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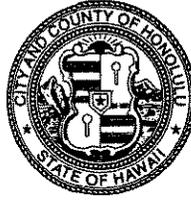
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February 19, 2008

The Honorable Ann H. Kobayashi, Chair
and Members of the Public Health, Safety
and Welfare Committee
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

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CITY CLERK
HONOLULU, HAWAII

Dear Chair Kobayashi and Councilmembers:

Subject: Response to Inquiry Regarding Bill 100 (2007), CD1

This memorandum responds to your oral request of February 6, 2008, requesting a legal opinion concerning revisions to the purpose clause of Bill 100 (2007), CD1.

I. ISSUE

Whether the committee draft amendments to Bill 100, which substitute "temporary appointment" for "appointment" and add the provision that the Mayor's authority to fill temporary vacancies is derived from Section 13-103(e) of the Revised Charter of the City and County of Honolulu 1973 (2000 ed.) ("RCH"), violate RCH Section 3-202.3 which prohibits any amendment that changes the original purpose of a bill?

II. BRIEF ANSWER

The committee draft amendments to substitute "temporary appointment" for "appointment" and add the provision that the mayor's authority to fill temporary vacancies is derived from RCH Section 13-103(e) do not violate RCH 3-202.3 because the amendments are germane to the original purpose of Bill 100.

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COUNCIL

III. FACTS

When Bill 100 was first introduced on December 12, 2007, the bill contained the following purpose provision:

Section 1. Purpose. The purpose of this ordinance is to provide a procedure for the appointment of one or more individuals to serve on a board, commission or committee for a contested case hearing, in the limited instances when the board, commission or committee is unable to act due to a lack of quorum caused by the recusal or disqualification of one or more of its regularly appointed members.

On February 6, 2008, a committee draft version of Bill 100 was introduced to include the following amendments to the purpose provision of the bill proposed (new language is underlined):

Section 1. Purpose. The purpose of this ordinance is to provide a procedure for the temporary appointment of one or more individuals to serve on a board, commission or committee for a contested case hearing, in the limited instances when the board, commission or committee is unable to act due to a lack of quorum caused by the recusal or disqualification of one or more of its regularly appointed members. This ordinance creates a procedure for the mayor to make appointments pursuant to the mayor's authority in Section 13-103(e) of the Revised Charter of Honolulu 1973 to fill temporary vacancies on boards and commissions.

IV. DISCUSSION

RCH Section 3-202.3 states:

No bill shall be so amended as to change its original purpose. On demand of at least four members, any bill shall, after amendment, be laid over for one week before its final reading. Every bill, as amended, shall be in writing before final passage. (emphasis added).

There is no Hawaii case law that discusses the requirement that a bill not be amended to change its original purpose. Case law in other jurisdictions has examined the requirement that a bill not be amended to change its original purpose. Many of those cases involve legal challenges to statutes on the basis that the statutes as adopted violate the state's constitutional provision prohibiting any amendment to a bill's original purpose.

These cases stand for the proposition that amendments to a bill are permissible if they are germane to the bill's original purpose.

"A determination whether an amendment or substitute act changed the original purpose depends on whether the subject matter of the amendment or substitute was germane to the original purpose. The test of germaneness is much like the standard for determining whether a bill is limited to a single object." Boulton v. Fenton Township, 726 N.W.2d 733, 740 (Mich. Ct. App. 2006) (internal citation, citation, and quotation marks omitted).

"The constitutional article providing that amendments to bills must be 'germane' must be construed broadly, rather than narrowly, with the view of effectuating, not frustrating, the legislative process. What is 'germane' is that which is in close relationship, appropriate, relevant, or pertinent to the general subject;" Louisiana Public Facilities Auth. v. Foster, 795 So.2d 288, 299 (La. 2001) (internal citation and citation omitted); "[g]ermane is defined as "in close relationship, appropriate, relative, pertinent. Relevant to or closely allied," C.C. Dillion Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000).

For example, in Boulton v. Fenton Township, a county sheriff's deputy who was injured when he was struck by the township fire truck argued that the statute precluding firefighters and police officers from recovering damages for injuries arising from normal foreseeable risks of their professions was unconstitutional on the basis that the underlying house bill for the statute was amended so that its original purpose was changed in violation of the state constitutional provision prohibiting amendments to a bill's purpose. The Michigan Court of Appeals disagreed with the plaintiff's allegations finding that the subsequent amendments to the house bill were germane to the original purpose of the bill:

The subsequent amendments of HB 4044 were germane to the original bill's purpose: that is, **the amendments were not so diverse from the original purpose as to have no necessary connection to it.** The original version sought to abolish the common-law firefighters' rule so as to give firefighters and police officers a greater ability to recover for injuries caused by another's negligence. The amendments prescribed the circumstances under which a firefighter or police officer could recover. "Where . . . the changes fall within the general purpose of the original bill, or are extensions of it, the Court has termed them germane." (citations omitted).

