

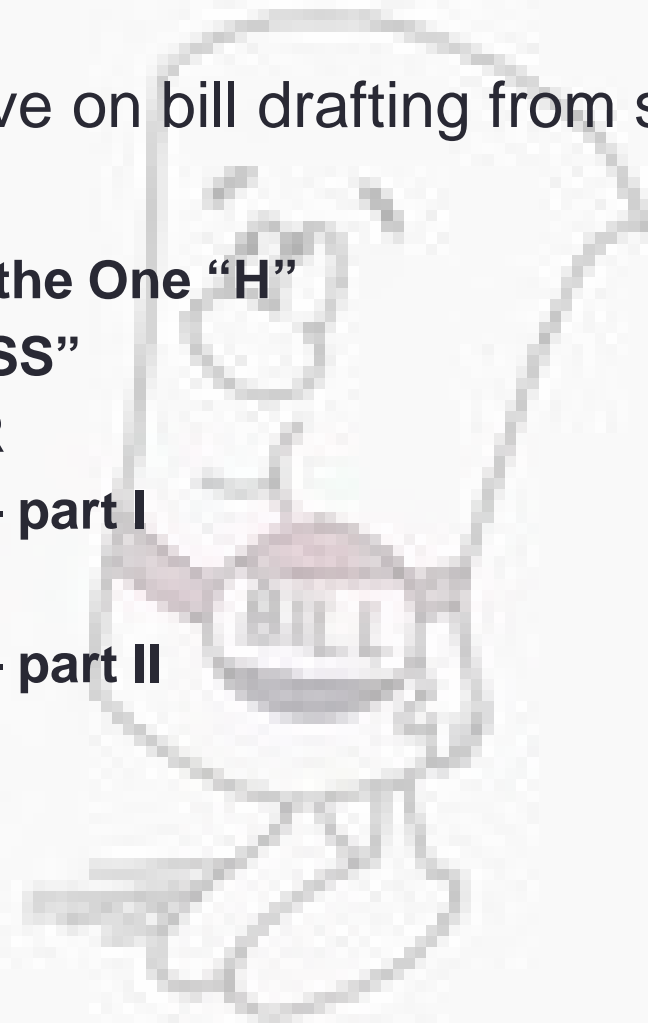
A cartoon illustration of a man in a suit running to the right. He is holding a large sign that says "BILL" in bold, capital letters. There are motion lines behind him, suggesting speed. The man has a determined expression.

B.I.L.L.

Basic Instructions for Legitimate Legislation

The Plan

- Share my perspective on bill drafting from start to finish
- Components
 - **The Four “Ws” and the One “H”**
 - **The “PUKA PROCESS”**
 - **HUNT AND GATHER**
 - **NUTS AND BOLTS – part I**
 - **DA GUTS**
 - **NUTS AND BOLTS – part II**
 - **GET COUNSELING**



Why me?

- Jon Henricks – Deputy County Clerk – County of Hawai‘i
- Part of Clerk’s Office for 10+ years
- Drafted and reviewed too many bills to count
 - There is a number, but I’m too lazy to figure it out and it’s more dramatic this way
- Don’t know everything, never will
- Confident that these practices and protocols are the “right” way and will lead to effective policymaking

The Seed

- It all starts with an idea (your seed)
- Big ideas and small ideas
 - Small ideas shouldn't require as much effort
 - Apply these principles regardless
 - No harm in treating all legislative ideas as big ideas that require all of your attention and effort
- You must germinate your seed
- It is far from a mighty oak

The Four “Ws” and the One “H”

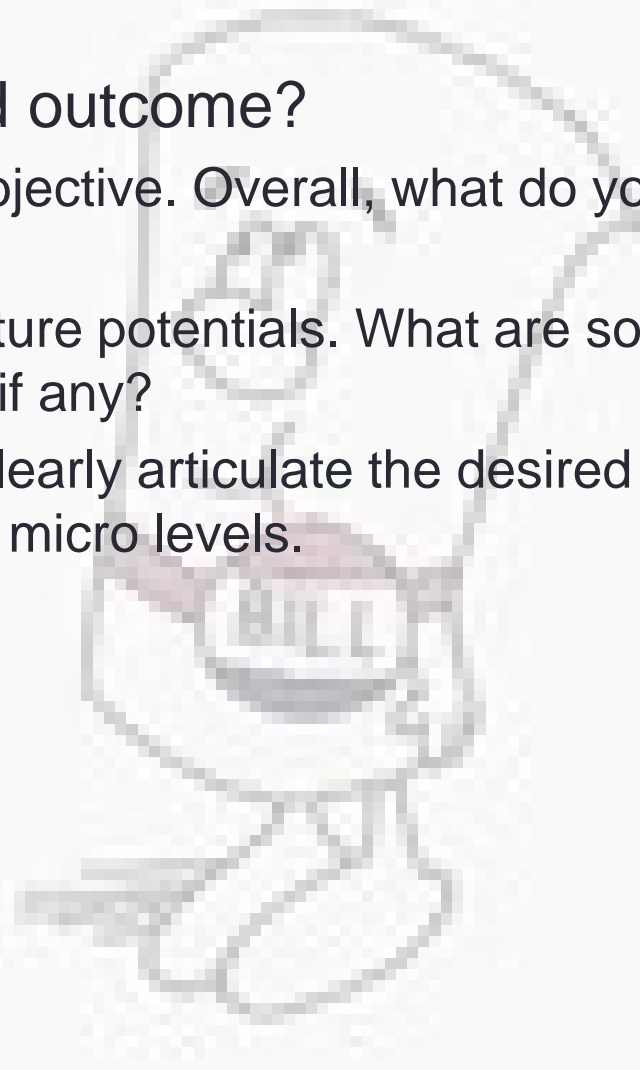
- This is your germination period
- The seed that is your idea must sprout before it can take root
- Fundamental questions stimulate sprouting
 - Who?
 - What?
 - When?
 - Why?
 - And How?

