



1           §     -2 **Hawaii construction authority; establishment;**  
2 **board; staff.** (a) There is established the Hawaii construction  
3 authority, which shall be a body corporate and a public  
4 instrumentality of the State, for the purpose of implementing  
5 this chapter. The authority shall be placed within the  
6 department of labor and industrial relations for administrative  
7 purposes only.

8           (b) The authority shall be headed by a policy-making board  
9 of directors which consists of twelve public, voting members,  
10 and four ex officio nonvoting members; provided that:

11           (1) The twelve public, voting members shall be appointed  
12 by the governor as provided in section 26-34, except  
13 as otherwise provided by law;

14           (2) The twelve public, voting members shall be composed of  
15 at least one representative each from the city and the  
16 counties of Honolulu, Hawaii, Kauai, and Maui; the  
17 remaining public members shall be appointed at-large;

18           (3) Of the twelve public, voting members:

19           (A) Three shall be appointed by the governor from a  
20 list of three names submitted for each  
21 appointment by the president of the senate; and



1 (B) Three shall be appointed by the governor from a  
2 list of three names submitted for each  
3 appointment by the speaker of the house of  
4 representatives;

5 provided that if fewer than three names are submitted  
6 for each appointment, the governor may disregard the  
7 list;

8 (4) Of the twelve public, voting members at least:

9 (A) Six shall have knowledge, experience, and  
10 expertise in at least one of the area of  
11 construction, architecture, engineering, or the  
12 building industry;

13 (B) One shall have knowledge, experience, and  
14 expertise with labor organizations representing  
15 the construction trades; and

16 (C) One shall have knowledge, experience, and  
17 expertise in the area of Hawaiian cultural  
18 practices;

19 provided that no more than three members shall  
20 represent, be employed by, or be under contract to any  
21 sector of the industry represented on the board;



1           (5) The governor shall make appointments to ensure the  
2           fulfillment of all requirements; provided that any  
3           appointments made after July 1, 2007, shall be made to  
4           fulfill the requirements in place when the  
5           appointments are made; and

6           (6) The ex-officio nominating members shall be as follows:

7           (A) The director of labor and industrial relations,  
8           or a designated representative;

9           (B) The director of commerce and consumer affairs, or  
10          a designated representative;

11          (C) The director of business, economic development,  
12          and tourism, or a designated representative; and

13          (D) The chairperson of the board of land and natural  
14          resources, or a designated representative.

15          (c) The public members shall be appointed by the governor  
16          for terms of four years. Each public member shall hold office  
17          until the member's successor is appointed and qualified.

18          Section 26-34 shall be applicable insofar as it relates to the  
19          number of terms and consecutive number of years a member may  
20          serve on the board.

21          (d) The board shall elect a chairperson from among the  
22          voting members.



1 (e) Seven voting members shall constitute a quorum and a  
2 minimum of seven affirmative votes shall be necessary for all  
3 actions by the authority. The members shall serve without  
4 compensation, but shall be reimbursed for expenses, including  
5 traveling expenses, necessary for the performance of their  
6 duties.

7 (f) The board:

8 (1) Shall appoint an executive director, exempt from  
9 chapters 76 and 88 who shall oversee the  
10 authority staff;

11 (2) Shall set the executive director's salary,  
12 duties, responsibilities, holidays, vacations,  
13 leave, hours of work, and working conditions;  
14 provided that the compensation package shall not  
15 include private sector moneys or other  
16 contributions; and

17 (3) May grant such other benefits as it deems  
18 necessary.

19 (g) The authority may employ persons not subject to  
20 chapters 76 and 78 to perform and execute the functions of the  
21 authority.



1           §     **-3 Authority; private attorneys.** (a) The board may  
2 appoint or retain by contract one or more attorneys who are  
3 independent of the attorney general to provide legal services  
4 for the board solely in cases in which the attorney general  
5 lacks sufficient expertise; provided that the independent  
6 attorney shall consult and work in conjunction with the  
7 designated deputy attorney general assigned to the Hawaii  
8 construction authority.

9           (b) The board may fix the compensation of the attorneys  
10 appointed or retained pursuant to this section. Attorneys  
11 appointed or retained by contract shall be exempt from chapters  
12 76, 78, and 88.

