

Report Title:

Hawaii construction authority; construction; land development

Description:

Establishes a Hawaii Construction Authority.



A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 SECTION 1. Hawaii's construction industry is currently
2 experiencing a boom with recent reports indicating that it will
3 continue expanding, and will add more jobs and money into the
4 local economy over the next several years to roughly twenty-nine
5 thousand three hundred jobs, with increases of 6.5 per cent
6 expected in 2005, and 3.1 per cent in 2006. Experts believe
7 that this growth has been fueled by moderate but steady local
8 economic expansion, stronger population growth, out-of-state
9 second-home buyers of resort properties, low interest rates, and
10 increases in privatization of military construction projects.

11 The legislature finds that the expansion of the
12 construction industry raises a number of issues for both the
13 industry and policymakers, such as the adequacy of the workforce
14 and complaints about government bureaucracy and regulatory
15 redundancy when developing properties. The legislature finds
16 that Hawaii's construction and building development industries
17 are governed by numerous agencies throughout the state, and that
18 consolidating these agencies into a single entity would create a



1 one-stop center for construction projects that would help to
2 streamline the regulatory process.

3 Accordingly, the purpose of this Act is to create a Hawaii
4 construction industry authority to provide consolidated
5 oversight of the construction industry in Hawaii.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 "CHAPTER

10 HAWAII CONSTRUCTION AUTHORITY

11 PART I. ESTABLISHMENT AND GENERAL PROVISIONS

12 § -1 Definitions. As used in this part:

13 "Agency" means any agency, department, authority, board,
14 commission, the University of Hawaii, or any other unit of the
15 State or its political subdivisions.

16 "Authority" means the Hawaii construction authority
17 established in section -2.

18 "Board" means the board of directors of the Hawaii
19 construction authority established in section -2, and any
20 successor thereto.

1 "Public agency" means any office, department, board,
2 commission, bureau, division, public corporation agency, or
3 instrumentality of the federal, state, or county government.

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

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

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

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

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



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

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

8 provided that if fewer than three names are submitted
9 for each appointment, the governor may disregard the
10 list;

11 (4) At least six of the twelve public, voting members
12 shall have knowledge, experience, and expertise in the
13 area of construction, architecture, engineering, or
14 the building industry, at least one shall have
15 knowledge, experience, and expertise with labor
16 organizations representing the construction trades,
17 and at least one shall have knowledge, experience, and
18 expertise in the area of Hawaiian cultural 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 under this section;
3 provided that any appointments made after July 1,
4 2007, shall be made to fulfill the requirements in
5 place when the appointments are made; and

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

7 (A) The director of labor, or a designated
8 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 authority
10 staff and general operations;
- 11 (2) Shall set the executive director's salary, duties,
12 responsibilities, holidays, vacations, leaves, hours
13 of work, and working conditions; provided that the
14 compensation package shall not include private sector
15 moneys or other contributions; and
- 16 (3) May grant such other benefits as it deems necessary.

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

20 **§ -3 Authority; private attorneys.** (a) The board may
21 appoint or retain by contract one or more attorneys who are
22 independent of the attorney general to provide legal services



1 for the board solely in cases in which the attorney general
2 lacks sufficient expertise; provided that the independent
3 attorney shall consult and work in conjunction with the
4 designated deputy attorney general assigned to the Hawaii
5 construction authority.

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

10 **§ -4 Powers and duties.** (a) Except as otherwise
11 limited by this chapter, the authority may:

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



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



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



1 authority shall support the efforts of other state and
2 county departments or agencies to manage and improve
3 Hawaii's construction industry;

4 (13) Conduct research as necessary;

5 (14) Coordinate all agencies involved in the regulation of
6 the construction industry

7 (15) Coordinate the development of new and innovative
8 construction and building concepts with the counties
9 and other public and private sectors, including the
10 development of education and technology programs;

11 (16) Establish programs in training in consultation with
12 employers and employees to encourage voluntary
13 compliance with occupational health and safety
14 standards;

15 (17) Encourage the development of building trades
16 educational, training, and career counseling programs;
17 and

18 (18) Establish a program to monitor, investigate, and
19 respond to complaints about problems resulting
20 directly or indirectly from the construction industry
21 and taking appropriate action as necessary.

22 (b) The authority shall be responsible for:



- 1 (1) Administering a one-stop shop for construction
2 industry licensing and consumer protection, public
3 works wage and hour regulation, and occupational
4 safety and health regulation;
- 5 (2) Creating a vision and developing a long-range
6 strategic plan for state regulation and support of the
7 construction industry in Hawaii;
- 8 (3) Coordinating this state construction industry plan;
- 9 (4) Consulting with the construction industry and state
10 and county agencies and reviewing all state laws and
11 county ordinances to identify ways of improving and
12 streamlining regulation of the construction industry
13 and to develop and recommend amendments to state laws
14 and county ordinances;
- 15 (5) Arranging for the conduct of research through
16 contractual services with the University of Hawaii or
17 any agency or other qualified persons concerning the
18 short- and long-term demand for construction services
19 in the state, short- and long-term construction
20 industry employment needs, or any other aspects of the
21 construction industry in the state deemed necessary by
22 the board;



1 (6) Providing technical or other assistance to agencies
2 and private industry upon request; and
3 (7) Reviewing annually the expenditure of public funds by
4 any organization with which the authority contracts to
5 perform duties related to the long-range construction
6 development plan and making recommendations necessary
7 to ensure the effective use of the funds in
8 furtherance of the plan. The authority shall also
9 prepare annually a report of expenditures, including
10 descriptions and evaluations of programs funded,
11 together with any recommendations the authority may
12 make and shall submit the report to the governor and
13 the legislature as part of the annual report required
14 under section -13.

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

19 **§ -5 Meetings of the board.** (a) The meetings of the
20 board shall be open to the public as provided in section 92-3,
21 except that when it is necessary for the board to receive
22 information that is proprietary to a particular enterprise or



1 the disclosure of which might be harmful to the business
2 interests of the enterprise, the board may enter into an
3 executive meeting that is closed to the public.

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

9 **§ -6 Exemption of Hawaii construction authority from**
10 **administrative supervision of boards and commissions.**

11 Notwithstanding any law to the contrary, the authority shall be
12 exempt from section 26-35 with the exception of section
13 26-35(a)(2), (3), (7), and (8) and (b).

14 **§ -7 Construction industry development plan; measures**
15 **of effectiveness.** (a) The authority shall be responsible for
16 developing a long-range construction industry development plan
17 that shall be updated every year and, at minimum, includes the
18 following:

19 (1) Short- and long-term projections of the need for
20 construction industry services;



- 1 (2) Short- and long-term projections of the construction
2 industry employee workforce and needs for additional
3 employees;
- 4 (3) Short- and long-term strategies for making the need
5 for construction industry services;
- 6 (4) A compilation and summary of construction industry
7 regulatory problems and complaints;
- 8 (5) A compilation and summary of frequent consumer
9 problems and complaints regarding the construction
10 industry;
- 11 (6) A review of all federal and state laws and county
12 ordinances that affect the construction industry in
13 the state;
- 14 (7) Strategies to improve the construction industry
15 through coordination among agencies that provide
16 oversight or have jurisdiction over construction
17 projects; and
- 18 (8) Recommended legislation.
- 19 (b) In accordance with subsection (a), the authority shall
20 be responsible for developing measures of
21 effectiveness to assess the overall benefits and
22 effectiveness of the long-range construction industry



1 development plan and include documentation of the
2 directly attributable benefits of the plan to the
3 following:

- 4 (1) Hawaii's construction industry;
- 5 (2) Employment in Hawaii; and
- 6 (3) State taxes.

7 **§ -8 Hawaii construction authority special fund. (a)**

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

- 10 (1) Appropriations by the legislature to the Hawaii
11 construction authority special fund;
- 12 (2) Gifts, grants, and other funds accepted by the
13 authority; and
- 14 (3) All interest and revenues or receipts derived by the
15 authority from any project or project agreements.

16 (b) Moneys in the Hawaii construction authority special
17 fund may be:

- 18 (1) Placed in interest-bearing accounts; provided that the
19 depository in which the money is deposited furnishes
20 security as provided in section 38-3; or
- 21 (2) Otherwise invested by the authority until such time as
22 the moneys may be needed; provided that the authority



1 shall limit its investments to those listed in section
2 36-21.

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

5 (c) Moneys in the Hawaii construction authority special
6 fund shall be used by the authority for the purposes of this
7 chapter.

8 **§ -9 Exemption of authority from Hawaii public**
9 **procurement code.** The authority shall not be subject to chapter
10 103D and any and all other requirements of law for competitive
11 bidding for project agreements, lease and sublease agreements,
12 or other contracts unless a project agreement with respect to a
13 project otherwise shall require.

14 **§ -10 Assistance by state and county agencies.** Any
15 state or county agency may render services upon request of the
16 authority.

17 **§ -11 Declaration of public function, purpose, and**
18 **necessity.** The powers and functions granted to and exercised by
19 the Hawaii construction authority under this chapter are
20 declared to be public and governmental functions, exercised for
21 a public purpose, and matters of public necessity.



1 § -12 **Court proceedings; preferences; venue.** (a) Any
2 action or proceeding to which the authority, the State, or the
3 county may be a party, in which any question arises as to the
4 validity of this chapter, shall be preferred over all other
5 civil cases, except election cases, in the circuit court of the
6 circuit where the case or controversy arises, and shall be heard
7 and determined in preference to all other civil cases pending
8 therein except election cases, irrespective of position on the
9 calendar.

10 (b) Upon application of counsel to the authority, the same
11 preference shall be granted in any action or proceeding
12 questioning the validity of this chapter in which the authority
13 may be allowed to intervene.

14 (c) Any action or proceeding to which the authority, the
15 State, or the county may be party, in which any question arises
16 as to the validity of this chapter or any portion of this
17 chapter, or any action of the authority may be filed in the
18 circuit court of the circuit where the case or controversy
19 arises, which court is hereby vested with original jurisdiction
20 over the action.



1 (d) Notwithstanding any provision of law to the contrary,
2 declaratory relief from the circuit court may be obtained for
3 any action.

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

7 § -13 **Annual report.** The authority shall submit a
8 complete and detailed report of its activities, expenditures,
9 and results to the governor and the legislature at least twenty
10 days prior to the convening of each regular session of the
11 legislature.

12 PART II. LICENSING

13 A. Licensing Generally

14 § -14 **Definitions.** As used in this subpart:

15 "Authority" means the Hawaii construction authority
16 established in section -2.

17 "Board" means any board or commission which is created and
18 authorized by statute to issue a professional or vocational
19 license, and is established within or transferred to the
20 authority for administrative purposes or subject to the
21 administrative control or supervision of the director.



1 "Director" means the executive director of the Hawaii
2 construction authority.

3 "Executive secretary" or equivalent expressions means the
4 individual employed by the authority, who shall assist the
5 licensing authority in administering this part, its licensing
6 laws, rules, and orders, and who shall perform such other
7 ministerial duties and delegated functions as authorized by law.

8 "Forfeit" or "forfeiture" means the immediate and automatic
9 termination or cancellation without any prior consultation with
10 the licensee of a license issued by a board, caused by a
11 licensee's voluntary or involuntary failure to comply with the
12 requirements for maintaining or renewing a license.

13 "License" means the permission to engage in a profession or
14 vocation granted by the applicable licensing authority to a
15 person who has satisfied every applicable requirement for
16 licensure, and shall include any registration, certificate, or
17 other document issued by the licensing authority reflecting
18 proof of permission.

19 "Licensee" means the person in whose name the licensing
20 authority grants a license.



1 "Licensing authority" means the director, or any licensing
2 board or commission under the administrative control of the
3 director authorized by statute to grant or to deny licenses.

4 "Licensing laws" means the applicable subpart providing for
5 the regulation, licensing, and practice of a profession or
6 vocation by the licensing authority.

7 "Person" includes an individual, partnership, joint
8 venture, corporation, association, business, trust, or any
9 organized group of persons or legal entity, or any combination
10 thereof.

11 "Program" means any regulatory program in which the
12 director is authorized by law to grant or to deny a license to a
13 person seeking permission to engage in a profession or vocation.

14 "Reinstate" or "reinstatement" means the permission to
15 engage in a profession or vocation granted by the applicable
16 licensing authority to a person whose license has been
17 previously suspended by the licensing authority.

18 "Renew" or "renewal" means the permission to engage in a
19 profession or vocation granted by the applicable licensing
20 authority to a licensee who has applied for an extension of a
21 current and valid license.



1 "Restore" or "restoration" means the permission to engage
2 in a profession or vocation granted by the applicable licensing
3 authority to a person whose license has been previously
4 forfeited by the licensing authority.

5 **§ -15 Applicability; prevailing provisions;**

6 **construction.** (a) The provisions of this part shall only be
7 applicable to the professions and vocations required by law to
8 be regulated by the licensing authority.

9 (b) Unless otherwise stated in this subpart, chapters 26H,
10 91, and 92 and the licensing laws or rules for the respective
11 profession or vocation shall prevail. This chapter shall apply
12 whenever chapters 26H, 91, and 92 and the licensing laws or
13 rules for the respective profession or vocation are silent.

14 (c) This chapter shall be liberally construed to protect
15 the health, safety, and welfare of consumers of services
16 provided by a profession or vocation regulated by the licensing
17 authority.

18 **§ -16 Rules.** The licensing authority may adopt rules
19 pursuant to chapter 91 to effectuate this part and its licensing
20 laws, and to carry out its purpose of protecting the health,
21 safety, and welfare of consumers of services provided by a
22 profession or vocation regulated by the licensing authority.



1 The enumeration of specific matters which may properly be made
2 the subject of rules shall not be construed to limit the
3 licensing authority's broad general power to make all rules
4 necessary to fully effectuate the purpose of this part.

5 **§ -17 Conditions of office.** (a) Each member of a
6 board shall be selected and shall serve under the provisions of
7 section 26-34, and before beginning a term of office, shall take
8 an oath of office before a notary public, or other officer
9 empowered to administer oaths.

10 (b) Each member of a board shall serve without pay.
11 However, the actual and necessary traveling expenses incurred in
12 connection with the performance of the member's official duties
13 shall be paid by the authority, upon the presentation of
14 vouchers approved by the authority.

15 **§ -18 Organization of boards.** (a) Immediately upon
16 the qualification and appointment of the original members, and
17 annually thereafter, the board shall elect one member as chair
18 and one member as vice-chair. In the absence of both the chair
19 and the vice-chair to preside at a meeting, the members present
20 shall select a chair pro tem.

21 (b) Each board shall meet not less than twice a year at a
22 time and place determined by the board.



1 (c) The majority of the members to which the board is
2 entitled shall constitute a quorum. The concurrence of a
3 majority of the members to which the board is entitled shall be
4 necessary to make any action taken by the board valid. Each
5 board shall conduct its meetings in accordance with chapters 91
6 and 92.

7 **§ -19 Powers and duties of licensing authority.** In
8 addition to any other powers and duties authorized by law, each
9 licensing authority may:

- 10 (1) Adopt, amend, or repeal rules, issue declaratory
11 rulings or informal nonbinding interpretations, and
12 conduct contested case proceedings pursuant to chapter
13 91;
- 14 (2) Grant, deny, convert, forfeit, renew, reinstate, or
15 restore licenses, including the issuance of
16 conditional licenses;
- 17 (3) Revoke, suspend, or otherwise limit the license of any
18 licensee for any violation of the provisions in this
19 part, the licensing laws, or any rule or order of the
20 licensing authority;
- 21 (4) Develop requirements for licensure through the
22 applicable licensing law or rules;



- 1 (5) Investigate and conduct hearings regarding any
2 violation of this part, the licensing laws, and any
3 rule or order of the licensing authority;
- 4 (6) Monitor the scope of practice of the profession or
5 vocation regulated by the licensing authority;
- 6 (7) Prepare, administer, and grade examinations; provided
7 that the licensing authority may contract with a
8 testing agency to provide those services, and the
9 licensing authority may also reserve the right to
10 modify, amend, change, or regrade the examination;
- 11 (8) Create fact-finding committees which may make
12 recommendations to the licensing authority for its
13 deliberations;
- 14 (9) Contract with qualified persons including
15 investigators who may be exempt from chapter 76 and
16 who shall assist the licensing authority in exercising
17 its powers and duties; and
- 18 (10) Subpoena witnesses and documents, administer oaths,
19 and receive affidavits and oral testimony, including
20 telephonic communications, and do any and all things
21 necessary or incidental to the exercise of the
22 licensing authority's power and duties, including the



1 authority to conduct contested case proceedings under
2 chapter 91.