The Four “Ws” and the One “H”

- Who will this affect?
 - Everyone? Just the adults in the room? Hawai‘i Island residents only? Drivers? Small Business? People with a certain recognized status?
 - Project the group or groups of people that your bill is intended to impact.
 - Knowing who you are dealing with is essential to build your assistance network and narrowing your focus

The Four “Ws” and the One “H”

- What is the intended outcome?
 - Find the big picture objective. Overall, what do you want to happen?
 - Look for the small-picture potentials. What are some of the tangential objectives, if any?
 - You must be able to clearly articulate the desired outcome of your bill, on the macro and micro levels.

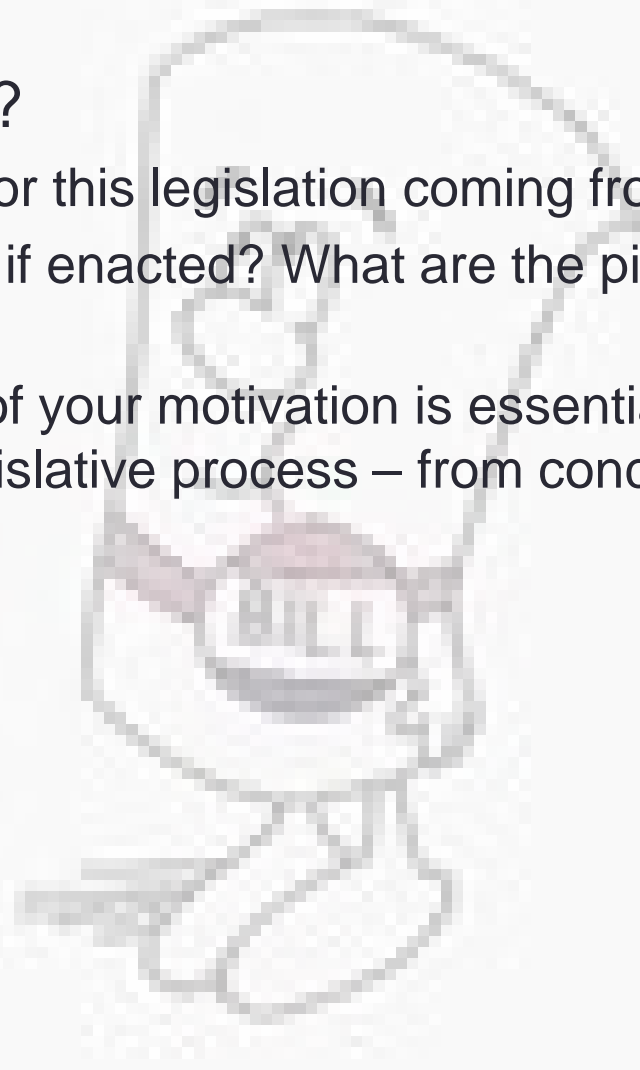


The Four “Ws” and the One “H”

- When should I do this?
 - Are we talking ASAP here? Is there an immediate and pressing need for legislation? (Immediate in the world of legislation means at least a few months – legislation cannot stop heavy bleeding and does not work in triage situations)
 - Is this a long-term project that will require much planning, even after your bill is enacted as law?
 - Setting a timeframe is critical – if pressing, you will need to mobilize people in an urgent, but considerate manner. If not pressing, use time to your advantage by taking any and all proactive and precautionary measures to produce a solid bill.