726 N.W.2d at 466-67 (emphasis added).

Likewise, in Missouri State Medical Association v. Missouri Department of Health, 39 S.W.3d 837 (Mo. 2001), physicians challenged the constitutionality of a statute on the basis that an amendment to the house bill to include pre-operative information for breast implantation exceeded the original purpose of the house bill to mandate insurance coverage for cancer early detection. Rejecting the physicians' arguments, the Missouri Supreme Court held that the amendments were germane to the original purpose of the bill to mandate health services for serious illnesses, including cancer:

MSMA asserts that the amendments to H.B. 191 were not germane to any possible original purpose. As introduced, H.B. 191 indicated an original purpose to mandate health services for serious illnesses, including cancer. As enacted, H.B. 191 requires that physicians tell patients about the advantages, disadvantages, and risk, "including cancer," of breast implantation. Subsections 1.5-1.8, 1999 Mo. Laws 312, 13, codified at subsections 376.1250.5-376.1250.9 The original purpose logically relates to mandating pre-operation information about the risks of breast implantation, including cancer. The subsections on breast implantation are germane to the original purpose of H.B. 191.

39 S.W.3d at 840.

The purpose behind not allowing a bill to be amended to change its original purpose "is to prevent bills relating to one subject when introduced from afterwards being so amended as to relate to an entirely different subject." Parrish v. Lamm, 758 P.2d 1356, 1361 (Colo. 1988) (citation omitted); and to "prevent the enactment of amendatory statutes in terms so blind that legislators themselves . . . [would be] . . . deceived in regard to their effects, and the public, from difficulty in making the necessary examination and comparison, [would fail] to become apprised of the changes made in the laws." Akin v. Director of Revenue, 934 S.W.2d 295, 302 (Mo. 1996)(citation omitted).

"[T]he 'purpose' of a bill within this section is the general purpose of a bill, not the mere details through which its purpose is manifested and effectuated." Advisory Opinion No. 331, 582 So.2d 1115, 1116 (Ala. 1991); Parrish, 758 P.2d at 1361 (legislature not prohibited from amending a bill by changing the means of accomplishing the bill's original purpose).

In analyzing whether the purpose of a bill has changed, "the original purpose is compared to the final purpose to determine if it was changed." Christ the King Manor v. Commonwealth, 911 A.2d 624, 636 (Pa. Commw. Ct. 2006).

The Honorable Ann H. Kobayashi
February 19, 2008
Page 5

Here, Bill 100 is entitled "To Amend Chapter 3, Revised Ordinances of Honolulu 1990, as Amended, Relating to Temporary Vacancies on Boards, Commissions or Committees." The purpose of Bill 100 is to establish a procedure for the appointment of individuals to fill temporary vacancies on a board, commission or committee conducting a contested case hearing when the board, commission or committee is unable to attain a quorum caused by recusal or disqualification of one or more regularly appointed board members.

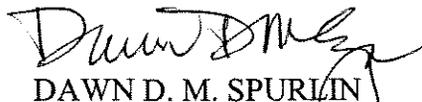
Bill 100, CD1, is virtually identical to Bill 100, except that the committee draft adds the word "temporary" before appointment and adds the provision that the mayor's authority to fill temporary vacancies is derived from RCH Section 13-103(e).

V. CONCLUSION

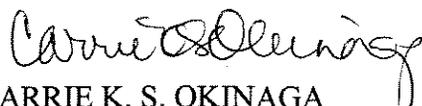
In our opinion, the committee draft amendments do not change the original purpose of Bill 100 which is to establish a procedure for the filling of temporary vacancies on boards, commissions, and committees. The proposed amendments are "germane" to the original purpose in that the addition of "temporary" before appointment is closely related to the original purpose in that the additional language merely affirms that an appointment is "temporary" because the vacancies on the board, commission or committee are temporary. Moreover, inclusion of the Charter provision does not change the original bill purpose, but is relevant and goes to the underlying reasons why an ordinance amendment is required for the promulgation of the procedure.

Should you have any questions concerning the foregoing, please do not hesitate to contact the undersigned at 523-4263.

Very truly yours,


DAWN D. M. SPURLIN
Deputy Corporation Counsel

APPROVED:


CARRIE K. S. OKINAGA
Corporation Counsel

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