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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: G. Riki Hokama, Chair
Policy and Intergovernmental Affairs Committee

F R O M: Gladys C. Baisa
Council Chair 

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSALS RELATING TO THE
2014 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE
PACKAGE** (PAF 13-220)

The attached legislative proposals pertain to Item PIA-3(3) on your committee's agenda.

paf:kmh:13-220d

Attachments

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2014 HAWAII
STATE ASSOCIATION OF COUNTIES LEGISLATIVE
PACKAGE HOUSE BILL 230 AUTHORIZING
COUNTY LIQUOR COMMISSIONS TO PROVIDE
FUNDING FOR ALCOHOL ABUSE TREATMENT AND
PREVENTION

WHEREAS, House Bill 230 (“H.B. 230”) entitled “A Bill for An Act Relating to Intoxicating Liquor” was introduced during the 2013 legislative session; and

WHEREAS, the purpose of H.B. 230 is to authorize county liquor commissions to provide funding for alcohol abuse treatment and prevention with revenues collected through fines against licensees and license fees, without the current 10 per cent limitation; and

WHEREAS, because H.B. 230 was introduced during the session of a biennium year and did not become law, it can still be considered during the 2014 legislative session; and

WHEREAS, enactment of State legislation authorizing county liquor commissions to provide funding for alcohol abuse treatment and prevention would provide the counties with a resource to address the problem through revenues generated by the very industry from which the problem of alcohol abuse stems; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That H.B. 230 entitled “A Bill for An Act Relating to Intoxicating Liquor”, attached as Exhibit “A”, is approved for inclusion in the 2014 Hawaii State Association of Counties (“HSAC”) Legislative Package; and
2. That certified copies of this resolution be transmitted to the HSAC Executive Committee.

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO. 230

A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 281-17, Hawaii Revised Statutes, is amended to read as follows:

"§281-17 Jurisdiction and powers. (a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, alcohol abuse treatment, prevention, and

EXHIBIT A

education; provided that any alcohol abuse treatment, prevention, or educational program shall be [~~limited to the commission staff, commissioners, liquor control adjudication board members, licensees and their employees and shall be~~] financed through the money collected from the assessment of fines against licensees and license fees; [~~provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;~~]

- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within

the scope of the investigator's duties, shall have the powers of a police officer;

- (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director

- of taxation to hear and determine complaints against any licensee;
- provided that a liquor commission in a county with a population of seven hundred thousand or greater may establish a pilot program that employs both a dBA and a dBC sound level measurement system for the purpose of community noise control; provided further that the dBC sound level measurements shall be in accordance with the following maximum permissible sound levels in dBC:
- (A) Zoning districts that include all areas equivalent to lands zoned residential, conservation, preservation, public space, open space, or similar type shall have a maximum dBC sound level of fifty-five from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of forty-five from 10:00 p.m. to 7:00 a.m.;
 - (B) Zoning districts that include all areas equivalent to lands zoned for multi-family dwellings, apartment, business, commercial, hotel, resort, or similar type shall have a maximum dBC sound level of sixty from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of fifty from 10:00 p.m. to 7:00 a.m.; and
 - (C) Zoning districts that include all areas equivalent to lands zoned in agriculture, country, industrial, or similar type shall have a maximum dBC sound level of seventy from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of seventy from 10:00 p.m. to 7:00 a.m.;
- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;

- (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
- (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to this chapter, the commission or board and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission or board and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission or board shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or board or to an investigation by the commission or board.

(c) The commission shall also have the power to provide funding to the county for public and private programs that are intended to prevent and treat alcohol abuse within that county.

(d) The exercise by the commission or board of the power, authority, and discretion vested in it pursuant to this chapter shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91."

SECTION 2. Section 281-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any [~~such~~] liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for alcohol abuse education, prevention, and treatment programs and costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving [~~such~~] the liquor license fees or moneys. [~~Such~~] The fees or moneys shall not be used for any costs or expenses other than those directly relating to its operation and administration, except as otherwise provided by law."

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

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

INTRODUCED BY: _____

Report Title:

Maui County Package; Intoxicating Liquors; Alcohol Abuse Treatment and Prevention

Description:

Authorizes the liquor commission to conduct and fund state and county alcohol abuse treatment and prevention activities. Allows liquor license fees to be used for those activities.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2014 HAWAII
STATE ASSOCIATION OF COUNTIES LEGISLATIVE
PACKAGE A STATE BILL TO EXEMPT THE
LEGISLATIVE BODIES OF THE COUNTIES FROM
THE SUNSHINE LAW

WHEREAS, the State Sunshine Law (Chapter 92, Hawaii Revised Statutes), which prohibits communications among board members outside of a meeting, has been interpreted to include serial communications, written communications, and attendance at public events, conferences, etc.; and

WHEREAS, the purpose of the Sunshine Law is to open up governmental processes to public scrutiny and participation, which is particularly important for boards with members who are appointed and not accountable to an electorate; and

WHEREAS, unlike appointed boards subject to the Sunshine Law, the legislative bodies of the counties consist of elected officials who are directly accountable to their constituencies; and

WHEREAS, if an elected official is conducting back-room deals, out of the public eye, then the official will not be re-elected; and

WHEREAS, the Sunshine Law's requirements on an elected board like a county council, who has a broad range of responsibilities, unjustifiably interfere with the important legislative work of the council; and

WHEREAS, the State Legislature recognized these same concerns and wisely exempted itself from the Sunshine Law; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A", exempting the legislative bodies of the counties from the Sunshine Law, is approved for inclusion in the 2014 Hawaii State Association of Counties ("HSAC") Legislative Package; and
2. That certified copies of this resolution be transmitted to the HSAC Executive Committee.