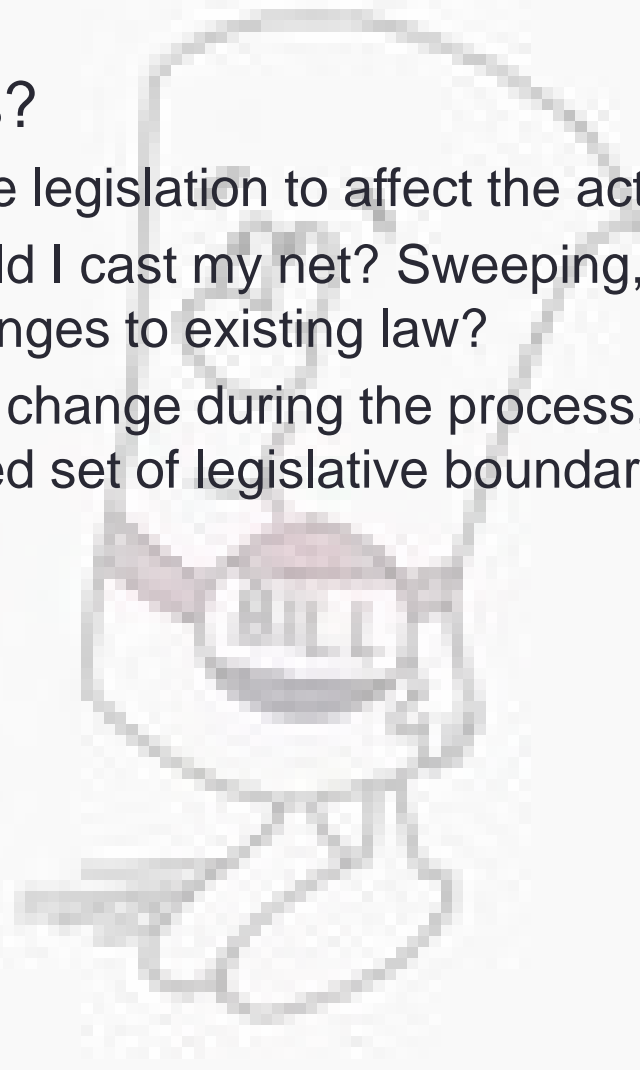
The Four “Ws” and the One “H”

- Why am I doing this?
 - Where is the energy for this legislation coming from?
 - What are the benefits if enacted? What are the pitfalls if no action is taken?
 - Clear understanding of your motivation is essential to leadership at every stage of the legislative process – from concept through enactment.



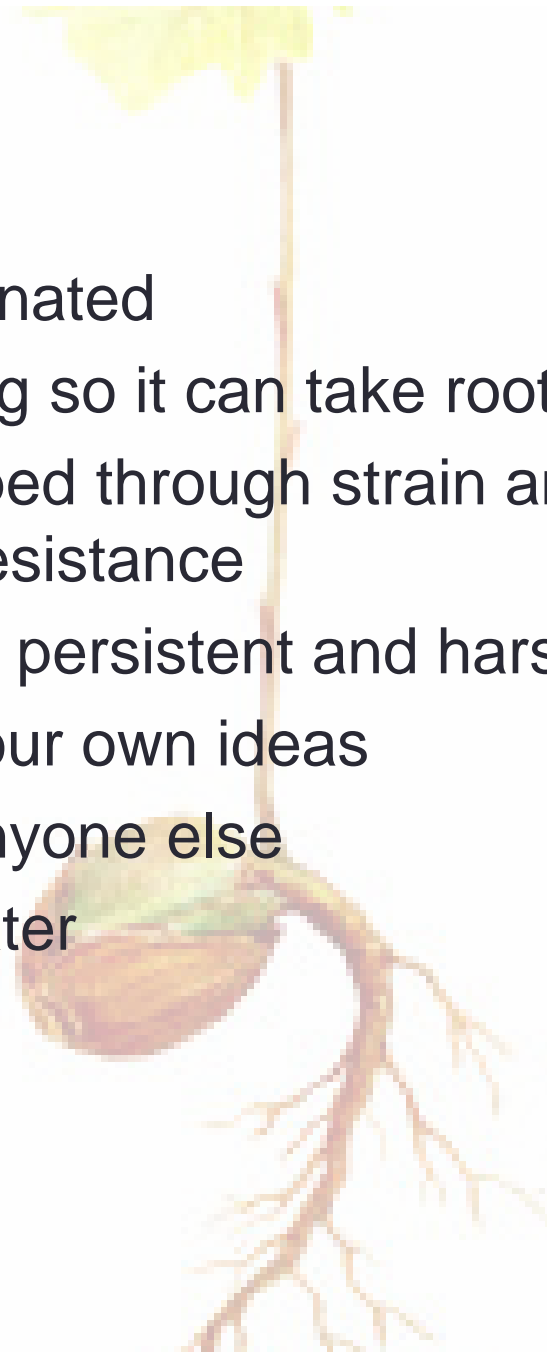
The Four “Ws” and the One “H”

- How should I do this?
 - Do I really need to use legislation to affect the action I seek?
 - If yes, how wide should I cast my net? Sweeping, broad changes? Surgical, pinpoint changes to existing law?
 - Your parameters may change during the process, but it’s prudent to start out with a planned set of legislative boundaries.



B.I.L.L.

- The seed is germinated
- Plant your seedling so it can take root
- Roots are developed through strain and struggle – pushing against resistance
- Be your own most persistent and harsh critic
- Poking holes in your own ideas
- Better you than anyone else
- Better now than later



“THE PUKA PROCESS”

- Your seedling =

A Bill to reduce a person’s Real Property Tax by 10 percent if that person shows proof that he or she voted in the last general election.

- Objective is clear: encourage voters to keep voting and stimulate new voter turnout by creating an incentive for those who opted not to vote to go to do so.
- Sounds like a pretty good idea – on the surface.
- The more people that vote, the better. Right???