13          §     **-4 Powers and duties.** (a) Except as otherwise  
14 limited by this chapter, the authority may:

- 15           (1) Sue and be sued;
- 16           (2) Have a seal and alter the same at pleasure;
- 17           (3) Make and execute contracts and all other instruments  
18 necessary or convenient for the exercise of its powers  
19 and functions under this chapter; provided that the  
20 authority may enter into contracts and agreements for  
21 a period of up to five years, subject to the  
22 availability of funds;



- 1           (4) Make and alter bylaws for its organization and  
2                   internal management;
- 3           (5) Unless otherwise provided in this chapter, adopt rules  
4                   in accordance with chapter 91 with respect to its  
5                   projects, operations, and facilities;
- 6           (6) Through its executive director represent the authority  
7                   in communications with the governor and with the  
8                   legislature;
- 9           (7) Through its executive director:
- 10                (A) Provide for the appointment of officers, agents,  
11                   and employees, subject to the approval of the  
12                   board, prescribing their duties and  
13                   qualifications, and fixing their salaries,  
14                   without regard to chapters 76 and 78 if there is  
15                   no anticipated revenue shortfall in the  
16                   construction authority special fund and funds  
17                   have been appropriated by the legislature and  
18                   allotted as provided by law;
- 19                (B) Purchase supplies, equipment, and furniture; and
- 20                (C) Allocate the space or spaces which are to be  
21                   occupied by the authority and appropriate staff;



- 1           (8) Engage the services of qualified persons to implement  
2           the State's construction industry development plan or  
3           portions thereof as determined by the authority;
- 4           (9) Engage the services of consultants on a contractual  
5           basis for rendering professional and technical  
6           assistance and advice;
- 7           (10) Procure insurance against any loss in connection with  
8           the state's property and other assets and operations  
9           in such amounts and from such insurers as it deems  
10          desirable;
- 11          (11) Contract for or accept revenues, compensation,  
12          proceeds, and gifts or grants in any form from any  
13          public agency or any other source, including any  
14          revenues;
- 15          (12) Develop, coordinate, and implement state policies and  
16          directions for the construction industry and related  
17          activities taking into account the economic, social,  
18          and physical impacts of construction on the state and  
19          the state's natural resources infrastructure; provided  
20          that the authority shall support the efforts of other  
21          state and county departments or agencies to manage and  
22          improve Hawaii's construction industry;





- 1 (13) Conduct research as necessary;
- 2 (14) Coordinate all agencies and advise the private sector  
3 in the development of construction activities and  
4 resources;
- 5 (15) Coordinate the development of new and innovative  
6 construction and building concepts with the counties  
7 and other public and private sectors, including the  
8 development of education and technology programs;
- 9 (16) Establish a public information and educational program  
10 to inform the public of construction, building, and  
11 construction-related problems;
- 12 (17) Encourage the development of building trades  
13 educational, training, and career counseling programs;  
14 and
- 15 (18) Establish a program to monitor, investigate, and  
16 respond to complaints about problems resulting  
17 directly or indirectly from the construction industry  
18 and taking appropriate action as necessary.
- 19 (b) The authority shall be responsible for:
- 20 (1) Creating a vision and developing a long-range  
21 strategic plan for construction in Hawaii;



- 1           (2) Coordinating this construction industry plan for the  
2           State;
- 3           (3) Reviewing all state and county laws to determine  
4           whether there is redundancy, and if so, whether  
5           elimination of this redundancy will improve the  
6           construction industry in the state;
- 7           (4) Arranging for the conduct of research through  
8           contractual services with the University of Hawaii or  
9           any agency or other qualified persons concerning the  
10          social, economic, and environmental impacts of  
11          construction in this state or any other aspects of  
12          construction in the state deemed necessary by the  
13          board;
- 14          (5) Providing technical or other assistance to agencies  
15          and private industry upon request; and
- 16          (6) Reviewing annually the expenditure of public funds by  
17          any construction industry organization with which the  
18          authority contracts to perform duties related to the  
19          long-range construction development plan and making  
20          recommendations necessary to ensure the effective use  
21          of the funds for the development of construction. The  
22          authority shall also prepare annually a report of



1 expenditures, including descriptions and evaluations  
2 of programs funded, together with any recommendations  
3 the authority may make and shall submit the report to  
4 the governor and the legislature as part of the annual  
5 report required under section -13.

6 (c) The authority shall do any and all things necessary to  
7 carry out its purposes, to exercise the powers and  
8 responsibilities given in this chapter, and to perform other  
9 functions required or authorized by law.