3 **§ -20 Delegation of authority.** (a) The board shall
4 delegate to the department of commerce and consumer affairs the
5 authority to receive, arbitrate, investigate, and prosecute any
6 complaint against a licensee.

7 (b) A licensing authority may delegate to the executive
8 secretary, or other designee, any of its powers or duties as it
9 deems reasonable and proper. The delegation of powers and
10 duties by the licensing authority shall be made in accordance
11 with the procedures set forth in section -18(c). However, the
12 licensing authority shall not delegate its discretionary
13 functions resulting in a final decision, including but not
14 limited to the following:

- 15 (1) Adopting, amending, or repealing rules;
- 16 (2) Ordering disciplinary action against a licensee,
17 including the revocation, suspension, or imposition of
18 conditions or fines; provided that summary suspensions
19 may be delegated; and
- 20 (3) Granting, denying, or otherwise conditioning license
21 applications, unless the granting, denying, or
22 conditioning of a license does not require the



1 exercise of the licensing authority's expertise and
2 discretion.

3 **§ -21 Review of examinations.** The authority, in its
4 discretion, may allow an applicant to review the most recent
5 examination failed by the applicant, provided that under no
6 circumstances shall the licensing authority or the authority
7 allow an examination to be copied.

8 **§ -22 Action on applications; abandoned applications.**

9 (a) Unless otherwise provided by law, each licensing authority
10 shall take the following actions within one year after the
11 filing of a complete application for licensure:

12 (1) If it deems appropriate, conduct an investigation of
13 the applicant; and

14 (2) Notify the applicant in writing by mail of the
15 decision regarding the application for licensure. If
16 the application has been denied, written notice of the
17 decision shall state specifically the reason for
18 denying the application and shall inform the applicant
19 of the right to a hearing under chapter 91.

20 (b) An application shall be considered to be abandoned if
21 an applicant fails to provide evidence of continued efforts to
22 complete the licensing process for two consecutive years;



1 provided that the failure to provide evidence of continued
2 efforts includes but is not limited to:

3 (1) Failure to submit the required documents and other
4 information requested by the licensing authority
5 within two consecutive years from the last date the
6 documents or other information were requested; or

7 (2) Failure to provide the licensing authority with any
8 written communication during two consecutive years
9 indicating that the applicant is attempting to
10 complete the licensing process, including but not
11 limited to attempting to complete the examination
12 requirement; and

13 provided further that the licensing authority may extend the
14 above time periods by rule. The licensing authority shall not
15 be required to act on any abandoned application, and the
16 application may be destroyed by the licensing authority or its
17 delegate. If the application is deemed abandoned by the
18 licensing authority, the applicant shall be required to reapply
19 for licensure and comply with the licensing requirements in
20 effect at the time of reapplication.

21 **§ -23 Application and requirements for licensure. (a)**

22 Application for a license shall be made on an application form



1 to be furnished by the licensing authority. An applicant shall
2 provide the following information on the application form:

3 (1) The applicant's legal name;

4 (2) Affirmation that the applicant is beyond the age of
5 majority;

6 (3) The applicant's current residence, business and
7 mailing addresses, and phone numbers;

8 (4) The applicant's social security number if the
9 licensing authority is authorized by federal law to
10 require the disclosure;

11 (5) The date and place of any conviction of a penal crime
12 directly related to the profession or vocation in
13 which the applicant is applying for licensure, unless
14 the conviction has been expunged or annulled, or is
15 otherwise precluded from consideration by section 831-
16 3.1;

17 (6) Proof that the applicant is a United States citizen, a
18 United States national, or an alien authorized to work
19 in the United States;

20 (7) Disclosure of similar licensure in any state or
21 territory;



1 (8) Disclosure of disciplinary action by any state or
2 territory against any license held by the applicant;
3 and

4 (9) Any other information the licensing authority may
5 require to investigate the applicant's qualifications
6 for licensure.

7 Failure to provide the above information and pay the required
8 fees shall be grounds to deny the application for licensure.

9 (b) In addition to any other requirements provided by law,
10 all applicants shall be:

11 (1) Beyond the age of majority; and

12 (2) A United States citizen, a United States national, or
13 an alien authorized to work in the United States.

14 **§ -24 Additional licensure requirements.** In addition
15 to any other requirements provided by law, the licensing
16 authority may also require by rule that the applicant provide
17 the following:

18 (1) In the case of a partnership applicant, each general
19 partner shall attest that each partner is beyond the
20 age of majority;

21 (2) Proof that the applicant is competent, trustworthy,
22 fair, and has financial integrity; and



1 (3) Proof that the applicant has satisfied all applicable
2 business registration requirements prior to applying
3 for licensure.

4 **§ -25 Criminal conviction.** When an applicant has been
5 convicted of a penal crime directly related to the profession,
6 vocation, or occupation for which licensure is sought, and it is
7 determined that the conviction may be considered under section
8 831-3.1, the authority, executive secretary, or the licensing
9 authority's designee may request the following documents from
10 the applicant:

11 (1) Copies of any court records, orders, or other
12 documents that state the facts and statutes upon which
13 the applicant was convicted, the verdict of the court
14 with regard to that conviction, the sentence imposed,
15 and the actual terms of the sentence; and

16 (2) Affidavits from any parole officer, employer, or other
17 persons who can attest to a firm belief that the
18 applicant has been sufficiently rehabilitated to
19 warrant public trust.

20 **§ -26 Renewal of license.** (a) Each licensee shall be
21 responsible for timely renewing the licensee's license and
22 satisfying the renewal requirements provided by law.



1 (b) At the time of license renewal, each licensee shall
2 submit a completed renewal application and all applicable fees,
3 and shall comply with any other requirement provided by law. A
4 completed renewal application sent by United States mail shall
5 be considered timely filed if the envelope bears a postmark of
6 the required renewal date.

7 (c) The failure to timely renew a license, the failure to
8 pay all applicable fees, the dishonoring of any check upon first
9 deposit, or the failure to comply with any other requirement
10 provided by law, shall cause the license to be automatically
11 forfeited.

12 **§ -27 Restoration of forfeited license.** A license
13 which has been forfeited may be restored by the licensing
14 authority within one year after the date of forfeiture upon
15 compliance with the licensing renewal requirements provided by
16 law and upon written application and payment of all applicable
17 renewal fees, penalty fees, Hawaii construction authority
18 special fund feesand, if applicable, recovery fund assessments.
19 Any person who fails to have the person's license restored
20 within one year from the date of forfeiture may be required by
21 the licensing authority to reapply for licensure as a new
22 applicant.



1 § -28 **Extension of licenses for members of the armed**
2 **forces, national guard, and reserves.** (a) Notwithstanding any
3 other law to the contrary, any license held by a member of the
4 armed forces, national guard, or a reserve component that
5 expires, is forfeited, or deemed delinquent while the member is
6 on active duty and deployed during a state or national crisis
7 shall be restored under the restoration requirements provided in
8 this section.

9 For the purposes of this section, "state or national
10 crisis" includes but is not limited to:

11 (1) A situation requiring the proper defense of nation or
12 State;

13 (2) A federal or state disaster or emergency;

14 (3) A terrorist threat; or

15 (4) A homeland security or homeland defense event or
16 action.

17 (b) The licensing authority shall restore a license upon
18 the payment of the current renewal fee if the member:

19 (1) Requests a restoration of the license within one
20 hundred twenty days after being discharged or released
21 from active duty deployment;



- 1 (2) Provides the licensing authority with a copy of the
2 member's order calling the member to active duty
3 deployment and the member's discharge or release
4 orders; and
- 5 (3) If required for renewal, provides documentation to
6 establish the financial integrity of the licensee or
7 to satisfy a federal requirement.
- 8 (c) This section:
- 9 (1) Shall not apply to a member who is on scheduled annual
10 or specialized training, or to any person whose
11 license is suspended or revoked, or who otherwise has
12 been adjudicated and is subject to disciplinary action
13 on a license; and
- 14 (2) Shall also apply to a member whose license is current,
15 but will expire within one hundred twenty days of the
16 member's discharge or release from active duty
17 deployment.
- 18 § -29 **Fees and expenses.** No applicant or licensee
19 shall be granted a license pursuant to the licensing laws unless
20 the appropriate fees have been paid. Unless otherwise provided
21 by law, the director shall establish the amount for all fees and
22 expenses by rules adopted pursuant to chapter 91. The fees to



1 be established by the director may include but not be limited to
2 an application fee, filing fee, license fee, renewal fee,
3 examination fee, and other reasonable and necessary fees related
4 to the authority's administrative costs. Unless otherwise
5 provided by law, the fees shall be deposited with the director
6 to the credit of the Hawaii construction authority special fund
7 established pursuant to section -8.

8 **§ -30 Conversion of license.** (a) Notwithstanding any
9 other provision of law to the contrary, a licensee who has
10 converted its form of business entity in accordance with
11 sections 414-271, 414D-207, 415A-16.5, 425E-1102, and 428-902.5,
12 and desires to continue engaging in a profession or vocation
13 subject to this part in its new form of business entity shall:

14 (1) File an application for conversion of a license and
15 pay the initial application fee specified in the
16 statutes or rules of the profession or vocation,
17 within thirty calendar days after the effective date
18 of the conversion; and

19 (2) Continue to meet the other licensing requirements of
20 that profession or vocation.

21 (b) Failure to comply with the requirements of this
22 section shall cause the license to be automatically forfeited.



1 A licensee whose license is forfeited shall not engage in the
2 profession or vocation until the license is restored or the
3 licensee obtains a new license.

4 **§ -31 Notice of judgments, penalties.** (a) Each
5 licensee shall provide written notice within thirty days to the
6 licensing authority of any judgment, award, disciplinary
7 sanction, order, or other determination, which adjudges or finds
8 that the licensee is civilly, criminally, or otherwise liable
9 for any personal injury, property damage, or loss caused by the
10 licensee's conduct in the practice of the licensee's profession
11 or vocation. A licensee shall also give notice of such
12 determinations made in other jurisdictions.

13 (b) In addition to any other penalties provided by law,
14 the failure of a licensee to comply with the provisions of this
15 section is a violation punishable by a fine of not less than
16 \$100 for the first violation, \$250 to \$500 for the second
17 violation, and \$500 to \$1,000 for subsequent violations. Any
18 action taken to impose or collect the fine provided for in this
19 subsection shall not be considered a criminal action.

20 **§ -32 Filing of current addresses.** Each licensee shall
21 file with the licensing authority the licensee's current
22 mailing, business, and residence address. It shall be the



1 licensee's duty to provide written notice to the licensing
2 authority of any change of address within thirty days of the
3 change. Failure of the licensee to provide the notice shall
4 absolve the licensing authority, executive secretary, or any
5 designee from any duty to provide notice of any matter required
6 by law to be provided the licensee.

7 **§ -33 Disciplinary action.** In addition to the
8 licensing sanctions or remedies provided by section 92-17
9 against any licensee, the licensing authority may also impose
10 conditions or limitations upon a licensee's license after a
11 hearing conducted in accordance with chapter 91. The violation
12 of any condition or limitation on a licensee's license may be
13 cause to impose additional sanctions against the licensee.
14 Unless otherwise provided by law, any fine imposed by the
15 licensing authority after a hearing in accordance with chapter
16 91 shall be no less than \$100 for each violation, and each day's
17 violation may be deemed a separate violation.

18 **§ -34 Grounds for refusal to renew, reinstate or**
19 **restore and for revocation, suspension, denial, or condition of**
20 **licenses.** In addition to any other acts or conditions provided
21 by law, the licensing authority may refuse to renew, reinstate
22 or restore, or may deny, revoke, suspend, or condition in any



1 manner, any license for any one or more of the following acts or
2 conditions on the part of the licensee or the applicant thereof:

- 3 (1) Failure to meet or maintain the conditions and
4 requirements necessary to qualify for the granting of
5 a license;
- 6 (2) Engaging in false, fraudulent, or deceptive
7 advertising, or making untruthful or improbable
8 statements;
- 9 (3) Being addicted to, dependent on, or a habitual user of
10 a narcotic, barbiturate, amphetamine, hallucinogen,
11 opium, or cocaine, or other drugs or derivatives of a
12 similar nature;
- 13 (4) Practicing the licensed profession or vocation while
14 impaired by alcohol, drugs, physical disability, or
15 mental instability;
- 16 (5) Procuring a license through fraud, misrepresentation,
17 or deceit;
- 18 (6) Aiding and abetting an unlicensed person to directly
19 or indirectly perform activities requiring a license;
- 20 (7) Professional misconduct, incompetence, gross
21 negligence, or manifest incapacity in the practice of
22 the licensed profession or vocation;



- 1 (8) Failure to maintain a record or history of competency,
2 trustworthiness, fair dealing, and financial
3 integrity;
- 4 (9) Conduct or practice contrary to recognized standards
5 of ethics for the licensed profession or vocation;
- 6 (10) Violating any condition or limitation upon which a
7 conditional or temporary license was issued;
- 8 (11) Engaging in business under a past or present license
9 issued pursuant to the licensing laws, in a manner
10 causing injury to one or more members of the public;
- 11 (12) Failure to comply, observe, or adhere to any law in a
12 manner such that the licensing authority deems the
13 applicant or holder to be an unfit or improper person
14 to hold a license;
- 15 (13) Revocation, suspension, or other disciplinary action
16 by another state or federal agency against a licensee
17 or applicant for any reason provided by the licensing
18 laws or this section;
- 19 (14) Criminal conviction, whether by nolo contendere or
20 otherwise, of a penal crime directly related to the
21 qualifications, functions, or duties of the licensed
22 profession or vocation;



1 (15) Failure to report in writing to the licensing
2 authority any disciplinary decision issued against the
3 licensee or the applicant in another jurisdiction
4 within thirty days of the disciplinary decision;

5 (16) Employing, utilizing, or attempting to employ or
6 utilize at any time any person not licensed under the
7 licensing laws where licensure is required; or

8 (17) Violating this part, the applicable licensing laws, or
9 any rule or order of the licensing authority.

10 **§ -35 Suspension or denial of license for noncompliance**

11 **with child support order.** In addition to any other acts or
12 conditions provided by law, the licensing authority shall refuse
13 to renew, reinstate, or restore, or shall deny or suspend any
14 license if the authority has received certification from the
15 child support enforcement agency pursuant to the terms of
16 section 576D-13 that the licensee or applicant is not in
17 compliance with an order of support or has failed to comply with
18 a subpoena or warrant relating to a paternity or child support
19 proceeding. Unless otherwise provided by law, the licensing
20 authority shall renew, reinstate, restore, or grant the license
21 only upon receipt of an authorization from the child support



1 enforcement agency, the office of child support hearings, or the
2 family court. Sections 92-17, -37, -38, -41, and
3 -42 shall not apply to a license suspension or denial
4 pursuant to this section.

5 **§ -36 Denial or suspension of license for default of**
6 **student loan, student loan repayment contract, or scholarship**
7 **contract.** (a) In addition to any other acts or conditions
8 provided by law, the licensing authority shall not renew or
9 reinstate, or shall deny or suspend any license or application,
10 if the department has received certification from an
11 administering entity pursuant to chapter 436C that the licensee
12 or applicant is in default or breach of any obligation under any
13 student loan, student loan repayment contract, or scholarship
14 contract that financed the licensee's or applicant's education,
15 or has failed to comply with a repayment plan.