“THE PUKA PROCESS”

- Not every person who pays property taxes is eligible to vote (foreign ownership, convicted felon, part-time residents and vacant land owners vote in other states)
- Not every person who is eligible to vote directly pays property taxes; How would a renter/lessor (a person that indirectly pays RPT) be able to take advantage of this program?
- Eligible voters may not even indirectly pay RPT; e.g. young people living at home, drinking all your soda (maybe even your beer!!!), playing video games, and taking 9 college credits and/or working part time.
- That looks like this:



“THE PUKA PROCESS”

- Different kinds of RPT categories; could this RPT tax reduction be applied to commercial property; ag property; hotel; industrial?
- The incentive can be drastically different based on RPT assessment and rate; i.e. what may be a \$10 incentive for one person could be a \$2,000 incentive for a person with a much higher property value, even when restricted to the residential RPT classification. Are government-sponsored disproportionate incentives appropriate?
- What if we discover that most people who pay RPT already vote? If so, the County would be providing an apparently unnecessary incentive – a tax reduction with no apparent benefits.
- Is it “legal” to offer monetary incentives directly related to voting? (Believe it or not, this has been considered before)

Los Angeles City Council considers paying people to vote

In by Poor Richard / August 16,



Apparently the ironically named L.A. Ethics Commission has voted to recommend that the City Council to begin randomly giving prizes away to voters as an incentive to vote. What could possibly go wrong?

“THE PUKA PROCESS”

- Perform test runs and hypothetical practices
- Try to mimic outcomes in the real world
- What might work?
- What might fail?
- How does the unknown factor in?



“THE PUKA PROCESS”

- Many of the pukas can be resolved
- Change the parameters of the program
- Add provisions to address noted problem areas
- After any changes – go back to making pukas again until no more pukas left – or only small kine

“THE PUKA PROCESS”



- Now is the time – when your seedling has yet to become fully rooted
- Large, conceptual changes are best made in the developmental phase
- You only need one vote to make any changes to your bill – to fill in your pukas
- You’ll need at least five after introduction
- Might not be possible to make certain changes
 - Bill construction may not allow for substantial changes due to Title restrictions, lack of content, or change to “original purpose” (more on that later)
- If too many pukas, might have to scrap it and start with a new seed

B.I.L.L.

- If your seedling withstands the puka process and starts to take root, you've got a sapling
- You've answered the foundational questions and established a focused direction
- You've poked holes all over the place and found resolutions and addressed deficiencies
- Forage for nutrition for your young and nutrient-starved sapling
- You're ready to hunt out and gather the information, people and resources you'll need to get to the next phase - drafting

HUNT AND GATHER

- INFO INFO INFO
- news articles, reports from credible non-partisan institutions, specialized journal material
- ordinances from counties/municipalities of similar size and structure (including minutes, committee reports, etc.)
- case law on the subject matter
- email administrators from other municipalities with similar policy in place – gather their input on implementation and effects
- information on the issue from any and all sources – unhelpful to seek only info that supports your objective
- BUILD A BIG FILE – and then whittle that big file down to its most important parts

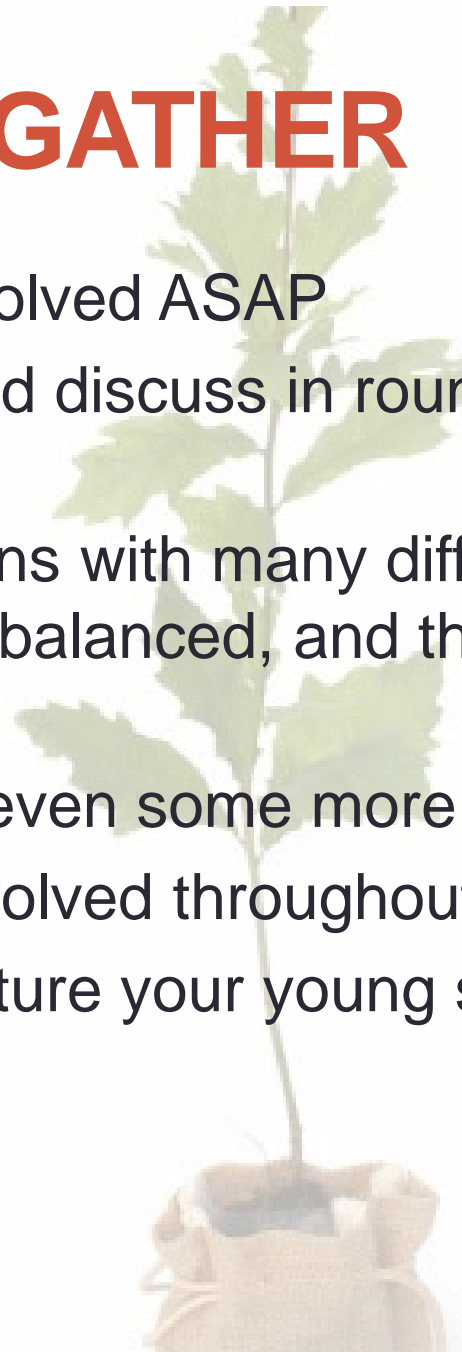
HUNT AND GATHER



- Invitations to the Party
- Create a list of persons that you will consult during the drafting process, and thereafter
- Private and public stakeholders (people in the field)
- Administrators and line workers from potentially affected agencies
- Legal counsel
- Establish a working relationship and gain commitments of participation
- Do not restrict a person because he or she may be adversarial to the cause - This person may be the most helpful person of all
- Do not restrict a person because he or she is unavailable due to geography - A person can do a lot by way of email, phone call, and videoconference

HUNT AND GATHER

- Get your group involved ASAP
- Gather together and discuss in roundtable fashion whenever possible
- Dynamic discussions with many different people present lead to innovative, balanced, and thoughtful ideas and solutions
- And yes, perhaps even some more pukas that need repair
- Keep the group involved throughout the process
- Your group will nurture your young sapling into a strong, vibrant baby oak



B.I.L.L.

