

The Property of the State of
Hawaii in the official keeping of

ACT 24

SESSION LAWS

OF

HAWAII

PASSED BY THE

FIFTEENTH STATE LEGISLATURE

REGULAR SESSION

1990

Convened on Wednesday, January 17
and
Adjourned sine die on Friday, May 4

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Revisor of Statutes
Honolulu, Hawaii

- (3) Turn over to the department all photographs and any other relevant historical records; [and]
- (4) Move all headstones to the place of reinterment[.]; and
- (5) Obtain the written concurrence of the department prior to any removal or redesignation if the cemetery has existed for more than fifty years.

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 Statutory material to be repealed is bracketed.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

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 1990.)

Note

- 1. So in original.

ACT 23

S.B. NO. 3423

S.B. NO. 2711

A Bill for an Act Relating to Fences.

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

SECTION 1. The legislature finds that the current minimum height for fences enclosing animals (four and a half feet) is unnecessary. Standard hog wire with a standard height of four feet will stop most animals. Present law requires additional expenses for labor and material to string another wire above the hog wire but which the livestock industry considers unnecessary. The purpose of this Act is to require fences to be only four feet high.

SECTION 2. Section 142-61, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every fence made of stone, posts and rails, posts and boards, posts and wire, or other suitable materials shall be a lawful fence, provided that it is not less than four [and a half] feet in height, substantially built, strong and close, existing in good state of repair, and capable of turning either all stock or all stock excepting swine, attempting to pass through the fence.”

SECTION 3. Statutory material to be repealed is bracketed.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 1990.)

ACT 24

H.B. NO. 2487

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

SECTION 1. Section 221, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§221. Water. (a) When used in this section:

- (1) The term “water license” means any license issued by the board of land and natural resources granting to any person the right to the use of government-owned water; and
- (2) The term “surplus water” means so much of any government-owned water covered by a water license or so much of any privately owned water as is in excess of the quantity required for the use of the licensee or owner, respectively.

(b) All water licenses issued after the passage of this Act shall be deemed subject to the condition, whether or not stipulated in the license, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any water which the department deems necessary adequately to supply the livestock, aquaculture operations, agriculture operations, or domestic needs of individuals upon any tract.

(c) In order adequately to supply livestock, the aquaculture operations, the agriculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water license issued previous to the passage of this Act but containing a reservation of such water for the benefit of the public, and (2) to contract with any person for the right to use or to acquire, under eminent domain proceedings similar, as near as may be, to the proceedings provided in respect to land by sections 101-10 to 101-34, Hawaii Revised Statutes, the right to use any privately owned surplus water or any government-owned surplus water covered by a water license issued previous to the passage of this Act, but not containing a reservation of such water for the benefit of the public. Any such requirement shall be held to be for a public use and purpose. The department may institute the eminent domain proceedings in its own name.

(d) The department is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, government-owned surplus water tributary to the Waimea river upon the island of Kauai, not covered by a water license or covered by a water license issued after July 9, 1921. Any water license issued after that date and covering any such government-owned water shall be deemed subject to the condition, whether or not stipulated therein, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any of the surplus water tributary to the Waimea river upon the island of Kauai, which is covered by the license and which the department deems necessary for the additional purpose of adequately irrigating any tract.

Any funds which may be appropriated by Congress as a grant-in-aid for the construction of an irrigation and water utilization system on the island of Molokai designed to serve Hawaiian home lands, and which are not required to be reimbursed to the federal government, shall be deemed to be payment in advance by the department and lessees of the department of charges to be made to them for the construction of such system and shall be credited against such charges when made.

(e) All rights conferred on the department by this section to use, contract for, or acquire the use of water shall be deemed to include the right to use, contract for, or acquire the use of any ditch or pipeline constructed for the distribution and control of such water and necessary to such use by the department.

(f) Water systems in the exclusive control of the department shall remain under its exclusive control; provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and

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collection of user fees. If any provision or the application of that provision is inconsistent with provisions contained in this section, this section shall control.

Water systems include all real and personal property together with all improvements to such systems acquired or constructed by the department for the distribution and control of water for domestic or agricultural use.”

SECTION 2. The provisions of this amendment are declared to be severable and, if any section, sentence, clause, or phrase or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 1990.)

ACT 25

H.B. NO. 2490

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who [has been] was lawfully admitted for permanent residence at the time those services were performed, was lawfully present for purposes of performing those services, or otherwise [is] was permanently residing in the United States under color of law at the time those services were performed (including an alien who [is] was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual’s alien status shall be made except upon a preponderance of the evidence.”

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

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

(Approved April 17, 1990.)