16 (b) The licensing authority in receipt of a certification
17 pursuant to chapter 436C shall, as applicable, and without
18 further review or hearing:

- 19 (1) Suspend the license;
- 20 (2) Deny the application or request for renewal of the
21 license; or
- 22 (3) Deny the request for reinstatement of the license,



1 and unless otherwise provided by law, shall renew, reinstate, or
2 grant the license only upon receipt of an authorization from the
3 administering entity. Chapter 91 and sections 92-17, -33,
4 -37, -38, -41, and -42 shall not apply to a
5 license suspension or denial under this section.

6 **§ -37 Suspended license.** No license shall be suspended
7 by the licensing authority for a period exceeding five years. A
8 person whose license has been suspended may apply for
9 reinstatement of the license to the extent authorized by law and
10 upon complete compliance with any term or condition imposed by
11 the order of suspension. The application for reinstatement
12 shall be accompanied by all applicable fees, including but not
13 limited to reinstatement fees, any Hawaii construction authority
14 special fund fees, and any recovery fund assessments.

15 **§ -38 Revoked license.** A person may apply for a new
16 license after five years from the effective date of the
17 revocation of the license by filing an application and complying
18 with all current requirements for new applicants. The licensing
19 authority may waive any applicable education or examination
20 requirements upon being satisfied that the applicant whose
21 license has been previously revoked, has submitted documentation
22 that the applicant has maintained equivalent knowledge,



1 competence, and qualifications through work experience,
2 training, or education.

3 **§ -39 Relinquishment no bar to jurisdiction.** The
4 forfeiture, nonrenewal, surrender, or voluntary relinquishment
5 of a license by a licensee shall not bar jurisdiction by the
6 licensing authority to proceed with any investigation, action,
7 or proceeding to revoke, suspend, condition, or limit the
8 licensee's license or fine the licensee.

9 **§ -40 Summary suspension.** Notwithstanding any law to
10 the contrary, the licensing authority or its delegate may cause
11 the immediate suspension or restriction of a license, subject to
12 subsequent notice and hearing or other adequate procedures, upon
13 a specific determination that the failure to take such an action
14 may result in:

- 15 (1) An immediate and unreasonable threat to personal
16 safety; or
17 (2) Fraud or misrepresentation upon consumers, and that,
18 for the protection of the public from the possible
19 consequences of practices, the licensee's license
20 should be immediately suspended or restricted.

21 The licensing authority or its delegate may order the
22 summary suspension of the license for a period not to exceed



1 twenty days. The order of suspension shall be served upon the
2 licensee at the same time as the notice of hearing for
3 disciplinary action, and the hearing shall be scheduled prior to
4 the expiration of the order of suspension. The period of
5 suspension prior to the hearing shall not be extended beyond
6 twenty days except upon request of the licensee for a reasonable
7 continuance to adequately prepare the licensee's defense. Any
8 attempt by the licensee to continue the licensed activity while
9 the license has been summarily suspended shall of itself be
10 sufficient to warrant a permanent revocation of the license and
11 shall subject the licensee to all penalties prescribed by this
12 part, the applicable licensing laws, or any rule or order of the
13 licensing authority.

14 **§ -41 Hearings.** Unless otherwise provided by law, in
15 every case in which the licensing authority refuses to issue,
16 renew, restore or reinstate a license, or proposes to take
17 disciplinary action or other licensing sanctions against a
18 licensee, the proceeding before the licensing authority shall be
19 conducted in accordance with chapter 91.

20 In all proceedings before it, the board and each member
21 thereof shall have the same powers respecting administering
22 oaths, compelling the attendance of witnesses and the production



1 of documentary evidence, and examining witnesses as are
2 possessed by circuit courts. In case of disobedience by any
3 person of any order of the board or of a member thereof, or of
4 any subpoena issued by it or a member, or the refusal of any
5 witness to testify to any matter regarding which the witness may
6 be questioned lawfully, any circuit judge, on application by the
7 board or a member thereof, shall compel obedience as in the case
8 of disobedience of the requirements of a subpoena issued by a
9 circuit court, or a refusal to testify therein.

10 **§ -42 Judicial review by circuit court.** Any person
11 aggrieved by a final decision and order of the board in a
12 "contested case", as defined in chapter 91, is entitled to
13 judicial review thereof by the circuit court of the circuit in
14 which the board making the final decision and order has
15 jurisdiction. The review shall be as provided by chapter 91.

16 **§ -43 No compensation for unlicensed activity; civil**
17 **action.** The failure of any person to maintain a current and a
18 valid license prior to engaging in any activity requiring
19 licensure by the licensing authority shall prevent such person
20 from recovering in a civil action for work or services performed
21 or materials or supplies furnished, or both, on a contract or on
22 any legal basis to recover the reasonable value thereof.



1 § -44 **Citation for unlicensed activity; civil**

2 **penalties.** (a) In addition to any other remedy available, the
3 investigator may issue citations to persons acting in the
4 capacity of or engaging in business within the state without
5 having a license previously obtained under and in compliance
6 with this part, the licensing laws for the respective profession
7 or vocation, and the rules adopted thereunder.

8 (b) Each citation shall be in writing and shall describe
9 the basis of the citation, including the specific statutory
10 provisions alleged to have been violated, and may contain an
11 order of abatement, and an assessment of civil penalties as
12 provided in this section. All penalties collected under this
13 section shall be deposited in the Hawaii construction authority
14 special fund established under section -8.

15 (c) Any person who violates this section shall be assessed
16 a civil penalty of:

17 (1) Not more than \$500 or forty per cent of the total
18 amount of the goods and services provided or to be
19 provided, whichever is greater, for the first
20 violation;

21 (2) Not more than \$1,000 or forty per cent of the total
22 amount of the goods and services provided or to be



1 provided, whichever is greater, for the second
2 violation; and

3 (3) Not more than \$5,000 or forty per cent of the total
4 amount of the goods and services provided or to be
5 provided, whichever is greater, for any subsequent
6 violation.

7 (d) Service of a citation issued under this section shall
8 be made by personal service or by certified mail, restricted
9 delivery, sent to the last known business or residence address
10 of the person cited.

11 (e) Any person cited under this section may submit a
12 written request to the director for a hearing, within twenty
13 days from the service of the citation, with respect to the
14 violations alleged, the scope of the order of abatement, or the
15 amount of the civil penalties assessed.

16 (f) If the person cited under this section timely notifies
17 the director of the request for a hearing, the director shall
18 afford an opportunity for a hearing under chapter 91. The
19 hearing shall be conducted by the director or the director may
20 designate a hearings officer to hold the hearing. The director
21 or any hearings officer designated by the director shall have



1 the power to issue subpoenas, administer oaths, hear testimony,
2 find facts, make conclusions of law, and issue a final order.

3 (g) If the person cited under this section does not submit
4 a written request to the director for a hearing within twenty
5 days from the receipt of the citation, the citation shall be
6 deemed a final order of the director.

7 (h) The director may apply to the appropriate court for a
8 judgment to enforce the provisions of any final order issued by
9 the director or designated hearings officer pursuant to this
10 section, including the provision for abatement and civil
11 penalties imposed.

12 (i) If any party is aggrieved by the decision of the
13 director or the designated hearings officer, the party may
14 appeal in the manner provided in chapter 91 to the circuit court
15 of the circuit in which the party resides or has the party's
16 principal place of business or in which the action in question
17 occurred. The operation of an abatement order shall not be
18 stayed on appeal unless specifically ordered by a court of
19 competent jurisdiction after applying the stay criteria
20 enumerated in section 91-14(c).

21 (j) The sanctions and disposition authorized under this
22 section shall be separate from and in addition to all other



1 remedies either civil or criminal provided in any other
2 applicable statutory provision.

3 (k) The director may adopt rules pursuant to chapter 91
4 necessary for the purpose of this section.

5 **§ -45 Civil and criminal sanctions for unlicensed**
6 **activity; fines; injunctive relief; damages; forfeiture.** (a)

7 Any licensee aiding or abetting an unlicensed person to directly
8 or indirectly evade this subpart or the applicable licensing
9 laws, or combining or conspiring with an unlicensed person, or
10 permitting one's license to be used by an unlicensed person, or
11 acting as agent, partner, associate, or otherwise, of an
12 unlicensed person with the intent to evade this subpart or the
13 applicable licensing laws may be fined:

14 (1) Up to \$1,000 for the first offense;

15 (2) Up to \$2,000 or, if applicable, forty per cent of the
16 total contract price, whichever is greater, for the
17 second offense; and

18 (3) Up to \$5,000 or, if applicable, forty per cent of the
19 total contract price, whichever is greater, for any
20 subsequent offense.



1 For purposes of this section, "contract price" means the total
2 monetary consideration offered by the consumer for the provision
3 of goods and services.

4 (b) Any person, who engages in an activity requiring a
5 license issued by the licensing authority and who fails to
6 obtain the required license, or who uses any word, title, or
7 representation to induce the false belief that the person is
8 licensed to engage in the activity, other than a circumstance of
9 first instance involving the inadvertent failure to renew a
10 previously existing license, shall be guilty of a misdemeanor
11 and be subject to a fine of not more \$1,000 or imprisoned not
12 more than one year, or both, and each day's violation shall be
13 deemed a separate offense.

14 (c) The authority, licensing authority, or any person may
15 maintain a suit to enjoin the performance or the continuance of
16 any act or acts by a person acting without a license where a
17 license is required by law, and if injured thereby, for the
18 recovery of damages. The authority may also seek the imposition
19 of fines provided by subsection (a). The plaintiff or
20 petitioner in a suit for an injunction need not allege or prove
21 actual damages to prevail. Reasonable attorney fees and costs



1 shall be allowed by the court to the plaintiff or petitioner as
2 the prevailing party.

3 (d) All tools, implements, armamentariums, documents,
4 materials, or any other property used by any person to provide
5 professional or vocational services without a license required
6 by law shall be declared forfeited to the State by the court and
7 turned over to the authority for disposition as it deems
8 appropriate.

9 **§ -46 Remedies or penalties cumulative.** Unless
10 otherwise expressly provided, the remedies or penalties provided
11 by this subpart are cumulative to each other and to the remedies
12 or penalties available under all other laws of this State.

13 **§ -47 Penalties for unlicensed acts in accordance with**
14 **this chapter.** (a) Unless otherwise provided for in this
15 chapter, any person who furnishes commodities or services for
16 which a license, registration, or certificate is required from
17 the authority or any board or commission thereunder without
18 having such license, registration, or certificate is engaged in
19 an unlawful act or practice and shall be subject to the penalty
20 provided in subsection (b).

21 (b) Any person who engages in an unlawful act or practice
22 as provided in subsection (a) shall be fined by a sum not less



1 than \$500 nor more than \$2,500 for each unlawful act or
2 practice, which sum shall be collected in a civil suit brought
3 by the office of consumer protection or the department of
4 commerce and consumer affairs.

5 (c) Any contract for the furnishing of commodities or
6 services by an unlicensed, unregistered, or uncertified person
7 shall be void and shall prevent such person from recovering the
8 contract price or the reasonable value thereof.

9 B. Contractors Licensing

10 **§ -48 Definitions.** As used in this subpart:

11 "Authority" means the Hawaii construction authority
12 established in section -2.

13 "Board" means the contractors license board.

14 "Chlorofluorocarbon" or "CFC" means any member of the
15 family of substances containing carbon, fluorine, and chlorine,
16 including, without limitation, those compounds known as CFC-11,
17 CFC-12, CFC-13, CFC-14, CFC-113, CFC-114, CFC-115, CFC-116, CFC-
18 500, CFC-502, and CFC-503, and any combination or mixture
19 containing any of these chlorofluorocarbon compounds.

20 "Contractor" means any person who by oneself or through
21 others offers to undertake, or holds oneself out as being able
22 to undertake, or does undertake to alter, add to, subtract from,



1 improve, enhance, or beautify any realty or construct, alter,
2 repair, add to, subtract from, improve, move, wreck, or demolish
3 any building, highway, road, railroad, excavation, or other
4 structure, project, development, or improvement, or do any part
5 thereof, including the erection of scaffolding or other
6 structures or works in connection therewith.

7 "Contractor", to the extent allowed under federal law
8 includes a subcontractor, a specialty contractor, and any
9 person, general engineering, general building, or specialty
10 contractor who performs any of the activities listed in the
11 previous paragraph directly or indirectly for the federal
12 government.

13 "Director" means the executive director of the Hawaii
14 construction authority.

15 "Hydrochlorofluorocarbon" or "HCFC" means any member of the
16 family of substances containing hydrogen, carbon, fluorine, and
17 chlorine, including, without limitation, those compounds known
18 as HCFC-22 and HCFC-123 and any combination or mixture
19 containing any of three hydrochlorofluorocarbon compounds.

20 "Investigator" means any person employed by the authority
21 to investigate matters relating to any person who furnishes



1 commodities or services for which a license is required from the
2 authority or any board or commission thereunder.

3 "Refrigerant recovery and recycling equipment" means a
4 device used to recover and to purify CFCs from a device for
5 later reuse.

6 "RME" means responsible managing employee.

7 "Sale" means any arrangement between two or more persons as
8 a result of which there is, or is to be, a transfer of property
9 for a consideration.

10 **§ -49 Exemptions.** This subpart shall not apply to:

11 (1) Officers and employees of the United States, the
12 State, or any county while in the performance of their
13 governmental duties;

14 (2) Any person acting as a receiver, trustee in
15 bankruptcy, personal representative, or any other
16 person acting under any order or authorization of any
17 court;

18 (3) A person who sells or installs any finished products,
19 materials, or articles of merchandise that are not
20 actually fabricated into and do not become a permanent
21 fixed part of the structure, or to the construction,



- 1 alteration, improvement, or repair of personal
2 property;
- 3 (4) Any project or operation for which the aggregate
4 contract price for labor, materials, taxes, and all
5 other items is not more than \$1,000. This exemption
6 shall not apply in any case where a building permit is
7 required regardless of the aggregate contract price,
8 nor where the undertaking is only a part of a larger
9 or major project or operation, whether undertaken by
10 the same or a different contractor or in which a
11 division of the project or operation is made in
12 contracts of amounts not more than \$1,000 for the
13 purpose of evading this subpart or otherwise;
- 14 (5) A registered architect or professional engineer acting
15 solely in the person's professional capacity;
- 16 (6) Any person who engages in the activities regulated in
17 this subpart as an employee with wages as the person's
18 sole compensation;
- 19 (7) Owners or lessees of property who build or improve
20 residential, farm, industrial, or commercial buildings
21 or structures on property for their own use, or for
22 use by their grandparents, parents, siblings, or



1 children and who do not offer the buildings or
2 structures for sale or lease; provided that this
3 exemption shall not apply to electrical or plumbing
4 work that must be performed only by persons or
5 entities licensed under this subpart, or to the owner
6 or lessee of the property if the owner or lessee is
7 licensed under subpart C. In all actions brought
8 under this paragraph, proof of the sale or lease, or
9 offering for sale or lease, of the structure not more
10 than one year after completion is prima facie evidence
11 that the construction or improvement of the structure
12 was undertaken for the purpose of sale or lease;
13 provided that this provision shall not apply to
14 residential properties sold or leased to employees of
15 the owner or lessee; provided further that in order to
16 qualify for this exemption the owner or lessee must
17 register for the exemptions as provided in section
18 -57. Any owner or lessee of property found to have
19 violated this paragraph shall not be permitted to
20 engage in any activities pursuant to this paragraph or
21 to register under section -57 for a period of three
22 years. There is a presumption that an owner or lessee



- 1 has violated this section, when the owner or lessee
2 obtains an exemption from the licensing requirements
3 of section -56 more than once in two years;
- 4 (8) Any joint venture if all members thereof hold licenses
5 issued under this part;
- 6 (9) Any project or operation where it is determined by the
7 board that less than ten persons are qualified to
8 perform the work in question and that the work does
9 not pose a potential danger to public health, safety,
10 and welfare; or
- 11 (10) Any public works project that requires additional
12 qualifications beyond those established by the
13 licensing law and which is deemed necessary and in the
14 public interest by the contracting agency.

