheet for Act 27 (SB 2263) notes that "the federal department with authority over firearms is no longer the Department of the Treasury, it is the Department of Justice".

**Section 8.** L 2006, c 27, §3 amended section 134-9(a), HRS, to require the county police chiefs to "perform an inquiry on an



applicant [for a license to carry a firearm] by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases, where the applicant is not a citizen of the United States, before any determination to grant a license is made." Senate Standing Committee Report No. 2410 stated that "an inquiry on the National Instant Criminal Background Check System [was intended to apply] to all the various licenses issued by county police chiefs". However, the language "to include a check of the Immigration and Customs Enforcement databases, where the applicant is not a citizen of the United States," may be read as requiring the check only for noncitizens.

Section 134-9(a), HRS, should be amended to delete the comma after "databases" to clarify that the inquiry applies to all applicants, citizens and noncitizens.

**Section 9.** L 2006, c 174, §1 created section 183-5, HRS, which provides for general administrative penalties for violations of chapter 183, HRS. Act 174, §5, amended section 195F-4(a)(2)(F), HRS, by providing that moneys in the forest stewardship fund collected from the "imposition of fines or penalties for violations of this chapter and chapters 185 and 195F or any rule adopted thereunder" shall be used for various enumerated activities. As a result of the amendment, section 195F-4(a)(2)(F), HRS, refers to chapter 195F twice ("this chapter" and "195F") but fails to refer to moneys from penalties collected under chapter 183, HRS (forest reserves, water development, zoning), including the general administrative penalties under section 183-5, HRS. Act 174, §4 amended section 183-16, HRS, to provide that moneys collected from fines or penalties for violations of chapter 183, 185, and 195F, HRS, are deposited in the forest stewardship fund.

In addition, Act 174 reformatted section 195F-4(a)(2), HRS, causing confusion as to whether clauses (i) to (iii) apply only to subparagraph (F) or to the entire paragraph (2).

Section 195F-4(a), HRS, should be amended to add a reference to the deposit of moneys from fines and penalties under chapter 183, HRS, delete the extra reference to chapter 195F, HRS, and reformat paragraph (2) to clarify that subclauses (i) to (iii) apply to the entire paragraph (2).

**Section 10.** L 2006, c 229, enacted chapter 485A, the Uniform Securities Act, to replace the Uniform Securities Act (Modified), chapter 485, effective July 1, 2008.



Section 211G-13(e), HRS, contains references to chapter 485 and should be amended to refer to chapter 485A, effective July 1, 2008.

**Section 11.** L 2006, c 110, §3 amended section 235-51(b), HRS, by more specifically deleting the December 31, 1998 and December 31, 2000 head of household tax income schedule and adding a new tax income schedule for taxable years beginning after December 31, 2006. In the process of doing so, a change occurred in the tax schedule for taxable years beginning after December 31, 2001. The specific part affected is for the following consecutive income ranges, "over \$12,000 but not over \$18,000", and "over \$21,600 but not over \$24,000", leaving a gap in the taxable income range for amounts in between those income ranges. It is noted that the "over \$21,600" amount appeared without the usual Ramseyer convention and formerly read "over \$18,000". The "over \$21,600" amount should be restored back to "over \$18,000" to close the obvious gap in the income tax levels for the set period beginning after December 31, 2001 through December 31, 2006.

In addition, L 2006, c 110, §3 amended section 235-51(b), HRS, by providing that for taxable years beginning after December 31, 2006, if the taxable income is over \$28,800 but not over \$36,000, the tax shall be \$1,512.00 plus 7.20% of excess over \$28,000. The beginning dollar amount upon which to assess the 7.20% should be "\$28,800".

Section 235-51(b), HRS, should be amended to reflect the correct dollar amounts.

**Section 12.** L 1990, c 184 authorized the counties to establish a general excise and use tax surcharge through, among other things, the enactment of sections 46-16.7, 235-16, 237-8.5, 238-2.5, and 248-2.5, HRS. The authorization for the surcharge was granted only if the counties adopted an ordinance before October 1, 1992, to take effect on January 1, 1993, and remain in effect for ten years through December 31, 2002. Since the counties were not successful in adopting an ordinance to establish the surcharge, sections 235-16, 237-8.5, 238-2.5, and 248-2.5, HRS, were subsequently repealed as functus by L 2003, c 135, and section 46-16.7, HRS, was repealed as functus by L 2006, c 38.

Section 235-110.7, HRS, as amended by L 1990, c 184, §§7, 8, and L 1992, c 235, §6, still contains language relating to this now-repealed surcharge authorization.

To conform, section 235-110.7, HRS, should be amended to delete, as functus, the language related to the authorization to establish the surcharge for the period from January 1, 1993, through December 31, 2002.