10 § -5 **Meetings of the board.** (a) The meetings of the  
11 board shall be open to the public as provided in section 92-3,  
12 except that when it is necessary for the board to receive  
13 information that is proprietary to a particular enterprise or  
14 the disclosure of which might be harmful to the business  
15 interests of the enterprise, the board may enter into an  
16 executive meeting that is closed to the public.

17 (b) The board shall be subject to the procedural  
18 requirements of section 92-4, and this authorization shall be in  
19 addition to the exceptions listed in section 92-5, to enable the  
20 board to respect the proprietary requirements of enterprises  
21 with which it has business dealings.



1           §     -6   **Exemption of Hawaii construction authority from**  
2   **administrative supervision of boards and commissions.**

3   Notwithstanding any law to the contrary, the authority shall be  
4   exempt from section 26-35 with the exception of section  
5   26-35(a) (2), (3), (7), and (8) and (b).

6           §     -7   **Construction industry development plan; measures**  
7   **of effectiveness.**   (a)   The authority shall be responsible for  
8   developing a long-range construction industry development plan  
9   that shall be updated every year and, at a minimum, include the  
10   following:

- 11           (1)   Construction projects already in progress;
- 12           (2)   Construction projects targeted to begin during the  
13               current calendar year;
- 14           (3)   Construction projects projected to begin during the  
15               next five calendar years;
- 16           (4)   A review of all federal, state, and county laws that  
17               will affect the construction industry in the state;
- 18           (5)   Efforts to improve the construction industry through  
19               coordination among agencies that provide oversight or  
20               have jurisdiction over construction projects;



1           (6) Projections on the labor needs of the construction  
2                    industry and the capabilities of the construction  
3                    industry to meet these demands; and

4           (7) Efforts to improve the education and training of the  
5                    building trades.

6           (b) In accordance with subsection (a), the authority shall  
7 be responsible for developing measures of effectiveness to  
8 assess the overall benefits and effectiveness of the long-range  
9 construction industry development plan and include documentation  
10 of the directly attributable benefits of the plan to:

- 11           (1) Hawaii's construction industry;
- 12           (2) Employment in Hawaii; and
- 13           (3) State taxes.

14           §    -8 **Hawaii construction authority special fund.** (a)

15 There is established the Hawaii construction authority special  
16 fund, into which shall be deposited:

- 17           (1) Appropriations by the legislature to the Hawaii  
18                    construction authority special fund;
- 19           (2) Gifts, grants, and other funds accepted by the  
20                    authority; and
- 21           (3) All interest and revenues or receipts derived by the  
22                    authority from any project or project agreements.



1 (b) Moneys in the Hawaii construction authority special  
2 fund may be:

3 (1) Placed in interest-bearing accounts; provided that the  
4 depository in which the money is deposited furnishes  
5 security as provided in section 38-3; or

6 (2) Otherwise invested by the authority until such time as  
7 the moneys may be needed; provided that the authority  
8 shall limit its investments to those listed in section  
9 36-21.

10 All interest accruing from the investment of these moneys shall  
11 be credited to the Hawaii construction authority special fund.

12 (c) Moneys in the Hawaii construction authority special  
13 fund shall be used by the authority for the purposes of this  
14 chapter.

15 § -9 **Exemption of authority from Hawaii public**  
16 **procurement code.** The authority shall not be subject to chapter  
17 103D and any and all other requirements of law for competitive  
18 bidding for project agreements, lease and sublease agreements,  
19 or other contracts unless a project agreement with respect to a  
20 project requires otherwise.



1           §     -10   **Assistance by state and county agencies.** Any  
2 state or county agency may render services upon request of the  
3 authority.

4           §     -11   **Declaration of public function, purpose, and**  
5 **necessity.** The powers and functions granted to and exercised by  
6 the Hawaii construction authority under this chapter are  
7 declared to be public and governmental functions, exercised for  
8 a public purpose, and matters of public necessity.

9           §     -12   **Court proceedings; preferences; venue.** (a) Any  
10 action or proceeding to which the authority, the State, or the  
11 county may be a party, in which any question arises as to the  
12 validity of this chapter, shall be preferred over all other  
13 civil cases, except election cases, in the circuit court of the  
14 circuit where the case or controversy arises, and shall be heard  
15 and determined in preference to all other civil cases pending  
16 therein except election cases, irrespective of position on the  
17 calendar.