15 **§ -50 Contractors license board.** (a) There shall be a
16 contractors license board of thirteen members.

17 (b) Of the board members:

- 18 (1) Ten shall be contractors who have been actively
19 engaged in the contracting business for a period of
20 not less than five years preceding the date of their
21 appointment; and



1 (2) Five shall be general engineering or building
2 contractors, five shall be specialty contractors, and
3 three shall be noncontractors. No member shall
4 receive any compensation for the member's services,
5 but each shall be reimbursed for necessary traveling
6 expenses incurred in the performance of duties.

7 (c) Each county shall be represented on the board.

8 (d) No one, except the three noncontractor members, shall
9 be eligible for appointment who does not at the time of the
10 member's appointment hold a valid and unexpired license to
11 operate as a contractor.

12 § -51 **Powers and duties of board.** In addition to any
13 other powers and duties authorized by law, the board shall:

14 (1) Grant licenses, including conditional licenses, to
15 contractors pursuant to this subpart and rules;

16 (2) Adopt, amend, or repeal such rules as the board may
17 deem proper fully to effectuate this subpart and carry
18 out the purpose thereof, which is the protection of
19 the general public. All rules shall be approved by
20 the governor and the director, and when adopted
21 pursuant to chapter 91, shall have the force and
22 effect of law. The rules may forbid acts or practices



1 deemed by the board to be detrimental to the
2 accomplishment of the purpose of this subpart. The
3 rules may require contractors to make reports to the
4 board containing any items of information as will
5 better enable the board to enforce this subpart and
6 rules, or as will better enable the board from time to
7 time to amend the rules more fully to effectuate the
8 purposes of this subpart. The rules may require
9 contractors to furnish reports to owners containing
10 any matters of information as the board deems
11 necessary to promote the purpose of this subpart. The
12 enumeration of specific matters which may properly be
13 made the subject of rules shall not be construed to
14 limit the board's general power to make all rules
15 necessary fully to effectuate the purpose of this
16 subpart;

- 17 (3) Adopt rules pursuant to chapter 91 necessary to
18 implement the provisions of this subpart relating to
19 CFCs, including but not limited to procedures for the
20 disposal of air conditioning units using CFCs that
21 include mandatory recovery and recycling of CFCs;



- 1 (4) Enforce this subpart and rules adopted pursuant
2 thereto;
- 3 (5) Suspend or revoke any license for any cause prescribed
4 by this subpart, or for any violation of the rules,
5 and refuse to grant, renew, restore, or reinstate any
6 license for any cause which would be grounds for
7 revocation or suspension of a license;
- 8 (6) Publish and distribute pamphlets and circulars
9 containing any information as the board deems proper
10 to further the accomplishment of the purpose of this
11 subpart;
- 12 (7) Contract for professional testing services to prepare,
13 administer, and grade the examinations for applicants
14 as may be required for the purposes of this subpart.
15 The board shall determine the scope and length of the
16 examinations, whether the examinations shall be oral,
17 written, or both, and the score that shall be deemed a
18 passing score;
- 19 (8) Order summary suspension of a license; provided that
20 summary suspensions may be delegated in accordance
21 with section -40;



1 (9) Issue informal nonbinding interpretations or
2 declaratory rulings, and conduct contested case
3 proceedings pursuant to chapter 91; and

4 (10) Subpoena witnesses and documents, administer oaths,
5 receive affidavits and oral testimony, including
6 telephonic communications.

7 **§ -52 Other assistants.** Subject to chapter 76 the
8 authority may employ and remove such administrative and clerical
9 assistants as the contractors license board may require.

10 **§ -53 Classification.** (a) For the purpose of
11 classification, the contracting business includes any or all of
12 the following branches:

- 13 (1) General engineering contracting;
14 (2) General building contracting; and
15 (3) Specialty contracting.

16 (b) A general engineering contractor is a contractor whose
17 principal contracting business is in connection with fixed works
18 requiring specialized engineering knowledge and skill, including
19 the following divisions or subjects: irrigation, drainage,
20 water power, water supply, flood control, inland waterways,
21 harbors, docks and wharves, shipyards and ports, dams and
22 hydroelectric projects, levees, river control and reclamation



1 works, railroads, highways, streets and roads, tunnels, airports
2 and airways, sewers and sewage disposal plants and systems,
3 waste reduction plants, bridges, overpasses, underpasses and
4 other similar works, pipelines and other systems for the
5 transmission of petroleum and other liquid or gaseous
6 substances, parks, playgrounds and other recreational works,
7 refineries, chemical plants and similar industrial plants
8 requiring specialized engineering knowledge and skill,
9 powerhouses, power plants and other utility plants and
10 installations, mines and metallurgical plants, land levelling
11 and earth-moving projects, excavating, grading, trenching,
12 paving and surfacing work and cement and concrete works in
13 connection with the above mentioned fixed works.

14 (c) A general building contractor is a contractor whose
15 principal contracting business is in connection with any
16 structure built, being built, or to be built, for the support,
17 shelter, and enclosure of persons, animals, chattels, or movable
18 property of any kind, requiring in its construction the use of
19 more than two unrelated building trades or crafts, or to do or
20 superintend the whole or any part thereof.

21 (d) A specialty contractor is a contractor whose
22 operations as such are the performance of construction work



1 requiring special skill such as, but not limited to, electrical,
2 drywall, painting and decorating, landscaping, flooring, carpet
3 laying by any installation method, plumbing, or roofing work,
4 and others whose principal contracting business involves the use
5 of specialized building trades or crafts.

6 **§ -54 Asbestos contractors.** (a) The board shall
7 provide for the licensure or permitted activities as a specialty
8 contractor of any person who engages in any activity involving
9 the application, enclosure, removal, encapsulation, renovation,
10 repair, demolition, or other disturbances of friable asbestos or
11 asbestos-containing material that may become friable during the
12 activity; provided that this section shall not apply to
13 activities such as maintenance, repair, or removal of asbestos
14 pipe or sheets, vinyl asbestos floor materials, or asbestos-
15 bituminous or resinous material as well as other activities that
16 the board may exempt which are incidental to the primary purpose
17 for which the contractor holds a license and if they were
18 performed in a manner that no health hazard is posed to the
19 public, the contractor, or the contractor's employees.

20 (b) No person shall be licensed as an asbestos contractor
21 unless that person meets all requirements of subsection (c) in
22 addition to the requirements in section -65.



1 (c) The licensing requirements and procedures, and the
2 standards of conduct for individuals licensed as an asbestos
3 contractor shall be as provided by rules and shall include but
4 shall not be limited to provisions for the following:

- 5 (1) Examination;
- 6 (2) Registration of employees;
- 7 (3) Training, experience, and any other certification
8 standards for contractors and their employees;
- 9 (4) Protective equipment standards;
- 10 (5) Application, enclosure, removal, encapsulation,
11 renovation, repair and demolition procedures;
- 12 (6) Hazardous waste disposal;
- 13 (7) Clean-up procedures;
- 14 (8) Monitoring;
- 15 (9) Health examinations;
- 16 (10) Continuing education;
- 17 (11) Administrative procedures; and
- 18 (12) Fees.

19 The board shall consult with and shall initiate and maintain
20 cooperative agreements with the departments of health, and labor
21 and industrial relations, or any other state, federal, or county
22 departments or agencies and the University of Hawaii or their



1 community colleges in the development of these rules, and to
2 develop procedures and methods for the enforcement of any
3 asbestos activity.

4 (d) The authority, the board, and the department of health
5 shall have the right of entry to any job site and access to any
6 records of the licensee for purposes of inspection for health or
7 safety hazards. Each agency shall be empowered to apply to a
8 court of competent jurisdiction for an order restraining any
9 activity at the job site which constitutes an imminent health or
10 safety hazard.

11 (e) Any person who knowingly hinders or delays the
12 authority, the board, or the department of health in the
13 performance of their duties, who knowingly fails to obtain the
14 licenses or registrations required by this section, or otherwise
15 knowingly violates this section shall be guilty of a
16 misdemeanor.

17 (f) The board may, in addition to any other remedies
18 provided by law, and after a hearing conducted pursuant to
19 chapter 91, assess a fine not to exceed \$5,000 for each
20 violation of this section. For purposes of this subsection,
21 each day's violation shall constitute a separate violation.



1 **§ -55 Powers to classify and limit operations.** (a) The
2 board may adopt rules and regulations necessary to effect the
3 classification of contractors in a manner consistent with
4 established usage and procedure as found in the construction
5 business, and may limit the field and scope of the operations of
6 a licensed contractor to those in which the contractor is
7 classified and qualified to engage, as defined in section
8 -53.

9 (b) A licensee may make application for classification and
10 be classified in more than one classification if the licensee
11 meets the qualifications prescribed by the board for such
12 additional classification or classifications. For qualifying or
13 classifying in additional classifications, the licensee shall
14 pay the appropriate application fee but shall not be required to
15 pay any additional license fee.

16 (c) This section shall not prohibit a specialty contractor
17 from taking and executing a contract involving the use of two or
18 more crafts or trades, if the performance of the work in the
19 crafts or trades, other than in which the specialty contractor
20 is licensed, is incidental and supplemental to the performance
21 of work in the craft for which the specialty contractor is
22 licensed.



1 **§ -56 Licenses required.** No person within the purview
2 of this subpart shall act, or assume to act, or advertise, as
3 general engineering contractor, general building contractor, or
4 specialty contractor without a license previously obtained under
5 and in compliance with this subpart and the rules and
6 regulations of the board.

7 **§ -57 Issuance of building permits; owner-builder**
8 **registration.** (a) Each county or other local subdivision of
9 the State which requires the issuance of a permit as a condition
10 precedent to the construction, alteration, improvement,
11 demolition, or repair of any building or structure shall also
12 require that each applicant for such a permit file as a
13 condition to the issuance of a permit a statement that the
14 applicant and all specialty contractors are licensed under this
15 subpart, giving the license numbers and stating that the
16 licenses are in full force and effect, or, if the applicant is
17 exempt from this subpart, the basis for the claimed exemption;
18 provided that if the applicant claims an exemption under section
19 -49(7), the applicant shall also be required to certify that
20 the building or structure is for the applicant's personal use
21 and not for use or occupancy by the general public. Each county
22 or local subdivision of the State shall maintain an owner-



1 builder registration list which shall contain the following
2 information:

3 (1) The name of any owner or lessee who claims an
4 exemption from this subpart as provided in section
5 -49(7);

6 (2) The address of the property where exempt building or
7 improvement activity is to occur;

8 (3) A description of the type of building or improvement
9 activity to occur;

10 (4) The approximate dates of construction activity; and

11 (5) Whether any electrical or plumbing work is to be
12 performed and if so, the name and license number of
13 the person or entity who will do the work.

14 The absence of such registration is prima facie evidence that
15 the exemption in section -49(7) does not apply.

16 (b) The county shall verify the license against a list of
17 licensed contractors provided by the board, which list shall be
18 updated at least quarterly. The county shall also verify that
19 the applicant is in fact the contractor so licensed or the
20 contractor's duly authorized agent.



1 (c) To qualify for the exemption under section -49(7),
2 the county shall provide the applicant with a disclosure
3 statement in substantially the following form:

4 "Disclosure Statement

5 State law requires construction to be done by licensed
6 contractors. You have applied for a permit under an
7 exemption to that law. The exemption provided in section
8 -49(7), Hawaii Revised Statutes, allows you, as the owner
9 or lessee of your property, to act as your own general
10 contractor even though you do not have a license. You must
11 supervise the construction yourself. You must also hire
12 licensed subcontractors. The building must be for your own
13 use and occupancy. It may not be built for sale or lease.
14 If you sell or lease a building you have built yourself
15 within one year after the construction is complete, the law
16 will presume that you built it for sale or lease, which is
17 a violation of the exemption, and you may be prosecuted for
18 this. It is your responsibility to make sure that
19 subcontractors hired by you have licenses required by state
20 law and by county licensing ordinances. Electrical or
21 plumbing work must be performed by contractors licensed
22 under chapter , Hawaii Revised Statutes. Any person



1 working on your building who is not licensed must be your
2 employee which means that you must deduct F.I.C.A. and
3 withholding taxes and provide workers' compensation for
4 that employee, all as prescribed by law. Your construction
5 must comply with all applicable laws, ordinances, building
6 codes, and zoning regulations. If you violate section -
7 49(7) you may be fined \$5,000 or forty per cent of the
8 appraised value of the building as determined by the county
9 tax appraiser, whichever is greater, for the first offense;
10 and \$10,000 or fifty per cent of the appraised value of the
11 building as determined by the county tax appraiser,
12 whichever is greater for any subsequent offense."

13 The county shall not issue a building permit to the owner-
14 applicant until the applicant signs a statement that the
15 applicant has read and understands the disclosure form.

16 (d) A county building inspector or other building official
17 shall report to the regulated industries complaints office the
18 name and address of any person, who, in the opinion of the
19 building inspector or official, has violated this subpart by
20 accepting or contracting to accomplish work which would classify
21 the person as a contractor under this subpart.



1 **§ -58 Advertising.** (a) It is a misdemeanor for any
2 person, including a person who is exempt by section -49 from
3 this subpart, to advertise with or without any limiting
4 qualifications as a contractor unless such person holds a valid
5 license under this subpart for the goods and services
6 advertised. "Advertise" as used in this section includes but is
7 not limited to:

8 (1) The issuance of any card, sign, or device to any
9 person;

10 (2) The causing, permitting, or allowing of any sign or
11 marking on or in any building, vehicle, or structure;

12 (3) Advertising in any newspaper or magazine;

13 (4) Any listing or advertising in any directory under a
14 classification or heading that includes the word
15 "contractor"; or

16 (5) Commercials broadcast by airwave transmission.

17 (b) A contractor may advertise in print or broadcast
18 medium, as defined in subsection (a) only if the contractor
19 includes in the advertisement or listing the contractor's
20 applicable and current license number, and provides proof of the
21 number's validity to the publisher or producer of the
22 advertising medium. The publisher or producer of a print or



1 broadcast advertising medium shall refuse to publish or
2 broadcast an advertisement or listing for a contractor who does
3 not comply with the provisions of this subsection. A publisher
4 or producer who obtains a signed statement from the contractor
5 which states that the contractor has read the text of the
6 advertisement or listing, has an applicable and current
7 contractors license for the goods and services advertised, has
8 included all applicable and current license numbers in the
9 advertisement or listing, and is aware of civil and criminal
10 penalties for advertising as a contractor without a valid
11 license, shall be entitled to a rebuttable presumption of
12 compliance with this subsection.

13 (c) Upon entry of either a final order of the board
14 pursuant to chapter 91 or a judgment by a court of competent
15 jurisdiction finding that a contractor has advertised in
16 violation of either section -56 or -58(a), the public
17 utility furnishing telephone service to the contractor shall
18 disconnect the telephone number contained in the advertisement
19 or listing.

20 (d) The publisher or producer of a print or broadcast
21 advertising medium shall not be liable in any suit, action, or
22 claim arising from its refusal to list or accept advertisements



1 pursuant to subsection (b). Good faith compliance by a public
2 utility with subsection (c) is a complete defense to any civil
3 or criminal action brought against it arising from the
4 termination of telephone service.

5 **§ -59 Aiding or abetting.** Aiding or abetting an
6 unlicensed person to evade this subpart or knowingly combining
7 or conspiring with an unlicensed person, or allowing one's
8 license to be used by an unlicensed person, or acting as agent
9 or partner or associate, or otherwise, of an unlicensed person,
10 with the intent to evade this subpart, shall be a misdemeanor.