- The sapling has sent down a deep tap-root, to become a baby oak
- It can withstand a heavy rain, the hot sun, some pestering pests
- The baby oak is ready to take structure of what may become a Mighty Oak
- That structure is manifested in the form of a bill, whose physical structure looks like this

COUNTY OF HAWAI'I
B.I.L.L.



STATE OF HAWAI'I

• **Nuts and Bolts – part I**

BILL NO. 63

ORDINANCE NO. _____ (Draft 2)

- Title
- Enacting Clause

• **Da Guts**

- Findings and Purpose

- Prefatory Language

- Codified Material

- Ramseyer Format

• **Nuts and Bolts – part II**

- Ramseyer Format Clause

- Severability Clause

- Effective Date

SECTION 2. Chapter 15, article 7, section 15-62, Hawai'i County Code 1983 (2005 edition), is amended to read as follows:

“Section 15-62. Membership and tenure

NUTS AND BOLTS – part I

- **Title**

- the first thing you read; but perhaps the last thing you write
- The title must provide sufficient information to capture the intent of the bill
- Language should be broad but provide notice of intent – it's a title, not a summary of contents
- Include Chapter, Article, Division and Section Numbers (use some discretion here – if there are so many section numbers that the title becomes a garbled mess, consider excluding and referencing article only)

NUTS AND BOLTS – part I

- “Every Ordinance shall embrace one subject, which subject shall be expressed in its title.”
- Title ends with “RELATING TO...” – this is where we expressly state the one subject of the bill and provide a glimpse of what is to come
- Your Title matters – the information you choose to include and the information you choose to omit may impact how your bill may or may not be amended; in addition to providing public notice of intent

NUTS AND BOLTS – part I

- A title may not be amended
 - Because
 - “A Bill shall not be amended to change its original purpose.”
 - The purpose, or subject, is expressed in the title – (“each ordinance shall embrace ONE subject, which subject shall be expressed in its title)
 - Changing the title could be construed as, and effectively cause, a change in the “original purpose” of the bill
 - Reading of bills during meetings is by title only – change in title may impact Charter requirement that bills may be passed “only after two readings on separate days.”
 - Attorney General opinion stating as much, that is still under attorney client privilege
- A title looks like this:

- **AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 5, SECTION 25-5-132 OF THE HAWAI‘I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO ZONING DISTRICT REGULATIONS FOR DOUBLE FAMILY AND MULTIPLE FAMILY DWELLINGS WITHIN THE INDUSTRIAL-COMMERCIAL MIXED (MCX) COUNTY DISTRICT.**

NUTS AND BOLTS – part I

- **Enacting Clause** – must be included, but no discretion
- Most Charters provide that the enacting clause must be included for the ordinance to be valid – except for Maui – anyone here from Maui? What's up with that Maui?
- Charter provides the exact wording
- Enacting clause acts as an official seal – clear declaration that the Council is making law
- An Enacting Clause looks like this

THE CHARTER
OF THE
COUNTY OF KAUA'I

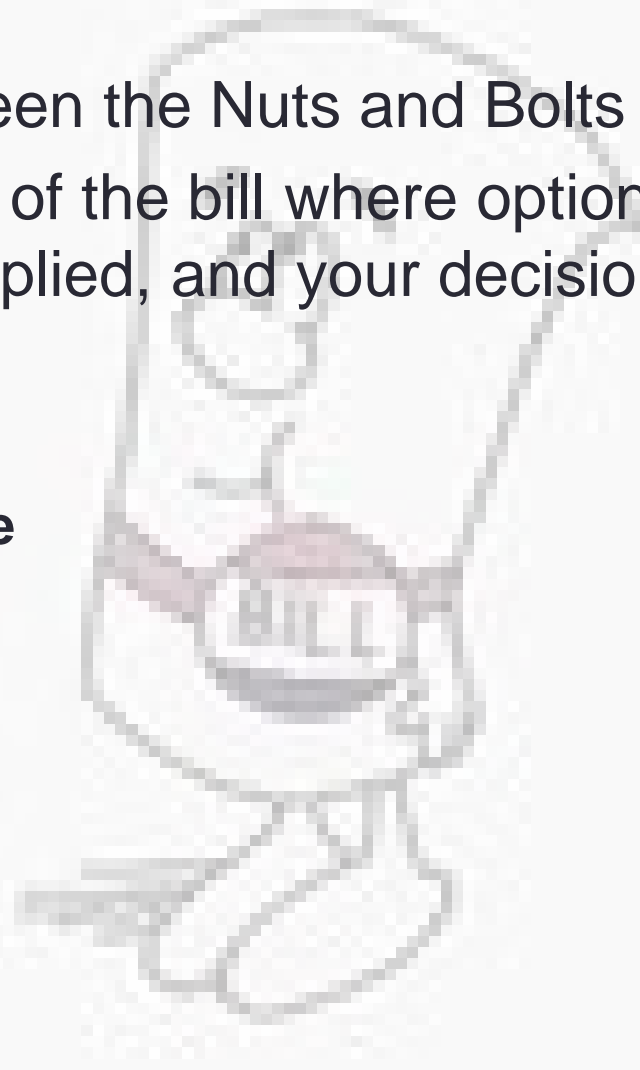
**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY
OF HAWAI'I:**