18           (b) Upon application of counsel to the authority, the same  
19 preference shall be granted in any action or proceeding  
20 questioning the validity of this chapter in which the authority  
21 may be allowed to intervene.



1           (c) Any action or proceeding to which the authority, the  
2 State, or the county may be party, in which any question arises  
3 as to the validity of this chapter or any portion of this  
4 chapter, or any action of the authority may be filed in the  
5 circuit court of the circuit where the case or controversy  
6 arises, which court is hereby vested with original jurisdiction  
7 over the action.

8           (d) Notwithstanding any provision of law to the contrary,  
9 declaratory relief from the circuit court may be obtained for  
10 any action.

11           (e) Any party aggrieved by the decision of the circuit  
12 court may appeal in accordance with part I of chapter 641 and  
13 the appeal shall be given priority.

14           §    -13 **Annual report.** The authority shall submit a  
15 complete and detailed annual report of its activities,  
16 expenditures, and results to the governor and the legislature at  
17 least twenty days prior to the convening of each regular session  
18 of the legislature."

19           SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is  
20 amended as follows:

21           1. By amending subsection (a) to read:





1           "(a) No department of the State other than the attorney  
2 general may employ or retain any attorney, by contract or  
3 otherwise, for the purpose of representing the State or the  
4 department in any litigation, rendering legal counsel to the  
5 department, or drafting legal documents for the department;  
6 provided that the foregoing provision shall not apply to the  
7 employment or retention of attorneys:

8           (1) By the public utilities commission, the labor and  
9           industrial relations appeals board, and the Hawaii  
10          labor relations board;

11          (2) By any court or judicial or legislative office of the  
12          State;

13          (3) By the legislative reference bureau;

14          (4) By any compilation commission that may be constituted  
15          from time to time;

16          (5) By the real estate commission for any action involving  
17          the real estate recovery fund;

18          (6) By the contractors license board for any action  
19          involving the contractors recovery fund;

20          (7) By the trustees for any action involving the travel  
21          agency recovery fund;

22          (8) By the office of Hawaiian affairs;



- 1           (9) By the department of commerce and consumer affairs for
- 2           the enforcement of violations of chapters 480 and 485;
- 3           (10) As grand jury counsel;
- 4           (11) By the Hawaiian home lands trust individual claims
- 5           review panel;
- 6           (12) By the Hawaii health systems corporation or any of its
- 7           facilities;
- 8           (13) By the auditor;
- 9           (14) By the office of ombudsman;
- 10          (15) By the insurance division;
- 11          (16) By the University of Hawaii;
- 12          (17) By the Kahoolawe island reserve commission;
- 13          (18) By the division of consumer advocacy;
- 14          (19) By the office of elections;
- 15          (20) By the campaign spending commission;
- 16          (21) By the Hawaii tourism authority, as provided in
- 17          section 201B-2.5; [~~e~~]
- 18          (22) By the Hawaii construction authority, as provided in
- 19          section           -3; or
- 20          [~~(22)~~] (23) By a department, in the event the attorney
- 21          general, for reasons deemed by the attorney general
- 22          good and sufficient, declines, to employ or retain an



1 attorney for a department; provided that the governor  
2 thereupon waives the provision of this section."

3 2. By amending subsection (c) to read:

4 "(c) Every attorney employed by any department on a full-  
5 time basis, except an attorney employed by the public utilities  
6 commission, the labor and industrial relations appeals board,  
7 the Hawaii labor relations board, the office of Hawaiian  
8 affairs, the Hawaii health systems corporation, the department  
9 of commerce and consumer affairs in prosecution of consumer  
10 complaints, insurance division, the division of consumer  
11 advocacy, the University of Hawaii, the Hawaii tourism authority  
12 as provided in section 201B-2.5, the Hawaii construction  
13 authority as provided in section \_\_\_\_\_-3, the Hawaiian home lands  
14 trust individual claims review panel, or as grand jury counsel,  
15 shall be a deputy attorney general."

16 SECTION 3. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_ or so much  
18 thereof as may be necessary for fiscal year 2006-2007 for the  
19 establishment of the Hawaii construction authority.

20 The sum appropriated shall be expended by the department of  
21 labor and industrial relations for the purposes of this Act.





HB 3073

**Report Title:**

Construction Industry Authority; construction

**Description:**

Establishes a Construction Industry Authority.

HB HMS 2006-1247