11 **§ -60 Licensing of craftsmen.** At least half of all
12 craftsmen requiring licenses employed on a construction project
13 by a specialty contractor in the trade in which the craftsman is
14 licensed shall be licensed in accordance with and to the extent
15 required by subpart C of this chapter. The board may waive this
16 requirement in any county when there are insufficient licensed
17 craftsmen in that county to comply herewith.

18 **§ -61 Investigation permitted.** The board may
19 investigate, classify, and qualify applicants for contractors
20 licenses.

21 **§ -62 Citation for unlicensed activity.** (a) In
22 addition to any other remedy available, the investigator may



1 issue citations to persons acting in the capacity of or engaging
2 in the business of a contractor within the state, without having
3 a license previously obtained under and in compliance with this
4 subpart and the rules promulgated thereunder. If the
5 investigator determines that a person is acting in the capacity
6 of, or engaging in the business of, a contractor within this
7 state without having a license to so act or engage, the
8 investigator may issue a citation to such person.

9 (b) Each citation shall be in writing and shall describe
10 the basis of the citation, including the specific statutory
11 provisions alleged to have been violated, and shall contain an
12 order to cease and desist from the violation, and an assessment
13 of civil penalties as provided in section -76. The citation
14 shall also include notice of the sanctions for violating the
15 cease and desist order. All penalties collected under this
16 section shall be deposited in the Hawaii construction authority
17 special fund established under section -8.

18 (c) Service of a citation issued under this section shall
19 be made by personal service whenever possible, or by certified
20 mail, restricted delivery, sent to the last known business or
21 residence address of the person cited.



1 (d) Any person served with a citation under this section
2 may submit a written request to the director for a hearing,
3 within twenty days from the receipt of the citation, with
4 respect to the violations alleged, the scope of the order to
5 cease and desist, and the amount of the civil penalties
6 assessed.

7 (e) If the person cited under this section timely notifies
8 the director of the request for a hearing, the director shall
9 afford an opportunity for a hearing under chapter 91. The
10 hearing shall be conducted by the director or the director may
11 designate a hearings officer to hold the hearing. The director
12 or any hearings officer designated by the director shall have
13 the power to issue subpoenas, administer oaths, hear testimony,
14 find facts, and make conclusions of law and issue a final order.

15 (f) If the person cited under this section does not submit
16 a written request to the director for a hearing within twenty
17 days from the receipt of the citation, the citation shall be
18 deemed a final order of the director.

19 (g) The director may apply to the appropriate court for a
20 judgment to enforce the provisions of any final order issued by
21 the director or designated hearings officer pursuant to this
22 section, including the provisions to cease and desist and for



1 civil penalties imposed. In any proceeding to enforce the
2 provisions of the final order of the director or designated
3 hearings officer, the director need only show that notice was
4 given, a hearing was held or the time granted for requesting a
5 hearing has run without such a request, and a certified copy of
6 the final order of the director or designated hearings officer.

7 (h) If any party is aggrieved by the decision of the
8 director or the designated hearings officer, the party may
9 appeal in the manner provided in chapter 91 to the circuit court
10 of the circuit in which the party resides or has the party's
11 principal place of business or in which the action in question
12 occurred; provided that the operation of a cease and desist
13 order shall not be stayed on appeal unless specifically ordered
14 by a court of competent jurisdiction after applying the stay
15 criteria enumerated in section 91-14(c).

16 (i) The sanctions and disposition authorized under this
17 section shall be separate from and in addition to all other
18 remedies either civil or criminal provided in any other
19 applicable statutory provision. The director may adopt rules
20 under chapter 91 as may be necessary to fully effectuate this
21 section.



1 (j) The director may apply to the appropriate court for
2 injunctive or any other relief the court deems appropriate,
3 including a fine of not less than \$10,000 for each offense,
4 against any person who violates a cease and desist order. Each
5 day's violation or failure to comply with a cease and desist
6 order shall be deemed a separate offense. The allegations in
7 the citation shall be deemed conclusively established for
8 purposes of a proceeding for permanent or temporary relief to
9 enforce the cease and desist order.

10 **§ -63 State of disaster; acting as a contractor without**
11 **a license; penalty.** Any person who violates section -56, in
12 connection with the offer or performance of repairs to a
13 residential or nonresidential structure for damage caused by a
14 natural disaster in a political subdivision for which a state of
15 disaster is proclaimed by the governor, may be punished by a
16 fine of up to \$10,000, or imprisonment up to one year, or both,
17 in addition to all other remedies or penalties.

18 **§ -64 Enhanced penalties when elderly persons are**
19 **targeted.** If any person is found to have violated section
20 -56 and the violation is committed against elderly persons,
21 in addition to any other penalty set forth or imposed, the court
22 may impose a fine of up to \$10,000, or imprisonment up to one



1 year, or both. As used in this section, "elderly person" means
2 a person who is sixty-five years of age or older.

3 **§ -65 No license issued when.** (a) No license hereunder
4 shall be issued to:

5 (1) Any person unless the person has filed an application
6 and paid the applicable fees;

7 (2) Any person unless the person meets the experience
8 requirements as prescribed in the board's rules;
9 provided that the board may accept experience acquired
10 on a self-employed or unlicensed basis if the
11 experience can be verified;

12 (3) Any person who does not possess a history of honesty,
13 truthfulness, financial integrity, and fair dealing;
14 provided that any person who during the six years
15 prior to application has failed to satisfy an
16 undisputed debt or a judgment relating to services or
17 materials rendered in connection with operations as a
18 contractor shall be presumed not to possess a history
19 of financial integrity;

20 (4) Any person unless the person has successfully passed a
21 written examination as prescribed by the board;



- 1 (5) Any individual unless the individual is age eighteen
2 years or more;
- 3 (6) Any joint venture which is not exempt under section
4 -49(8) unless the contracting business thereof is
5 under the direct management of a member or employee
6 thereof, and unless the member or employee holds an
7 appropriate license;
- 8 (7) Any individual who is unable to qualify as a
9 contractor or any partnership or corporation, unless
10 the contracting business of the individual,
11 partnership, or corporation is under the direct
12 management of an employee, partner, or officer thereof
13 who holds an appropriate license;
- 14 (8) Any person unless the person submits satisfactory
15 proof to the board that the person has obtained
16 workers' compensation insurance, or has been
17 authorized to act as a self-insurer under chapter 386
18 or is excluded from the requirements of chapter 386;
- 19 (9) Any person unless the person submits satisfactory
20 proof to the board that the person has obtained
21 liability insurance; or



1 (10) Any person unless the person submits a bond if
2 required by the board under section -72.

3 (b) Any license issued hereunder shall not be renewed if
4 the licensee no longer meets any of the foregoing
5 qualifications.

6 (c) An application shall be considered abandoned if the
7 application is not completed and the required documents or other
8 information are not submitted to the board within two years from
9 the last date the documents or information were requested.

10 **§ -66 Requirements to maintain license.** (a) A
11 licensed contractor shall have and maintain in full force and
12 effect the following:

13 (1) Workers' compensation insurance; unless the licensee
14 is authorized to act as a self-insurer under chapter
15 386 or is excluded from the requirements of chapter
16 386;

17 (2) Liability insurance from an insurance company or
18 agency for comprehensive personal injury and property
19 damage liability; and

20 (3) Bond when required by the board, under section -72.

21 (b) Failure, refusal, or neglect of any licensed
22 contractor to maintain in full force and effect, the applicable



1 workers' compensation insurance, liability insurance, or bond
2 shall cause the automatic forfeiture of the license of the
3 contractor effective as of the date of expiration or
4 cancellation of the contractor's workers' compensation
5 insurance, liability insurance, or bond.

6 (c) The board shall not restore the forfeited license
7 until satisfactory proof of continuous insurance and bond
8 coverages is submitted to the board as required by this section.

9 (d) Failure to restore a license within sixty days after
10 the date of forfeiture shall result in the forfeiture of all
11 fees and shall require the person to apply as a new applicant.

12 (e) The board may assess a fee not to exceed \$1,000,
13 impose a bond, or restrict the license as a condition for the
14 restoration of a license forfeited pursuant to this section.

15 (f) A licensee may, within sixty days after receipt of the
16 notification of the forfeiture, request an administrative
17 hearing to review the forfeiture pursuant to chapter 91.

18 **§ -67 Application; fees.** (a) Every applicant for a
19 license under this subpart shall complete and file an
20 application provided by the board and shall furnish any
21 additional information bearing upon the issuance of the license
22 as the board shall require. In the case of a partnership, joint



1 venture, or corporation, any partner, member, or officer thereof
2 may sign the application on behalf of the applicant.

3 (b) Every applicant who is required by the board to be
4 examined shall pay, directly to the testing agency, an
5 examination fee.

6 (c) These fees shall be as provided in rules adopted by
7 the director pursuant to chapter 91.

8 **§ -68 Form for licenses.** The form of every license
9 shall be prescribed by the board and shall be issued in the name
10 of the board.

11 **§ -69 Place of business and posting of license.** (a) A
12 licensed contractor shall have, maintain, and operate from a
13 definite place of business in the state and shall display
14 therein his or her contractor's license.

15 (b) The licensed contractor shall report any change of
16 address or telephone number to the board within ten business
17 days from such change.

18 **§ -70 Fees; biennial renewals; inactive license.** (a)
19 The biennial renewal fee or inactive license fee, and the
20 recovery fund, education fund, and Hawaii construction authority
21 special fund fees shall be paid to the board on or before
22 September 30 of each even-numbered year. These fees shall be as



1 provided in rules adopted by the director pursuant to chapter
2 91. Failure, neglect, or refusal of any licensee to pay these
3 fees and to submit all documents required by the board on or
4 before September 30 of each even-numbered year shall constitute
5 a forfeiture of the licensee's license.

6 (b) Any forfeited license may be restored upon submittal
7 of all required documents and fees, plus a penalty fee, within
8 sixty days from September 30 of the even-numbered year.

9 (c) Upon written request of a licensee, the board may
10 place that person's active license in an inactive status. The
11 licensee, upon payment of the inactive license fee, may continue
12 inactive for the biennial period. Failure, neglect, or refusal
13 of any licensee in inactive status to pay the inactive license
14 fee shall constitute a forfeiture of the license. The license
15 may be reactivated at any time during the biennial period by
16 making written request to the board and by fulfilling all the
17 requirements, including the payment of the appropriate fees.
18 While in an inactive status, a licensee shall not engage in
19 contracting; a licensee who violates this prohibition shall be
20 subject to discipline under this subpart and the board's rules.



1 (d) For purposes of this subpart, the dishonoring of any
2 check upon first deposit shall constitute a failure to meet the
3 fee requirements.

4 **§ -71 Action on applications.** Within one hundred and
5 twenty days after the filing of a proper application for a
6 license and the payment of the required fees, the board shall:

- 7 (1) Conduct an investigation of the applicant, and in that
8 investigation may post pertinent information,
9 including but not limited to the name and address of
10 the applicant, and if the applicant is associated in
11 any partnership, corporation, or other entity, the
12 names, addresses, and official capacities of the
13 applicant's associates; and
- 14 (2) Either issue a license to the applicant or notify the
15 applicant in writing by registered mail of the board's
16 decision not to grant the license and specifically
17 notify the applicant of the applicant's right to
18 submit a request for a contested case hearing pursuant
19 to chapter 91 within sixty days of the board's
20 decision. The hearing shall be conducted in
21 accordance with chapter 91.



1 **§ -72 Bond.** The board may require each licensee,
2 applicant, individual or corporate, who is a specialty
3 contractor to put up bond in the sum of not less than \$5,000
4 executed by the licensee or applicant as principal and by a
5 surety company authorized to do business in the state as surety.

6 The board may require each licensee, applicant, individual
7 or corporate, who is a general contractor to put up a bond in
8 the sum of not less than \$5,000 executed by the licensee or
9 applicant as principal and by a surety company authorized to do
10 business in the state as surety.

11 The board, in exercising its discretion shall take into
12 consideration the licensee's or applicant's financial condition
13 and experience in the field.

14 The bond shall be in such form as the board may prescribe,
15 conditioned upon the payment of wages, as defined in section
16 104-1(6), to the employees of the contractor or any other person
17 or entity entitled to such wages when due, and giving employees
18 or any other person or entity entitled to such wages who have
19 not been paid a right of action on the bond in their own names;
20 and upon the honest conduct of the business of the licensee, and
21 upon the right of any person injured or damaged by any wrongful
22 act of the licensee to bring an action on the bond; provided



1 that any claim for wages shall have priority over all other
2 claims.

3 **§ -73 Revocation, suspension, and renewal of licenses.**

4 In addition to any other actions authorized by law, the board
5 may revoke any license issued pursuant to this section, or
6 suspend the right of a licensee to use a license, or refuse to
7 renew a license for any cause authorized by law, including but
8 not limited to the following:

- 9 (1) Any dishonest, fraudulent, or deceitful act as a
10 contractor that causes substantial damage to another;
- 11 (2) Engaging in any unfair or deceptive act or practice as
12 prohibited by section 480-2;
- 13 (3) Abandonment of any construction project or operation
14 without reasonable or legal excuse;
- 15 (4) Wilful diversion of funds or property received for
16 prosecution or completion of a specific construction
17 project or operation, or for a specified purpose in
18 the prosecution or completion of any construction
19 project or operation, and the use thereof for any
20 other purpose;
- 21 (5) Wilful departure from, or wilful disregard of plans or
22 specifications in any material respect without consent



1 of the owner or the owner's duly authorized
2 representative, that is prejudicial to a person
3 entitled to have the construction project or operation
4 completed in accordance with those plans and
5 specifications;

6 (6) Wilful violation of any law of the State, or any
7 county, relating to building, including any violation
8 of any applicable rule of the department of health, or
9 of any applicable safety or labor law;

10 (7) Failure to make and keep records showing all
11 contracts, documents, records, receipts, and
12 disbursements by a licensee of all the licensee's
13 transactions as a contractor for a period of not less
14 than three years after completion of any construction
15 project or operation to which the records refer or to
16 permit inspection of those records by the board;

17 (8) When the licensee being a partnership or a joint
18 venture permits any partner, member, or employee of
19 the partnership or joint venture who does not hold a
20 license to have the direct management of the
21 contracting business thereof;



- 1 (9) When the licensee being a corporation permits any
2 officer or employee of the corporation who does not
3 hold a license to have the direct management of the
4 contracting business thereof;
- 5 (10) Misrepresentation of a material fact by an applicant
6 in obtaining a license;
- 7 (11) Failure of a licensee to complete in a material
8 respect any construction project or operation for the
9 agreed price if the failure is without legal excuse;
- 10 (12) Wilful failure in any material respect to comply with
11 this subpart or the rules adopted pursuant thereto;
- 12 (13) Wilful failure or refusal to prosecute a project or
13 operation to completion with reasonable diligence;
- 14 (14) Wilful failure to pay when due a debt incurred for
15 services or materials rendered or purchased in
16 connection with the licensee's operations as a
17 contractor when the licensee has the ability to pay or
18 when the licensee has received sufficient funds
19 therefor as payment for the particular operation for
20 which the services or materials were rendered or
21 purchased;



- 1 (15) The false denial of any debt due or the validity of
2 the claim therefor with intent to secure for a
3 licensee, the licensee's employer, or other person,
4 any discount of the debt or with intent to hinder,
5 delay, or defraud the person to whom the debt is due;
- 6 (16) Failure to secure or maintain workers' compensation
7 insurance, unless the licensee is authorized to act as
8 a self-insurer under chapter 386 or is excluded from
9 the requirements of chapter 386;
- 10 (17) Entering into a contract with an unlicensed contractor
11 involving work or activity for the performance of
12 which licensing is required under this subpart;
- 13 (18) Performing service on a residential or commercial air
14 conditioner, utilizing CFCs, without using refrigerant
15 recovery and recycling equipment;
- 16 (19) Performing service on any air conditioner after
17 January 1, 1994, without successful completion of an
18 appropriate training course in the recovery and
19 recycling of CFC and HCFC refrigerants, which included
20 instruction in the proper use of refrigerant recovery
21 and recycling equipment that is certified by
22 Underwriters Laboratories, Incorporated;



1 (20) Violating chapter 342C; and

2 (21) Failure to pay delinquent taxes, interest, and
3 penalties assessed under chapter 237 that relate to the business
4 of contracting, or to comply with the terms of a conditional
5 payment plan with the department of taxation for the payment of
6 such delinquent taxes, interest, and penalties.