What about the sapling/tree?

- It's not easy keeping a metaphorical cliché rolling
- It's not easy finding clipart of the life cycle of an oak
- But there's our young oak, slowly getting stronger – gaining strength through structure
- Gosh I hope that's an oak

DA GUTS

- Da guts are in between the Nuts and Bolts
- Da guts are the part of the bill where options abound, discretion can be applied, and your decisions carry greater weight
- Da guts are
 - **Finding and Purpose**
 - **Prefatory Language**
 - **Codified Material**
 - **Ramseyer Format**



DA GUTS

- **Findings and Purpose** – Why you doing that???
- Most properly drafted bills do NOT need a F&P section
- The purpose of the bill is plain and evident from its content
- An unnecessary F&P section could only cause harm to a well-drafted bill (limit ability to amend, unintentionally misrepresent true purpose of bill, include information that is not accurate/factual) – why add an element that must be analyzed for completeness, accuracy, spelling, grammar, etc. when it adds no benefit?

DA GUTS

- More complex and sweeping bills may benefit from F&P
 - Helpful for administrators to implement and enforce
 - Judicial interpretation beyond the plain reading
 - Understanding of public, exec branch, and fellow legislators during deliberation (could help to produce amendments to clarify and/or improve provisions)
 - F&P should be written in the present tense, but act as if the bill has already been passed and is an ordinance
- F&P should not state what a bill does, but rather the rationale for action. Here's a poor example 😊
 - NO - "The purpose of this ordinance is to raise the fares for public transportation."
 - YES – "The Council finds that public transportation ridership has increased to a degree that the County may reduce its subsidization of this critical service. The purpose of this ordinance is to pass on those costs to those utilizing public transportation by way of the nominal increase in fare as provided for in this ordinance."

DA GUTS

- **Prefatory Language** – this is the preface to the material to be codified
- Works hand-in-hand with Ramseyer format to state what law is to be changed, added, or repealed
- Simple on its face
- State those parts of the Code that the content following PL are to impact
- Include Chapter, Article, Division, Section
- Include subsection when only a subsection, or contiguous subsections, is/are under consideration for amendment

DA GUTS

- Be precise – this is your set up and it matters
- Set out only those parts that you intend to amend; sections only; subsections only when possible
- Including content that you do not intend to amend may result in
 - inadvertent amendments by way of drafting errors and/or
 - allow for amendments to your bill that are not in alignment with the bill's original purpose (material included in bill that is not pertinent to the purpose of your bill appears to be subject to potential amendments)
- There are highly-trained specialists for this – you are not alone
- Prefatory language looks like this

SECTION 2. Chapter 19, article 7, section 19-57 of the Hawai‘i County Code 1983 (2005 Edition, as amended) is amended to read as follows:

And this

SECTION 3. Chapter 25, article 2, division 7, section 25-2-71 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (g) to read as follows:

DA GUTS

- **Codified Material** – The words that matter most
- If you have answered the “Four Ws and One H”, performed the “PUKA PROCESS” and “Hunted and Gathered” this **should** be fairly easy
- The content has been discovered – only a matter of choosing the right words
- Keep it simple – Avoid jargon and legalese
 - Exceptions - words that I have grown to love
 - **Pursuant** = Something that is done in consequence of (do this because of that)
 - **Notwithstanding** = Irrespective of (this should normally matter, but it doesn't this time)
 - **Enumerated** = Expressly named or granted (something a reasonable person would say was clearly and irrefutably stated)

DA GUTS

- Don't try to make it sound smart;
 - Use plain, simple language;
 - Articulate your provisions using clear, succinct, and consistent words and phrases
 - No explanations, narrations, expository language (no describing the problem or discussing the solution)
- The art of excellent bill drafting is simplicity, specificity, and consistency
- The enemy of bill drafting is vagueness, ambiguity, and clutter
- Then it will read smart because everyone in the room will be on the same page
- There are highly-trained specialists to help keep it tight and right

DA GUTS

- Use the same words and phrases that are used in the surrounding provisions of related content; consistent language aides comprehension and implementation
- Use the same words and phrases throughout your amendments; no synonyms or different ways of saying the same thing; consistent language aides comprehension and implementation (see what I did there?)
- Use “may” to express authority, power, or privilege
- Use “shall” to express a duty, obligation, or requirement
- Use one or the other, but nothing in between
- A well-written provision looks like this:

- **Section 2-78. Duties of mass transit administrator.**
- The mass transit administrator shall have direct responsibility for the administration and operation of County mass transit service, whether such service is provided directly, jointly, or under contract with private parties. The mass transit administrator shall be under the direct supervision and control of the managing director and shall have the authority to staff the agency with necessary personnel to carry out the purposes of the agency.