___ .B. NO. ___

A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS AND RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 92-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§92-2 Definitions.** As used in this part:

4 "Board" means any agency, board, commission, authority, or
5 committee of the State or its political subdivisions [~~which~~
6 that is created by constitution, statute, rule, or executive
7 order, to have supervision, control, jurisdiction, or advisory
8 power over specific matters and [~~which~~ that is required to
9 conduct meetings and to take official actions[-]; provided that
10 "board" shall not include the legislative bodies of the counties
11 of this State.

12 "Chance meeting" means a social or informal assemblage of
13 two or more members at which matters relating to official
14 business are not discussed.

15 "Interactive conference technology" means any form of audio
16 or audio and visual conference technology, including
17 teleconference, videoconference, and voice over internet

EXHIBIT A

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____.B. NO. _____

1 protocol, that facilitates interaction between the public and
2 board members.

3 "Meeting" means the convening of a board for which a quorum
4 is required in order to make a decision or to deliberate toward
5 a decision upon a matter over which the board has supervision,
6 control, jurisdiction, or advisory power.

7 SECTION 2. Statutory material to be deleted is bracketed
8 and in strikethrough. New statutory material is underscored.

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

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INTRODUCED BY: _____

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Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2014 HAWAII
STATE ASSOCIATION OF COUNTIES LEGISLATIVE
PACKAGE A STATE BILL TO ENABLE
GOVERNMENTAL AGENCIES TO MAINTAIN
ROADS IN LIMBO

WHEREAS, government agencies have been reluctant to assume maintenance of roads whose ownership and jurisdiction are in dispute between the State and the counties, commonly known as “roads in limbo”; and

WHEREAS, the safety of residents traveling over roads in limbo is affected by the lack of any maintenance of such roads; and

WHEREAS, government agencies are unwilling to maintain these roads because the maintenance activities may be construed as assuming ownership and jurisdiction over the disputed roads, and the government agency may be subject to liability due to the maintenance activities; and

WHEREAS, providing an interim period in which the government agency can perform maintenance and improvement activities without the fear of liability will encourage government agencies to begin maintenance of roads in limbo and provide enough time to bring the roads up to sufficient standards; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit “A”, to enable governmental agencies to maintain roads in limbo, is approved for inclusion in the 2014 Hawaii State Association of Counties (“HSAC”) Legislative Package; and
2. That certified copies of this resolution be transmitted to the HSAC Executive Committee.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the safety of
2 residents traveling over roads whose ownership and jurisdiction
3 are in dispute between the State and the counties, commonly
4 known as "roads in limbo", is affected by the lack of any
5 maintenance to such roads. The legislature also finds that
6 government agencies are unwilling to maintain these roads
7 because the maintenance activities may be construed as assuming
8 ownership and jurisdiction over the disputed roads, and the
9 government agency may be subject to liability due to the
10 maintenance activities. The purpose of this Act is to enable
11 government agencies to maintain roads whose ownership and
12 jurisdiction are in dispute between the State and the counties
13 without incurring liability or assuming ownership or
14 jurisdiction over those roads.

15 SECTION 2. Chapter 662, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18

EXHIBIT A

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____.B. NO. _____

1 "§662- No liability for maintenance or repair of
2 disputed roads. A state agency maintaining or repairing a road
3 whose ownership is in dispute between the State and a county
4 shall not be liable to any person for injury or damage sustained
5 when using that road and shall not be deemed to have assumed
6 ownership or jurisdiction over the disputed road."

7 SECTION 3. Section 46-15.9, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§46-15.9 Traffic regulation; repair and maintenance;
10 public right to use public streets, roads, or highways whose
11 ownership is in dispute[-]; county liability. (a) Any
12 provision of law to the contrary notwithstanding, any county and
13 its authorized personnel may impose and enforce traffic laws and
14 shall enforce chapters 249; 286; 287; 291; 291C; 291E; 431,
15 articles 10C and 10G; and 486, part III on public streets,
16 roads, or highways whose ownership is in dispute between the
17 State and the county.

18 (b) [~~Any provision of the law to the contrary~~
19 ~~notwithstanding, any county and its authorized personnel may~~
20 ~~repair or maintain, in whole or in part, public streets, roads,~~
21 ~~or highways whose ownership is in dispute between the State and~~
22 ~~the county.] A county agency maintaining or repairing a road~~

1 whose ownership is in dispute between the State and the county
2 shall not be liable to any person for injury or damage sustained
3 when using that road.

4 (c) No presumption that a county owns a particular street,
5 road, or highway shall arise as a result of the county's
6 performance of the activities allowed by subsection (a) or (b).

7 (d) If a county requests or requires title to a disputed
8 road, the State may quitclaim whatever interest it has in the
9 road to the county.

10 (e) If a county accepts by resolution the dedication of a
11 road whose ownership is in dispute between the county and the
12 State, the county shall not be liable to any person for injury
13 or damage sustained while that person is using that road for a
14 period of ten years following the acceptance of that road by
15 resolution.

16 [~~(d)~~] (f) The general public shall have the unrestricted
17 right to use public streets, roads, or highways whose ownership
18 is in dispute between the State and the county to access the
19 shoreline and other public recreational areas; provided that
20 this subsection shall not apply to any private street, road, or
21 highway whose ownership is in dispute.

22 [~~(e)~~] (g) As used in this section[+]

____.B. NO. _____

1 ~~"Public recreational area"]~~, "public recreational area" means
2 coastal and inland recreational areas, including beaches,
3 shores, public parks, public lands, public trails, and bodies of
4 water opened to the public for recreational use."

5 SECTION 4. Statutory material to be deleted is bracketed
6 and in strikethrough. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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