7 **§ -74 Death or dissociation.** No copartnership, joint
8 venture, or corporation shall be deemed to have violated any
9 provision of this subpart by acting or assuming to act as a
10 contractor after the death or dissociation of a licensee who had
11 the direct management of the contracting business thereof prior
12 to final disposition by the contractors license board of an
13 application for a license made within thirty days from the date
14 of the death or dissociation.

15 **§ -75 Civil action.** The failure of any person to comply
16 with any provision of this subpart shall prevent such person
17 from recovering for work done, or materials or supplies
18 furnished, or both on a contract or on the basis of the
19 reasonable value thereof, in a civil action, if such person
20 failed to obtain a license under this subpart prior to
21 contracting for such work.



1 **§ -76 Violation; penalties.** (a) Any licensee who
2 contracts outside the appropriate scope of classification for
3 which the licensee is licensed shall be fined \$500 for the first
4 offense, \$1,000 for the second offense, and not less than \$1,500
5 or more than \$2,000 for any subsequent offense.

6 (b) Any licensee who violates section -59 or -73(17)
7 shall be fined up to \$25,000 or up to the full amount of the
8 contract price for each offense, whichever is greater.

9 (c) Except as provided in subsections (a), (b), (d), and
10 (e), any person who violates or fails to comply with this
11 subpart shall be fined not less than \$100 or more than \$5,000
12 for each violation; provided that any person who violates
13 section -56 shall be fined:

14 (1) \$500 or forty per cent of the total contract price,
15 whichever is greater, for the first offense;

16 (2) \$1,000 or forty per cent of the total contract price,
17 whichever is greater, for the second offense; and

18 (3) \$5,000 or forty per cent of the total contract price,
19 whichever is greater, for any subsequent offense,

20 and when the person is or was a defendant or respondent in a
21 separate citation or lawsuit filed with or by the authority, all
22 tools, implements, documents, materials, or any other property



1 used by the person in activities violating section -56 shall
2 be subject to forfeiture as provided by section -77 and shall
3 be turned over to the authority for disposition under that
4 section.

5 (d) Any licensee who violates, or whose employee violates,
6 section -73(18), -73(19), or -73(20), shall be fined
7 \$75 for the first offense, \$150 for the second offense, and not
8 less than \$300 or more than \$1,000 for each subsequent offense;
9 provided that each unit serviced in violation of section
10 -73(18) or -73(19) and each instance of releasing CFCs in
11 violation of section -73(20) shall constitute a separate
12 offense.

13 (e) Any person who violates section -49(7), shall be
14 fined:

- 15 (1) \$5,000 or forty per cent of the appraised value of the
16 building as determined by the county tax appraiser,
17 whichever is greater, for the first offense; and
18 (2) \$10,000 or fifty per cent of the appraised value of
19 the building as determined by the county tax
20 appraiser, whichever is greater, for any subsequent
21 offenses.



1 **§ -77 Forfeiture of property for unlicensed activity.**

2 (a) If an investigator finds that a person has acted in the
3 capacity of, or engaged in the business of a contractor within
4 this state without having a current license as required by this
5 subpart to so act or engage, and the person is or was a
6 defendant or respondent in a separate citation or lawsuit filed
7 with or by the authority, the investigator may issue a notice of
8 forfeiture of property used by the person in the unlicensed
9 activity, and the property that is the subject of the notice of
10 forfeiture shall be turned over to the authority for disposition
11 in accordance with this subpart.

12 (b) Each notice of forfeiture shall be in writing and
13 shall describe the tools, implements, documents, materials, or
14 any other property used by any person in unlicensed activity
15 that violates section -56.

16 (c) The authority shall make good faith efforts to locate
17 and notify within a reasonable period of time all owners or
18 interest-holders of property subject to a notice of forfeiture.

19 (d) Service of a notice of forfeiture issued under this
20 section shall be made:

21 (1) If the name and current address of the unlicensed
22 person, owner, or interest-holder is known:



1 (A) By personal service; or
2 (B) By mailing a copy of the notice to the unlicensed
3 person, owner, or interest-holder by certified
4 mail to the last address on record with a state
5 agency;

6 or

7 (2) If the address of the unlicensed person, owner, or
8 interest-holder is not known or is not on record with
9 a state agency, by public notice once as provided in
10 section 1-28.5.

11 (e) An unlicensed person served with a notice of
12 forfeiture under this section may submit a written request to
13 the director for a hearing:

14 (1) Within twenty days of receipt of the notice of
15 forfeiture, if the person is served personally or by
16 mail; or

17 (2) Within twenty days of public notice of forfeiture.

18 If a request for a hearing is not timely filed with the
19 director, the notice of forfeiture shall be deemed a final order
20 of the director.

21 (f) An owner or interest-holder served with a notice of
22 forfeiture, other than the unlicensed person, may file a



1 petition for remission of forfeiture with the authority within
2 twenty days of service by personal service or mail, or within
3 twenty days of the date of public notice, if service is by
4 public notice. The petition shall be signed by the petitioner
5 and sworn on oath before a notary public and shall contain the
6 following:

7 (1) A reasonably complete description of the property
8 subject to forfeiture; and

9 (2) A statement of the interest of the petitioner in the
10 property subject to forfeiture, with supporting
11 documentary evidence.

12 If a petition for remission of forfeiture is not timely filed
13 with the director, the notice of forfeiture shall be deemed a
14 final order of the director.

15 (g) The authority shall review the petition for remission
16 of forfeiture and, if remission is warranted, return the
17 property subject to forfeiture to the petitioner within thirty
18 days of receipt of the petition. If the authority determines
19 that remission is not warranted, the authority shall issue a
20 written decision to the petitioner within thirty days of receipt
21 of the petition.



1 (h) A petitioner whose petition for remission has been
2 denied may file with the director a written request for a
3 hearing as provided under subsections (i) and (j). The written
4 request shall be filed within twenty days of receipt of the
5 written decision denying the petition for remission. If a
6 request for hearing is not timely filed with the director, the
7 notice of forfeiture shall be deemed a final order of the
8 director.

9 (i) Hearings shall be subject to chapter 91 and shall be
10 conducted by the director or a hearings officer designated by
11 the director. The director or designated hearings officer may
12 issue subpoenas, administer oaths, hear testimony, find facts,
13 make conclusions of law, and issue a final order of forfeiture.
14 The authority shall have the burden to show by clear and
15 convincing evidence that the property is subject to forfeiture.
16 In determining whether the property is subject to forfeiture,
17 the director or hearings officer shall consider evidence of
18 ownership, the description of the property, and any other
19 relevant evidence.

20 (j) Any person aggrieved by the decision of the director
21 or designated hearings officer may appeal the decision in the



1 manner provided in chapter 91, to the circuit court of the
2 circuit in which:

3 (1) The person resides;

4 (2) The person's principal place of business is located;

5 or

6 (3) The activity in question occurred.

7 (k) The director may file an action in the circuit court
8 for a judgment to enforce any final order issued by the director
9 or designated hearings officer pursuant to this section. A
10 judgment enforcing the final order shall issue upon a showing by
11 the director either that notice was given and a hearing was
12 held, or, that the time granted for requesting a hearing has run
13 without the timely filing of a request.

14 (1) The authority may dispose of all property forfeited in
15 accordance with this subpart by:

16 (1) Transferring property to any local or state government
17 entity, municipality, or law enforcement agency within
18 the state;

19 (2) Selling property to the public by public sale; or

20 (3) Using any other means of disposition authorized by
21 law.



1 (m) All proceeds of a forfeiture action conducted pursuant
2 to this section, after payment of expenses of administration and
3 sale, shall be deposited in the Hawaii construction authority
4 special fund established under section -8. Moneys in the
5 fund shall be appropriated for the payment of any expenses
6 necessary to seize, detain, appraise, inventory, safeguard,
7 maintain, advertise, or sell property seized, detained, or
8 forfeited pursuant to this section or any other necessary
9 expenses incident to the seizure, detention, or forfeiture of
10 such property.

11 (n) Forfeiture under this section shall be separate from
12 and in addition to all other applicable remedies, either civil
13 or criminal. This section shall not apply to the violations set
14 forth in section -76(a) and (b).

15 (o) The director may adopt rules as necessary to fully
16 effectuate this section.

17 **§ -78 Injunction.** The board may, in addition to any
18 other remedies available, apply to a circuit judge for a
19 preliminary or permanent injunction restraining any person from
20 acting, or assuming to act, or advertising, as general
21 engineering contractor, general building contractor, or
22 specialty contractor, without a license previously obtained



1 under and in compliance with this subpart and the rules and
2 regulations of the board, and upon hearing and for cause shown,
3 the judge may grant the preliminary or permanent injunction.

4 **§ -79 Payment for goods and services.** A contractor
5 shall pay the contractor's subcontractor for any goods and
6 services rendered within sixty days after receipt of a proper
7 statement by the subcontractor that the goods have been
8 delivered or services have been performed. The subcontractor
9 shall be entitled to receive interest on the unpaid principal
10 amount at the rate of one per cent per month commencing on the
11 sixtieth day following receipt of the statement by the
12 contractor, provided that this section shall not apply if the
13 delay in payment is due to a bona fide dispute between the
14 contractor and the subcontractor concerning the goods and
15 services contracted for. If there is no bona fide dispute
16 between the subcontractor and the contractor concerning the
17 goods or services contracted for, the subcontractor shall be
18 entitled to payment for goods and services under this section.

19 If payment is contingent upon receipt of funds held in
20 escrow or trust, the contractor shall clearly state this fact in
21 the contractor's solicitation of bids. If the solicitation for
22 bids contains the statement that the time of payment is



1 contingent upon the receipt of funds held in escrow or trust and
2 a contract is awarded in response to the solicitation, interest
3 will not begin to accrue upon any unpaid balance until the
4 sixtieth day following receipt by the contractor of the
5 subcontractor's statement or the thirtieth day following receipt
6 of the escrow or trust funds, whichever occurs later.

7 **§ -80 Disclosure; contracts.** (a) Prior to entering
8 into a contract with a homeowner involving home construction or
9 improvements and prior to the application for a building permit,
10 licensed contractors shall:

11 (1) Explain verbally in detail to the homeowner all lien
12 rights of all parties performing under the contract
13 including the homeowner, the contractor, any
14 subcontractor or any materialman supplying commodities
15 or labor on the project;

16 (2) Explain verbally in detail the homeowner's option to
17 demand bonding on the project, how the bond would
18 protect the homeowner and the approximate expense of
19 the bond; and

20 (3) Disclose all information pertaining to the contract
21 and its performance and any other relevant information
22 that the board may require by rule.



1 (b) All licensed contractors performing home construction
2 or improvements shall provide a written contract to the
3 homeowner. The written contract shall:

4 (1) Contain the information provided in subsection (a) and
5 any other relevant information that the board may
6 require by rule;

7 (2) Contain notice of the contractor's right to resolve
8 alleged construction defects prior to commencing any
9 litigation in accordance with section 672E-11;

10 (3) Be signed by the contractor and the homeowner; and

11 (4) Be executed prior to the performance of any home
12 construction or improvement.

13 (c) For the purpose of this section, "homeowner" means the
14 owner or lessee of residential real property, including owners
15 or lessees of condominium or cooperative units.

16 (d) Any violation of this section shall be deemed an
17 unfair or deceptive practice and shall be subject to provisions
18 of chapter 480, as well as the provisions of this subpart.

19 **§ -81 Roofing contractors guarantee bond.** (a) Every
20 contract executed for the purpose of constructing, repairing or
21 improving a roof covering, which contract states a guarantee for
22 workmanship for a period in excess of seven years, shall be



1 accompanied by a bond, executed by the licensee as principal and
2 by a surety company authorized to do business in the state as a
3 surety, for the replacement value of such roof covering;
4 provided that no surety company shall be compelled to issue a
5 bond for any guarantee pursuant to a contract under this section
6 which it would not ordinarily bond or consider to be a bondable
7 project.

8 (b) Such bond shall be for the exclusive benefit of, and
9 be limited to, an owner or lessee of a private residence,
10 including a condominium or cooperative unit, who has contracted
11 with a duly licensed contractor for the construction of a roof
12 covering to the owner's or lessee's own private residence and
13 who has filed an appropriate claim for the replacement value of
14 a roof covering which has become faulty or defective within the
15 stated guarantee period.

16 (c) The surety bond shall be continuous in form and the
17 total aggregate liability of the surety for all claims shall be
18 limited to the face amount of the bond irrespective of the
19 number of years the bond is in force.

20 (d) Any claim or subsequent action to make a claim against
21 the bond shall be brought not later than one year after the
22 expiration of the guarantee period for which the bond has been



1 provided. Claims against the bond, as provided in this section,
2 shall not in any way supersede or prevent claims made under
3 section -82 or any other appropriate statute or law.

4 (e) Every contractor licensed to perform under this
5 subpart shall, prior to entering into a contract covered by this
6 section, provide to the owner appropriate information to
7 evidence the existence of the bond and its conditions in
8 writing.

9 (f) Bonds required under this section shall be in addition
10 to any other bond required by this subpart or any other bond
11 required or executed between a contractor and an owner or other
12 contracting agency.

13 (g) Any violation by any contractor of any provision of
14 this section or failure to maintain in full force and effect any
15 bond required by this section, shall be deemed to be an unfair
16 and deceptive act or practice.

17 **§ -82 Contractors recovery fund; use of fund; person**
18 **injured; fees.** (a) The board is authorized to establish and
19 maintain a contractors recovery fund from which any person
20 injured by an act, representation, transaction, or conduct of a
21 duly licensed contractor, which is in violation of this subpart
22 or the rules adopted pursuant thereto, may recover by order of



1 the circuit court or district court of the judicial circuit
2 where the violation occurred, an amount of not more than \$12,500
3 per contract, regardless of the number of persons injured under
4 the contract, for damages sustained by the act, representation,
5 transaction, or conduct. Recovery from the fund shall be
6 limited to the actual damages suffered by the claimant,
7 including court costs and fees as set by law, and reasonable
8 attorney fees as determined by the court; provided that recovery
9 from the fund shall not be awarded to persons injured by an act,
10 representation, transaction, or conduct of a contractor whose
11 license was suspended, revoked, forfeited, terminated, or in an
12 inactive status at the time the claimant entered into the
13 contract with the contractor.

14 (b) For the purposes of this subpart, "person injured" or
15 "injured person" means and is limited to owners or lessees of
16 private residences, including condominium or cooperative units,
17 who have contracted with a duly licensed contractor for the
18 construction of improvements or alterations to the owners' or
19 lessees' own private residences and owners or lessees of real
20 property who have contracted with a duly licensed contractor for
21 the construction of the owners' or lessees' own private
22 residences on the owners' or lessees' real property.



1 (c) When any person applies for a contractors license, the
2 person shall pay, in addition to the person's original license
3 fee, a fee of \$150 for deposit in the contractors recovery fund,
4 and a fee for deposit in the contractors education fund as
5 provided in rules adopted by the director pursuant to chapter
6 91. In the event that the board does not issue the license,
7 these fees shall be returned to the applicant.

8 **§ -83 Additional payments to fund.** (a) At any time
9 when the balance remaining in the contractors recovery fund is
10 less than \$250,000, the board may assess every contractor a fee
11 not to exceed \$500 annually for deposit in the contractors
12 recovery fund.

13 (b) The failure of any contractor to pay the assessment
14 within sixty days from the date of assessment shall constitute a
15 forfeiture of the contractor's license. The board may impose
16 other penalties or requirements as a condition of restoration of
17 the license.