**Section 13.** L 2006, c 258, §2 enacted section 367D-8, HRS. The first sentence of section 367D-8, HRS, provides "The department of public safety and the office of youth services shall submit an annual report to the legislature no later than twenty days before the convening of each regular session...". The last sentence provides "The first report shall be submitted no later than twenty days before the convening of the regular session of 2006." Act 258 became effective on July 1, 2006. Therefore, the first report could not have been submitted "twenty days before the convening of the regular session of 2006."

The last sentence of section 367D-8, HRS, relating to submission of the first report before the convening of the regular session of 2006 should be deleted as functus.

**Section 14.** L 2006, c 229, enacted chapter 485A, the Uniform Securities Act, to replace the Uniform Securities Act (Modified), chapter 485, effective July 1, 2008. Section 412:3-201(b)(6)(H) and (I), HRS, contains references to chapter 485 and should be amended to refer to chapter 485A, effective July 1, 2008.

**Section 15.** L 2006, c 229, enacted chapter 485A, the Uniform Securities Act, to replace the Uniform Securities Act (Modified), chapter 485, effective July 1, 2008. Section 412:3-202, HRS, contains references to chapter 485 and should be amended to refer to chapter 485A, effective July 1, 2008.

**Section 16.** L 2006, c 229, enacted chapter 485A, the Uniform Securities Act, to replace the Uniform Securities Act (Modified), chapter 485, effective July 1, 2008. Section 412:3-206, HRS, contains a reference to chapter 485 and should be amended to refer to chapter 485A, effective July 1, 2008.

**Section 17.** L 2006, c 229, enacted chapter 485A, the Uniform Securities Act, to replace the Uniform Securities Act (Modified), chapter 485, effective July 1, 2008. Section 417E-1, HRS, in the definition of "broker-dealer", provides that "broker-dealer" means a "dealer" as defined in section 485-1." The new chapter 485A, HRS, contains the definition of "broker-dealer" in section 485A-102, HRS. Section 417E-1, HRS, should be amended to conform the reference to the definition of "broker-dealer" in section 485A-102, HRS, effective July 1, 2008.

**Section 18.** L 2006, c 182, §1 enacted section 706-606.2, HRS. The sentence following paragraph (b) begins "With regard to any fire or monetary penalty that may be imposed...". The revisor



substituted the word "fine" for "fire" to correct this obvious error.

Section 706-606.2, HRS, should be amended by deleting the brackets around "fine" to ratify the revisor's substitution. In addition, section 706-606.2, HRS, should be amended by adding subsection designations to conform to the style of the Hawaii Penal Code.

**Section 19.** L 2006, c 230, §29, amended section 707-711(1), HRS, by, among other things, amending paragraph (e) to provide that "For the purposes of this paragraph, "educational worker" means: any administrator, specialist, counselor, teacher, or employee of the department of education; a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function."

L 2006, c 298, §16, also amended section 707-711(1)(e), HRS, by adding "an employee of a charter school" to the definition of "educational worker". In order to blend the amendments to the definition of "educational worker" made by Acts 230 and 298, the revisor added the word "or" between the phrases "employee of the department of education" and "an employee of a charter school".

Section 707-711(1)(e), HRS, should be amended by deleting the brackets around the word "or" to ratify the revisor's insertion of "or".

**Section 20.** Section 27-42(g), HRS, states "This section is repealed on December 31, 2005". Section 27-42, HRS, has not been amended to delete or extend this repeal and by operation of law, is repealed.

Section 27-42, HRS, should be formally repealed.

**Section 21.** L 1999, c 155, §1, enacted section 231-3.2, HRS, relating to the integrated tax information management systems special fund. Section 231-3.2(d), HRS, stated that the section "shall be repealed on July 1, 2004". L 2004, c 115, §1, extended the repeal date to July 1, 2005.

L 1999, c 155, L 2004, c 115, and section 231-3.2, HRS, were not amended to extend the July 1, 2005 repeal date. Thus, section 231-3.2, HRS, is repealed by operation of law, and is functus. Section 231-3.2, HRS, should thus be formally repealed.

**Section 22.** L 1999, c 178, §9 enacted section 231-8.6, HRS, entitled the "Hawaii Internet Tax Freedom Act". Section 231-



8.6(d), HRS, provides "[t]his section shall not apply to taxable years beginning after December 31, 2005".

L 1999, c 178 and section 231-8.6, HRS, were not amended to change the December 31, 2005 applicability date. Section 231-8.6, HRS, is functus and should be formally repealed.

**Section 23.** L 2000, c 195, §1 enacted section 235-110.4, HRS, relating to the hotel construction and remodeling tax credit. Section 235-110.4(e), HRS, provides "[t]he tax credit allowed under this section shall be available for taxable years beginning after December 31, 1998, and shall not be available for taxable years beginning after December 31, 2002". L 2001, Third Special Session, c 10, §2(3) extended the tax credit availability to December 31, 2005.

L 2000, c 195, L 2001, Third Special Session, c 10, and section 235-110.4, HRS, were not amended to extend the tax credit beyond December 31, 2005. Section 235-110.4, HRS, is functus and should be formally repealed.