DA GUTS

- **RAMSEYER FORMAT** – It's to **SHOW** the difference, but it doesn't **MAKE** the difference
- This **MUST MUST MUST** be accurate - **CRITICAL** to truly illustrate the changes you are proposing
- Inaccuracies can be viewed as deceptive or incompetent – neither are good traits
- Prefatory language states “**is amended to read as follows:**”
- If words are not underscored but are included, those words are **ADDED** - they are now the law
- If words are removed but not [~~bracketed and stricken~~], those words are **DELETED** – they are now **NOT** the law

LEGISLATIVE DRAFTING MANUAL

TENTH EDITION

DA GUTS

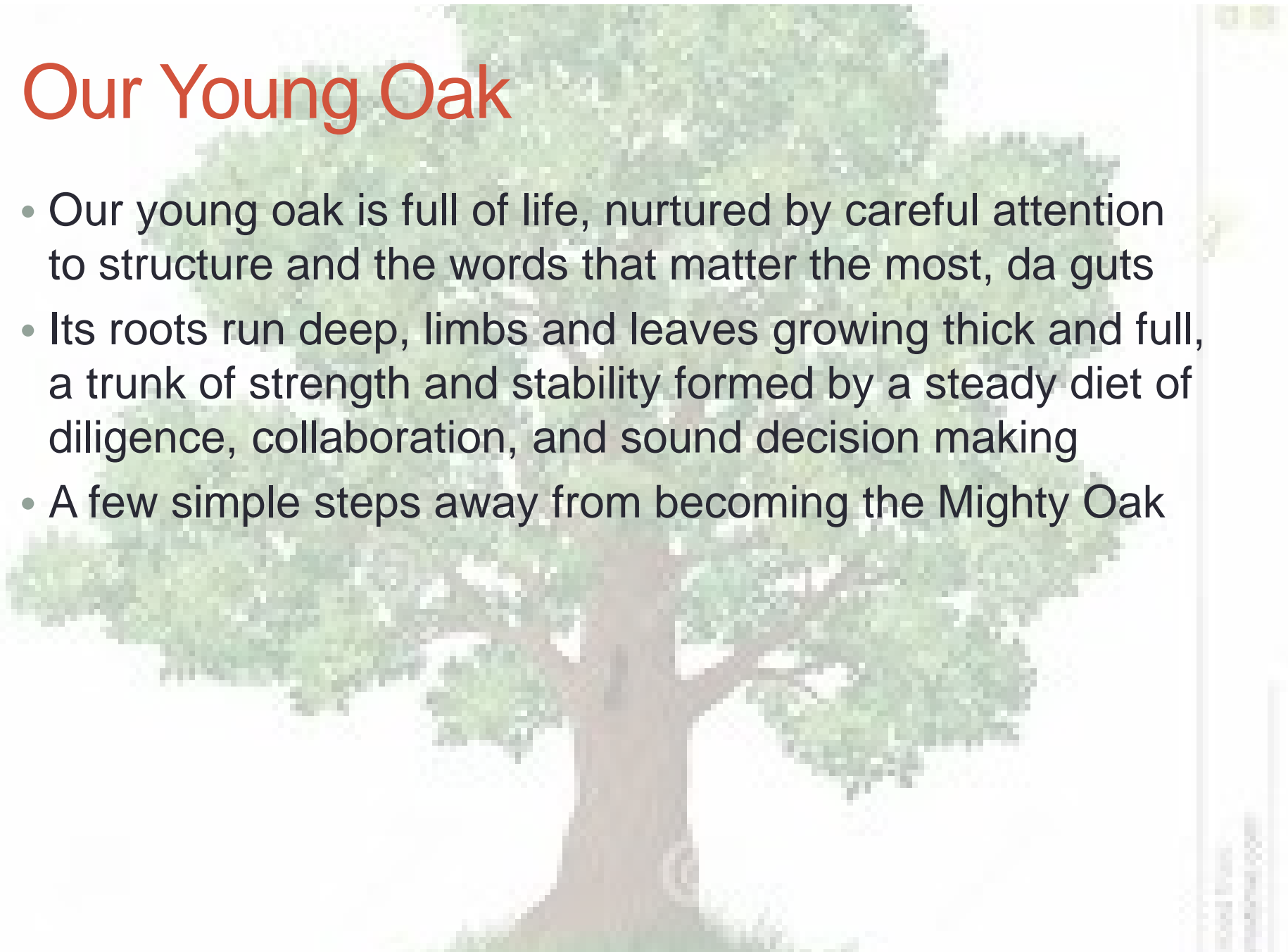
- Don't use Ramseyer format when adding a new article – keep it clean, underscoring all of the material will only harm readability
- Don't use Ramseyer format when adding a new chapter or repealing and replacing an existing chapter – no need bracket and strike old chapter, no need underscore new chapter – that wouldn't aide in understanding new law
- Ramseyer format is a technical exercise – it can take years to become proficient – there are highly-trained specialists for this
- Use the Hawai'i Legislative Drafting Manual for guidance and rules of Ramseyer format – It's awesome
- Ramseyer format looks like this:

Section 20-40. Explosives, radioactive wastes and other ~~[prohibited materials.]~~ cool materials from awesome 80s movies.