18 **§ -84 Statute of limitations; recovery from fund.** (a)
19 No action for an arbitration award or for a judgment which may
20 subsequently result in an order for collection from the
21 contractors recovery fund shall be commenced later than six
22 years from the accrual of the cause of action thereon. When any



1 injured person commences action for an arbitration award or for
2 a judgment which may result in collection from the contractors
3 recovery fund, the injured person shall notify the board in
4 writing to this effect at the time of the commencement of such
5 action. The board shall have the right to intervene in and
6 defend any such action. Nothing in this section shall supersede
7 the statute of limitations as contained in section 657-8.

8 (b) When any injured person recovers a valid judgment in
9 any circuit court or district court of the county where the
10 violation occurred against any licensed contractor for such act,
11 representation, transaction, or conduct which is in violation of
12 the provisions of this subpart or the regulations promulgated
13 pursuant thereto, which occurred on or after June 1, 1974, the
14 injured person may, upon the termination of all proceedings,
15 including reviews and appeals in connection with the judgment,
16 file a verified claim in the court in which the judgment was
17 entered and, upon ten days' written notice to the contractors
18 license board, may apply to the court for an order directing
19 payment out of the contractors recovery fund, of the amount
20 unpaid upon the judgment, subject to the limitations stated in
21 this section. Before proceeding against the contractors



1 recovery fund, the injured person must first proceed against any
2 existing bond covering the licensed contractor.

3 (c) The court shall proceed upon such application in a
4 summary manner, and, upon the hearing thereof, the injured
5 person shall be required to show:

6 (1) The injured person is not a spouse of debtor, or the
7 personal representative of such spouse;

8 (2) The injured person has complied with all the
9 requirements of this section;

10 (3) The injured person has obtained a judgment as set out
11 in subsection (b) of this section, stating the amount
12 thereof and the amount owing thereon at the date of
13 the application;

14 (4) The injured person has made all reasonable searches
15 and inquiries to ascertain whether the judgment debtor
16 is possessed of real or personal property or other
17 assets, liable to be sold or applied in satisfaction
18 of the judgment; and

19 (5) That by such search the injured person has discovered
20 no personal or real property or other assets liable to
21 be sold or applied, or that the injured person has
22 discovered certain of them, describing them, owned by



1 the judgment debtor and liable to be so applied, and
2 that the injured person has taken all necessary action
3 and proceedings for the realization thereof, and that
4 the amount thereby realized was insufficient to
5 satisfy the judgment, stating the amount so realized
6 and the balance remaining due on the judgment after
7 application of the amount realized.

8 (d) The court shall make an order directed to the
9 contractors license board requiring payment from the contractors
10 recovery fund of whatever sum it shall find to be payable upon
11 the claim, pursuant to the provisions of and in accordance with
12 the limitations contained in this section, if the court is
13 satisfied, upon the hearing of the truth of all matters required
14 to be shown by the injured person by subsection (c) of this
15 section and that the injured person has fully pursued and
16 exhausted all remedies available to the injured person for
17 recovering the amount awarded by the judgment of the court.

18 (e) The license of the contractor shall be automatically
19 terminated upon execution of a settlement agreement requiring
20 payment from the contractors recovery fund or the issuance of a
21 court order authorizing payment from the contractors recovery
22 fund. No contractor shall be eligible to receive a new license



1 until the contractor has repaid in full, plus interest at the
2 rate of ten per cent a year, the amount paid from the
3 contractors recovery fund on the contractor's account. A
4 discharge in bankruptcy shall not relieve a person from the
5 penalties and disabilities provided in this subsection.

6 (f) If, at any time, the money deposited in the
7 contractors recovery fund is insufficient to satisfy any duly
8 authorized claim or portion thereof, the contractors license
9 board shall, when sufficient money has been deposited in the
10 contractors recovery fund, satisfy such unpaid claims or
11 portions thereof, in the order that such claims or portions
12 thereof were originally filed.

13 (g) With respect to the repair or alteration of an
14 existing residential building or structure or any appurtenance
15 thereto, including but not limited to swimming pools, retaining
16 walls, garages or sprinkling systems, initial construction of
17 such appurtenances, and landscaping of private residences,
18 including condominium or cooperative units, pursuant to a
19 contract between the owner and a licensed contractor for which
20 the owner has paid the contractor in full, should, because of
21 the contractor's default, a mechanic's or materialman's lien be
22 enforced against the property pursuant to section 507-47, the



1 court hearing the action shall award such an owner or the
2 owner's assigns a valid judgment against the contractor in an
3 amount equal to the amount of the lien together with reasonable
4 attorney's fees as determined by the court. The judgment shall
5 include an order directing payment out of the contractors
6 recovery fund. Notwithstanding any other provisions of this
7 section to the contrary, the owner or the owner's assigns need
8 not meet any other requirement to secure payment from the
9 contractors recovery fund, except that notice of the lien
10 enforcement hearing shall be given to the contractors license
11 board so it may appear pursuant to section -87.

12 **§ -85 Management of fund.** The sums received by the
13 board for deposit in the contractors recovery fund shall be held
14 by the board in trust for carrying out the purposes of the
15 contractors recovery fund. The board, as trustee of the
16 recovery fund, shall be authorized to retain private legal
17 counsel to represent the board in any action which may result in
18 collection from the contractors recovery fund. These funds may
19 be invested and reinvested in the same manner as funds of the
20 state employees' retirement system, and the interest from these
21 investments shall be deposited to the credit of the contractors



1 education fund, and which shall be available to the board for
2 educational purposes, which is hereby created.

3 **§ -86 False statement.** It shall constitute a
4 misdemeanor for any person or the person's agent to file with
5 the contractors license board any notice, statement, or other
6 document required under the provisions of this subpart, which is
7 false or untrue or contains any material misstatement of fact.

8 **§ -87 The board has standing in court.** When the board
9 receives notice, as provided in section -84(a), the board may
10 enter an appearance, file an answer, appear at the court
11 hearing, defend the action or take whatever other action it may
12 deem appropriate. The board or its legal representative shall
13 be served with all pleadings in an action which may result in a
14 recovery from the contractors recovery fund.

15 Settlement of any claim against the contractors recovery
16 fund shall be made only with the unanimous agreement of the
17 board, director, and attorney general that settlement is in the
18 best interest of the contractors recovery fund.

19 **§ -88 Subrogation to rights of creditor.** When, upon the
20 order of the court, the board has paid from the contractors
21 recovery fund any sum to the judgment creditor, the board shall
22 be subrogated to all of the rights of the judgment creditor and



1 the judgment creditor shall assign all the judgment creditor's
2 right, title and interest in the judgment to the board and any
3 amount and interest so recovered by the board on the judgment
4 shall be deposited to the credit of said fund.

5 **§ -89 Waiver of rights.** The failure of an injured
6 person to comply with all of the provisions of this subpart
7 relating to the contractors recovery fund shall constitute a
8 waiver of any right hereunder.

9 **§ -90 Maximum liability.** Notwithstanding any other
10 provision, the liability of the contractors recovery fund shall
11 not exceed \$25,000 for any licensed contractor.

12 **§ -91 Disciplinary action against licensee.** Nothing
13 contained herein shall limit the authority of the board to take
14 disciplinary action against any licensee for a violation of any
15 of the provisions of this subpart, or of the rules and
16 regulations of the board; nor shall the repayment in full of all
17 obligations to the contractors recovery fund by any licensed
18 contractor nullify or modify the effect of any other
19 disciplinary proceeding brought pursuant to the provisions of
20 this subpart or the rules and regulations.

21 **§ -92 Prosecution of criminal violations.** The director
22 shall report any criminal violation of this part, including but



1 not limited to criminal contempt of court, to the county
2 prosecuting attorney's office or the department of the attorney
3 general for prompt prosecution.

4 **C. Electricians and Plumbers Licensing**

5 **§ -93 Definitions.** As used in this subpart, unless
6 otherwise indicated by the context:

7 "Board" means the board of electricians and plumbers.

8 "Journey worker electrician" means any person who has been
9 licensed by the board as a journey worker electrician to perform
10 electrical work.

11 "Journey worker industrial electrician" means any person
12 who has been licensed by the board as a journey worker
13 industrial electrician to perform and maintain electrical work
14 related to substation, switchgear, automatic controls, and all
15 other industrial electrical work in existing industrial
16 buildings and work places.

17 "Journey worker plumber" means any person who has been
18 licensed by the board as a journey worker plumber to direct and
19 supervise the performance of plumbing work and to perform
20 plumbing work.

21 "Journey worker specialty electrician" means any person who
22 has been licensed by the board as a journey worker specialty



1 electrician to perform electrical work related to installing,
2 repairing, altering, and maintaining but not the attachment of
3 lighting and power circuits to, the following: electronic
4 equipment, sound public address systems, and communication
5 systems, other than equipment and systems for a single-family or
6 two-family dwelling; master or community radio and television
7 receiving antenna systems; sound recording systems, other than
8 systems for a single-family or two-family dwelling; burglar and
9 fire alarm systems; low voltage remote control, other than a
10 control for a single-family or two-family dwelling; and low
11 voltage communication signal systems.

12 "Maintenance electrician" means any person who has been
13 licensed by the board as a maintenance electrician to maintain
14 electrical work.

15 "Master plumber" means any person who has been licensed by
16 the board as a master plumber to direct and supervise the
17 performance of plumbing work and to perform plumbing work and
18 who provides overall supervision and general direction and is
19 responsible for proper installation of plumbing work.

20 "Supervising electrician" means any person who has been
21 licensed by the board as a supervising electrician to direct and



1 supervise the performance of electrical work and to perform
2 electrical work.

3 "Supervising industrial electrician" means any person who
4 has been licensed by the board as a supervising industrial
5 electrician to direct and supervise electrical work related to
6 substation, switchgear, automatic controls, and all other
7 industrial electrical work in existing industrial buildings and
8 work places.

9 "Supervising specialty electrician" means any person who
10 has been licensed by the board as a supervising specialty
11 electrician to direct and supervise the performance of
12 electrical work related to installing, repairing, altering, and
13 maintaining, but not the attachment of lighting and power
14 circuits, to the following: electronic equipment, sound public
15 address systems, other than equipment and systems for a single-
16 family or two- family dwelling; master or community radio and
17 television receiving antenna system; sound recording systems
18 other than systems for a single-family or a two-family dwelling;
19 burglar and fire alarm systems; low voltage remote control,
20 other than control for a single-family or two-family dwelling;
21 and low voltage communication signal systems.



1 **§ -94 Board; appointment.** There is established the
2 board of electricians and plumbers consisting of seven members.
3 Two of the members shall be engaged in the electrical trade and
4 two of the members shall be engaged in the plumbing trade.
5 Three of the members shall be private citizens not connected
6 with the industry.

7 **§ -95 Powers and duties of board.** In addition to any
8 other powers and duties authorized by law, the board shall have
9 all the powers and duties necessary or convenient to carry out
10 and effectuate this subpart, including but not limited to the
11 following powers and duties:

- 12 (1) To grant licenses which shall be renewable for:
- 13 (A) Journey worker electricians;
- 14 (B) Journey worker specialty electricians;
- 15 (C) Supervising electricians;
- 16 (D) Supervising specialty electricians;
- 17 (E) Master plumbers;
- 18 (F) Journey worker plumbers;
- 19 (G) Maintenance electricians;
- 20 (H) Journey worker industrial electricians; and
- 21 (I) Supervising industrial electricians;



1 (2) To adopt, amend, or repeal rules in accordance with
2 chapter 91 as it may deem proper to effectuate this
3 chapter and to insure the safety and welfare of the
4 general public; provided that the rules may forbid
5 acts or practices deemed by the board to be
6 detrimental to the accomplishment of the purpose of
7 this subpart;

8 (3) To enforce this part and rules adopted pursuant to
9 this subpart and chapter 91, including the denial,
10 suspension, or revocation of any license; and

11 (4) To examine all applicants and licensees to determine
12 their qualifications prior to the issuance or renewal
13 of licenses.

14 **§ -96 Minimum requirements.** An applicant shall possess
15 the following minimum qualifications:

16 (1) Journey worker electrician. Every applicant to be
17 eligible for the journey worker electrician
18 examination shall be at least eighteen years of age
19 and shall provide satisfactory evidence of experience
20 in residential or commercial wiring of at least five
21 years full-time or its equivalent, but not less than
22 ten thousand hours of experience in the trade under



1 the supervision of a journey worker or supervising
2 electrician;

3 (2) Journey worker specialty electrician. Every applicant
4 to be eligible for the journey worker specialty
5 electrician examination shall be at least eighteen
6 years of age and shall have had at least five years'
7 experience in the trade;

8 (3) Supervising electrician. Every applicant to be
9 eligible for the supervising electrician examination
10 shall have been registered with the board as a journey
11 worker electrician for at least a period of four years
12 in the trade or shall have had equivalent experience
13 in the trade;

14 (4) Supervising specialty electrician. Every applicant to
15 be eligible for the supervising specialty electrician
16 examination shall have been registered with the board
17 as a journey worker specialty electrician for at least
18 a period of four years in the trade or shall have had
19 equivalent experience in the trade;

20 (5) Journey worker plumber. Every applicant to be
21 eligible for the journey worker plumber examination
22 shall have had experience of at least five years'



1 full-time or its equivalent but not less than ten
2 thousand hours as a journey worker's or master
3 plumber's helper, and is able to furnish satisfactory
4 evidence of such fact;

5 (6) Master plumber. Every applicant to be eligible for
6 the master plumber examination shall have been
7 registered with the board as a journey worker plumber
8 for at least two years or shall have had equivalent
9 experience in the trade;

10 (7) Maintenance electrician. Every applicant to be
11 eligible for the maintenance electrician examination
12 shall be not less than eighteen years of age and shall
13 have had at least one year of experience in performing
14 electrical maintenance work or proof of two years of
15 schooling in the electrical trade;

16 (8) Journey worker industrial electrician. Every
17 applicant to be eligible for the journey worker
18 industrial electrician examination shall be at least
19 eighteen years of age and shall have had experience in
20 industrial electrical work of at least five years
21 full-time or its equivalent, but not less than ten
22 thousand hours; and



1 (9) Supervising industrial electrician. Every applicant
2 to be eligible for the supervising industrial
3 electrician examination shall have been registered
4 with the board as a journey worker industrial
5 electrician for a period of at least four years or
6 shall have had equivalent experience in the trade.

7 § -97 **Examination.** (a) Every applicant shall be
8 examined and shall pass an examination to be eligible for
9 licensure. The board shall provide in its rules the passing
10 score for the examination. The board may examine applicants or
11 may contract with professional testing services to prepare,
12 administer, and grade the examination as may be required for the
13 purpose of this section.

14 (b) Every applicant shall pay an examination fee as
15 provided in rules adopted by the director pursuant to chapter
16 91. Should the board contract with a professional testing
17 agency to prepare, administer, and grade the examination, the
18 examination fee may be paid directly to the testing agency by
19 the director or the examinee.

20 § -98 **Fees; renewals.** (a) Renewal fees shall be paid
21 to the board before July 1.



1 (b) Plumbers shall renew the license every three years
2 effective June 30, 2006, and shall pay all required fees. Prior
3 to the June 30, 2009, renewal of the license, and prior to every
4 license renewal thereafter, the applicant shall:

5 (1) Pay all required fees; and

6 (2) Meet the requirements prescribed in section -99.

7 (c) Electricians shall renew the license every three years
8 effective with the July 1, 1996, renewal; provided that prior to
9 the renewal of the license the applicant shall:

10 (1) Pay all required fees; and

11 (2) Meet the requirements prescribed in section -99.

12 (d) Failure, neglect, or refusal of any licensee to pay
13 the renewal fee or meet the requirements of section -99
14 before the renewal date shall constitute a forfeiture of the
15 license. Any license so forfeited may be restored upon written
16 application within one year from the date of forfeiture, upon
17 payment of the required renewal fee plus penalty fees and upon
18 meeting the requirements in section -99.