**Section 24.** L 2001, Third Special Session, c 10, §1 enacted section 235-110.45, HRS, relating to the residential construction and remodeling tax credit. Section 235-110.45(e), HRS, provides "[t]he tax credit allowed under this section shall be available for taxable years beginning after December 31, 2000, and shall not be available for taxable years beginning after December 31, 2003". L 2002, c 174, §2 amended section 235-110.45, HRS, but did not amend section 235-110.45(e), HRS.

L 2001, Third Special Session, c 10, L 2002, c 174, and section 235-110.45, HRS, were not amended to extend the tax credit beyond December 31, 2003. Section 235-110.45, HRS, is functus and should be formally repealed.

**Section 25.** L 2001, c 293, §2 enacted section 235-110.92, HRS, relating to an income tax credit for the construction, repair, or reconstruction of drought mitigating water storage facilities. Section 235-110.92(e), HRS, provides "[t]he credit allowed under this section shall be available for taxable years beginning after December 31, 2000, and shall not be available for taxable years beginning after December 31, 2005".

L 2001, c 293, §2, and section 235-110.92, HRS, were not amended to extend the tax credit beyond December 31, 2005. Section 235-110.92, HRS, is functus and should be formally repealed.

**Section 26.** L 2001, c 221, §3 enacted section 237-29.65, HRS, which provided a general excise tax exemption for public



Internet data centers. Section 237-29.65(c), HRS, provides "[t]his section shall apply to gross income or gross proceeds received after June 30, 2001, but not after December 31, 2005".

L 2001, c 221, §3, and section 237-29.65, HRS, were not amended to extend this general excise tax exemption beyond December 31, 2005. Section 237-29.65, HRS, is functus and should be formally repealed.

**Section 27.** L 2001, c 221, §3 enacted section 237-29.75, HRS, which provided a general excise tax exemption for the sale of a net operating loss by a qualified high technology business. The last sentence of section 237-29.75, HRS, provides "[t]his section shall be repealed on December 31, 2005".

L 2001, c 221, §3, and section 237-29.75, HRS, were not amended to extend this general excise tax exemption beyond December 31, 2005. Section 237-29.75, HRS, is functus and should be formally repealed.

**Section 28.** L 2001, c 221, §4 enacted section 239-13, HRS, which provided a public service company tax exemption for public Internet data centers. Section 239-13(c), HRS, provides "[t]his section shall apply to gross income received after June 30, 2001, but not after December 31, 2005".

L 2001, c 221, §4, and section 239-13, HRS, were not amended to extend the exemption beyond December 31, 2005. Section 239-13, HRS, is functus and should be formally repealed.

**Section 29.** The prefatory language of L 2006, c 184, §3 states that "Section 414-64, Hawaii Revised Statutes, is amended by amending subsections (b) and (d) to read as follows". However, subsections (b) and (c) of section 414-64, HRS, were the subsections amended.

The prefatory language of L 2006, c 184, §3 should be amended to state that "subsections (b) and (c)" of section 414-64, HRS, were amended.

Your Committee has amended section 32, the effective date section of this bill, to correctly reflect that sections 10, 14, 15, 16, and 17 of this bill should take effect on July 1, 2008, rather than January 1, 2008. The amendments to those sections replace the reference to chapter 485 with chapter 485A, the new Uniform Securities Act, which takes effect on July 1, 2008, pursuant to Act 229, Session Laws of Hawaii 2006.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your



Committee is in accord with the intent and purpose of H.B. No. 1108, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1108, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



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TOMMY WATERS, Chair



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

HKCP 807

**Record of Votes of the Committee on Judiciary**

<b>Bill/Resolution No.:</b> <p style="text-align: center;">HB 1108</p>	<b>Date:</b> <p style="text-align: center;">1/30/07</p>			
<b>Committee Referral:</b> <p style="text-align: center;">JUD</p>	<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.			
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended <input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommittal for further consideration				
<b>JUD Members</b>	<b>Ayes</b>	<b>Ayes (WR)</b>	<b>Nays</b>	<b>Excused</b>
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	✓			
5. GREEN, Josh, M.D.	✓			
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.	✓			
9. MORITA, Hermina M.	✓			
10. SONSON, Alex M.	✓			
11. SOUKI, Joseph M.	✓			
12. TSUJI, Clift	✓			
13. YAMANE, Ryan I.	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.	✓			
16. PINE, Kymberly Marcos	✓			
17. THIELEN, Cynthia	✓			
<b>TOTAL</b>	<b>17</b>			
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted  If joint referral, _____ did not support recommendation. <div style="text-align: center; margin-left: 100px;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <div style="text-align: center; margin-top: 10px;"> </div>				
<b>Distribution:</b> Original (White) – Committee            Duplicate (Yellow) – HMSO            Duplicate (Pink) – Clerk's Office				