- (a) No person shall dump~~[, place, or remove to]~~ at any County disposal facility, ~~[including]~~ excluding transfer stations, or deposit any prohibited materials as defined in ~~[this article]~~ the urban dictionary or by the State department of health rules, regulations and standards, including any radioactive or chemical waste, any pesticides, explosives, blasting materials, fuses, live ammunition, fudge, or other substances that may ~~[explode]~~ ignite upon contact with heat ~~[or]~~, fire[-], or kool aid.

Our Young Oak

- Our young oak is full of life, nurtured by careful attention to structure and the words that matter the most, da guts
- Its roots run deep, limbs and leaves growing thick and full, a trunk of strength and stability formed by a steady diet of diligence, collaboration, and sound decision making
- A few simple steps away from becoming the Mighty Oak



NUTS AND BOLTS – part II

- More Nuts and Bolts after the words that matter
- Fairly dry – almost boilerplate
- **Ramseyer format clause**, to explain the brackets, strikethroughs and underscoring in the bill and work with the prefatory language to direct the content of amendments
 - When only adding material – only reference underscoring
 - When only deleting material – only reference bracketing and strike through
 - When doing both, use standard clause
 - If unsure of what may happen due to potential amendments, stick with the standard clause
- Ramseyer format clauses look like this:

SECTION 4. Material to be added is underscored. In printing this ordinance, the underscoring need not be included.

SECTION 4. Material to be repealed is bracketed and stricken. In printing this ordinance, the brackets and bracketed and stricken material need not be included.

SECTION 4. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material and underscoring need not be included.

NUTS AND BOLTS – part II

- **Severability Clause** – least interesting clause of all, and probably unnecessary
- Provides that if any part of the ordinance is declared unlawful, but other parts of the ordinance can stand alone and are “separate” from that part, than those “separate” parts are still lawful and in effect regardless of the unlawful content
- This one doesn’t ever change
- And it looks like this:

- **SECTION 4. Severability.** If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

NUTS AND BOLTS – part II

- Final clause is the **Effective Date**
- Usually upon approval; if not included in bill, then would take effect upon approval
- Upon approval means the date the mayor signs into law, returns unsigned by not disapproved, or when the council overrides mayoral disapproval
- Can certainly select a future time for ordinance to take effect
 - Allow for administration to prepare for significant changes or new duties
 - Allow time for public to be made aware of new law
 - Allow for a dependent act to occur

Retroactive effective dates can only be applied in the most rare circumstances – Law is generally prospective by nature

Effective date clauses look like this:

- **SECTION 5.** This ordinance shall take effect upon its approval.
- **SECTION 5.** This ordinance shall take effect ninety days after approval.
- **SECTION 5.** This ordinance shall take effect on July 1, 2017.
- **SECTION 5.** This ordinance shall take effect upon the date that the board of ethics formally adopts rules and procedures relating to the imposition of administrative fines, pursuant to Chapter 91, Hawai‘i Revised Statutes.

Get Counseling

- Questions have been asked and answered
- All the pukas have been brought to the light and properly resolved
- Information was hunted down, a large work file built and broken down
- The right people have been gathered to ensure a collaborative approach and result
- The filtered idea, information and collaboration manifest onto paper via nuts and bolts and da guts in between
- Final legal filter prior to introduction

Get Counseling



- Prudent to involve counsel as early in the developmental stage as possible – as part of your working group
- Share ideas, concerns, and your draft work with counsel through the developmental process
- Final check prior to introduction – like a Safety Check before you take it out on the road
- May not always be positive
- Best to be aware – find out what is possible on “your worst day”
- Possible to mitigate before your bill hits the floor
- Lawmakers respect the law and work within, and embrace, its confines

YOUR MIGHTY OAK!

- Your seed is now the Mighty Oak
- It can withstand harsh elements
- It is impervious to the seasons
- It thrives under excellent conditions and survives in drought
- Your work, attention to detail, and collaborative efforts have created a nurturing environment for your idea to fully form into a solid bill
- These are the Basic Instructions for Legitimate Legislation

Too Much Stuff

- Things not covered
- Intricacies and perils of proposed amendments to County Charters – Proceed with extreme caution –
- Nuts and bolts of formatting your language in a neat and tidy fashion – use of subsections, paragraphs, subparagraphs, etc. – Consult the Hawai'i Legislative Drafting Manual – It's awesome – and there are highly-trained specialists for this
- Bills not intended to amend the Code – Zoning, Fiscal, Etc.
- Everything else I didn't go over

All Pau

- Jon Henricks
- Deputy County Clerk
- County of Hawai'i
- Jon.Henricks@hawaiicounty.gov
- (808) 961-8580