19 **§ -99 Continued competency; license renewals.** (a)

20 Prior to each license renewal, all licensed electricians except
21 maintenance electricians shall:



- 1 (1) Furnish the board with proof of attendance at an
2 educational course related to current updates of the
3 National Electrical Code conducted or approved by the
4 community colleges; or
- 5 (2) Successfully complete an examination prescribed by the
6 board on current updates to the National Electrical
7 Code. The board shall contract with a professional
8 testing agency to prepare, administer, and grade the
9 examination. Fees related to the examination shall be
10 paid by the licensee directly to the professional
11 testing agency.
- 12 (b) Prior to each license renewal, all licensed plumbers
13 shall:
- 14 (1) Furnish the board with proof of attendance at an
15 educational course related to current updates of the
16 Uniform Plumbing Code conducted or approved by the
17 community colleges; or
- 18 (2) Successfully complete an examination prescribed by the
19 board on current updates to the Uniform Plumbing Code.
20 The board shall contract with a professional testing
21 agency to prepare, administer, and grade the
22 examination. A licensee shall pay all fees related to



1 the examination directly to the professional testing
2 agency.

3 (c) A licensee who has been issued a new license within
4 one year of the renewal date shall not be required to take the
5 course or the examination to renew the licensee's license.

6 **§ -100 Unlicensed activity.** (a) No person shall act
7 or assume to act as a journey worker electrician, journey worker
8 specialty electrician, supervising electrician, supervising
9 specialty electrician, journey worker plumber, master plumber,
10 maintenance electrician, journey worker industrial electrician,
11 or supervising industrial electrician without a license
12 previously obtained in compliance with this subpart and the
13 rules of the board; provided that any person may perform
14 emergency plumbing repair work in the person's principal place
15 of residence when such repairs do not involve or require
16 rearrangement of valves, pipes, or fixtures; provided further
17 that no such emergency repairs may be performed on sewer lines,
18 drains, gas lines, and on fixtures being served with backflow
19 devices which includes heaters, water closets, dishwashers, and
20 garbage disposal units.

21 (b) An apprentice or trainee learning the trade of a
22 person licensed under this subpart shall not be required to have



1 a license if the apprentice or trainee acts under the
2 supervision of a person appropriately licensed under this part.

3 **§ -101 Suspension; revocation; fine; denial of issuance**

4 **or renewal of a license.** (a) In addition to any other actions

5 authorized by law the board, after notice and hearing as

6 provided in chapter 91, may suspend or revoke any license, or

7 impose fines, or prior to the notice and hearing, deny the

8 issuance or renewal of any license for any cause authorized by

9 law, including but not limited to the following:

10 (1) A license was or is sought to be obtained by fraud,
11 misrepresentation, or deceit;

12 (2) Gross negligence, incompetency, misconduct, or
13 dishonesty in the practice of the profession;

14 (3) False, fraudulent, or deceptive advertising;

15 (4) Permitting an unlicensed person to perform activities
16 requiring a license; or

17 (5) Violation of any provisions of this subpart and any
18 rules of the board.

19 (b) Any person who violates any provision of this subpart
20 shall be fined not less than \$100 and not more than \$1,000 for
21 each violation.



1 **§ -102 Injunction.** The board may, in addition to any
2 other remedy available, apply to a circuit court judge for a
3 temporary restraining order or preliminary or permanent
4 injunction restraining any person from acting, or assuming to
5 act, as a journey worker electrician, journey worker specialty
6 electrician, supervising electrician, supervising specialty
7 electrician, maintenance electrician, journey worker industrial
8 electrician, supervising industrial electrician, journey worker
9 plumber, or master plumber without a license previously obtained
10 in compliance with this subpart and the rules of the board, and
11 upon hearing and for cause shown, the judge may grant the
12 temporary restraining order or preliminary or permanent
13 injunction.

14 **§ -103 Inspections.** Nothing in this subpart should
15 deprive the several counties of the right to perform electrical
16 or plumbing inspections, as regulated by their respective
17 ordinances.

18 **§ -104 Exemption of public utility and community**
19 **antennae television company employees.** All employees of a
20 public utility within the state under a franchise or charter
21 granted by the State which is regulated by the public utilities



1 commission and community antennae television company, while so
2 employed, shall be exempt from the provisions of this subpart.

3 D. Elevator Mechanics Licensing

4 **§ -104 Definitions.** As used in this part:

5 "Apprentice elevator mechanic" means any person who is in
6 training to acquire the skill to become an elevator mechanic and
7 who is required to work for at least four years under the
8 supervision of an elevator mechanic duly licensed under section
9 -105.

10 "Board" means the elevator mechanics licensing board
11 created by this chapter.

12 "Elevator mechanic" means any person who engages in the
13 construction, reconstruction, alteration, maintenance,
14 mechanical, or electrical work or adjustments of any elevator,
15 dumbwaiter, stage lift, mechanized parking garage elevator,
16 escalator, moving walk or ramp, lift including any construction,
17 reconstruction, alteration, or adjustment of the structure or
18 facility of which the same may be a part or to which the same
19 may be attached, necessary for proper completion of the work on
20 the elevator, dumbwaiter, stage lift, mechanized parking garage
21 elevator, escalator, moving walk or ramp, or lift.



1 **§ -105 License required.** No person shall operate or
2 practice as an elevator mechanic unless the person is licensed
3 under this subpart.

4 **§ -106 Elevator mechanics licensing board; appointment;**
5 **organization.** There is created an elevator mechanics licensing
6 board within the Hawaii construction authority for
7 administrative purposes. The board shall consist of seven
8 members:

9 (1) Four shall be licensed elevator mechanics;

10 (2) Two shall be public members not connected or
11 associated with the elevator or building industry; and

12 (3) One shall be the executive director of the Hawaii
13 construction authority or the director's designee who
14 is an employee of the Hawaii construction authority
15 and has expertise in elevator and escalator
16 installation and maintenance.

17 **§ -107 Meetings.** The board shall meet not less than
18 twice a year at a time and place as determined by the board.
19 The board shall also meet but not later than thirty days prior
20 to the licensing examination pursuant to section -108(2) in
21 order to evaluate applications therefor. Any board member who



1 misses two consecutive meetings of the board or fifty per cent
2 of the meetings in a year shall be removed from the board.

3 **§ -108 Powers and duties of the board.** In addition to
4 any other powers and duties authorized by law, the board shall:

5 (1) Adopt rules in accordance with chapter 91 to carry out
6 the purposes of this subpart;

7 (2) Develop, apply, review and upgrade appropriate
8 techniques, including examinations and investigations
9 for determining whether a person meets the
10 requirements of this subpart and standards to insure
11 that elevator mechanics will be persons qualified to
12 serve as such;

13 (3) Prescribe, at a minimum, that a nationally recognized
14 examination, augmented with locally developed
15 material, be used in testing for licensure, the
16 passing grade for the examination to be not less than
17 seventy per cent;

18 (4) Issue licenses to persons determined, after
19 application of those techniques, to have met the
20 required qualifications and revoke or suspend
21 licenses, previously issued by the board pursuant to
22 hearings held in accordance with chapter 91, in any



1 case where the individual holding any license is
2 determined substantially to have failed to conform to
3 the required qualifications, this subpart, or the
4 rules of the board;

5 (5) Establish and carry out procedures designed to insure
6 that persons licensed as elevator mechanics will,
7 during any period they serve as such, comply with the
8 requirements of this subpart, the rules of the board,
9 and subpart D and rules adopted thereunder;

10 (6) Receive, investigate, and take appropriate action with
11 respect to, any charge or complaint filed with the
12 board to the effect that any individual licensed as an
13 elevator mechanic has failed to comply with the
14 requirements of this subpart regarding any complaint
15 regarding job performance by mechanics, the rules of
16 the board, or subpart D and the rules adopted
17 thereunder;

18 (7) Register apprentice elevator mechanics;

19 (8) Maintain a record of its proceedings;

20 (9) Assist and advise the Hawaii construction authority in
21 the adoption of rules relating to the conditions of
22 work for elevator mechanics including requirements



1 related to equipment or facilities essential for the
2 safe installation, repair, maintenance, or alteration
3 of any elevator, dumbwaiter, escalator, moving walk or
4 ramp, and lift; and

5 (10) Notify the Hawaii construction authority of any fact
6 or situation that, in the opinion of the board,
7 constitutes a violation of subpart D or of any rule
8 adopted thereunder.

9 § -109 **Qualifications for license.** No person shall be
10 licensed as an elevator mechanic unless the person has
11 satisfactorily passed the examination administered by the board
12 and satisfactorily completed at least four years of training
13 under the supervision of a licensed elevator mechanic.

14 § -110 **Temporary permit.** The board may issue a
15 temporary permit to any person who has qualified as an elevator
16 mechanic in another state with standards substantially equal to
17 those of this subpart and who possesses skills or training not
18 available in the state; provided that the board shall not
19 register any such person as an apprentice elevator mechanic.
20 The board shall, by rules and regulations, establish the terms
21 of the temporary permit.



1 **§ -111 Fees.** Application, examination, license,
2 temporary permit, and biennial renewal fees shall be as provided
3 in rules adopted by the executive director of the Hawaii
4 construction authority pursuant to chapter 91. A fee is
5 required for each reexamination. Application fees are not
6 refundable.

7 Licenses shall expire on June 30 of each even-numbered
8 year.

9 **§ -112 Injunctive relief.** The board may apply for an
10 injunction in any court of competent jurisdiction to enjoin any
11 person who has not been issued a license or registered or whose
12 license has been suspended or revoked or has expired; and, upon
13 the filing of a verified petition in the court, the court or any
14 judge thereof, if satisfied by affidavit or otherwise, may issue
15 a temporary injunction, without notice or bond, enjoining the
16 defendant from further practicing as an elevator mechanic. A
17 copy of the verified complaint shall be served upon the
18 defendant and the proceedings shall thereafter be conducted as
19 in other civil cases. If it is established that the defendant
20 has been or is practicing as an elevator mechanic without having
21 been issued a license or registered or has been or is practicing
22 as an elevator mechanic after the defendant's license has been



1 suspended or revoked or has expired, the court or any judge
2 thereof may enter a decree enjoining the defendant from further
3 practicing as an elevator mechanic. In case of violation of any
4 injunction issued under this section, the court may summarily
5 try and punish the offender for contempt of court. The
6 injunction proceeding shall be in addition to, and not in lieu
7 of, all penalties and other remedies provided in this subpart.

8 **§ -113 Penalties.** Any person who violates this subpart
9 shall be fined not more than \$500 for a first offense. For each
10 subsequent offense the person shall be fined not more than
11 \$1,000, or imprisoned not more than one year, or both.

12 Part E. Engineers, Architects, and Surveyors Licensing

13 **§ -114 Definitions.** As used in this part:

14 "Architect" means a person who holds oneself out as able to
15 perform, or who does perform, any professional service such as
16 consultation, investigation, evaluation, planning, design,
17 including aesthetic and structural design, or observation of
18 construction, in connection with any private or public
19 buildings, structures, or projects or the equipment or utilities
20 thereof, or the accessories thereto, wherein the safeguarding of
21 life, health, or property is concerned or involved, when the
22 professional service requires the application of the art and



1 science of construction based upon the principles of
2 mathematics, aesthetics, and the physical sciences.

3 "Landscape architect" means a person who holds oneself out
4 as able to perform professional services such as consultation,
5 investigation, reconnaissance, research, design, preparation of
6 drawings and specifications, and observation of construction
7 where the dominant purpose of the services is:

8 (1) The preservation and enhancement of land uses and
9 natural land features;

10 (2) The location and construction of aesthetically
11 pleasing and functional approaches for structures,
12 roadways, and walkways; and

13 (3) The design for equestrian trails, plantings, landscape
14 irrigation, landscape lighting, and landscape grading.

15 This practice shall include the location, arrangement, and
16 design of tangible objects and features as are incidental and
17 necessary to the purposes outlined herein. Nothing herein shall
18 preclude a duly licensed landscape architect from planning the
19 development of land areas and elements used thereon or from
20 performing any of the services described in this section in
21 connection with the settings, approaches, or environment for
22 buildings, structures, or facilities; provided that nothing in



1 this subpart shall empower a landscape architect licensed under
2 this subpart from practicing or offering to practice
3 architecture or engineering in any of its various recognized
4 branches.

5 "Professional engineer" means a person who holds oneself
6 out as able to perform, or who does perform, any professional
7 service such as consultation, investigation, evaluation,
8 planning, design, or observation of construction or operation,
9 in connection with any public or private utilities, structures,
10 buildings, machines, equipment, processes, works, or projects,
11 wherein the safeguarding of life, health, or property is
12 concerned or involved, when such professional service requires
13 the application of engineering principles and data.

14 "Surveyor" or "land surveyor" means a person who holds
15 oneself out as able to make, or who does make cadastral surveys
16 of areas for their correct determination and description, either
17 for conveyancing or for the establishment or reestablishment of
18 land boundaries or the plotting of lands and subdivisions
19 thereof.

20 § -115 **Licensing of practicing engineers, etc.** To
21 safeguard life, health, and property, no person except those
22 exempted by sections -116 and -118 shall practice



1 professional engineering, architecture, land surveying or
2 landscape architecture in the state unless the person is duly
3 licensed under this subpart.

4 **§ -116 Persons exempt from licensure.** Persons
5 practicing professional engineering, architecture, land
6 surveying, or landscape architecture solely as officers or
7 employees of the United States shall be exempted from the
8 provisions of this subpart.

9 **§ -117 Public works.** (a) Notwithstanding any other
10 provision to the contrary, public works projects involving:

11 (1) Alteration or new construction shall be required to
12 have:

13 (A) Plans or specifications prepared by or under the
14 supervision of an appropriately licensed
15 professional engineer, architect, or landscape
16 architect. The licensed professional engineer,
17 architect, or landscape architect, as the case
18 may be, shall stamp the plans or specifications,
19 and indicate that the licensee has prepared or
20 supervised the preparation of the plans or
21 specifications; and



- 1 (B) A licensed professional engineer, architect, or
2 landscape architect designated by the State,
3 county, or political subdivision that is
4 undertaking the public works project to observe
5 the alteration or new construction. For the
6 observation of construction of these types of
7 public works projects, the licensed professional
8 engineer, architect, or landscape architect, as
9 the case may be, shall not be required to stamp
10 the plans or specifications.
- 11 and
- 12 (2) Maintenance work shall:
- 13 (A) Not be required to have plans or specifications
14 prepared by or under the supervision of an
15 appropriately licensed professional engineer,
16 architect, or landscape architect; and
- 17 (B) Be required to have a licensed professional
18 engineer, architect, or landscape architect
19 designated by the state, county, or political
20 subdivision that is undertaking the public works
21 project to observe the maintenance work. For the
22 observation of construction of this type of



1 public works project, the licensed professional
2 engineer, architect, or landscape architect, as
3 the case may be, shall not be required to stamp
4 the plans or specifications.

5 (b) All land surveys involving property boundaries for
6 public purposes or plans thereof shall be made or supervised by
7 a licensed surveyor. The licensed land surveyor shall stamp the
8 land surveys or plans, and indicate that the licensee has
9 prepared or supervised the preparation of the land surveys or
10 plans.

11 (c) For purposes of this section:

12 "Maintenance" means minor repairs or replacement work which
13 do not affect or involve the structural integrity of the public
14 works project.

15 "Public works projects" means projects undertaken by the
16 state, counties, or any political subdivisions thereof.

17 § -118 **Limitation upon application of subpart.** Nothing
18 in this subpart shall prevent any person from engaging in
19 engineering, architectural, or landscape architectural work and
20 undertakings upon property owned or exclusively controlled or
21 possessed by that person, or from hiring any person to do the
22 work and undertakings, unless the work and undertakings involve



1 the safety or health of the public, nor shall anything in this
2 chapter prevent any person from engaging in land surveying upon
3 property owned or exclusively controlled or possessed by that
4 person or from hiring any person to do the work, unless the work
5 involves a common boundary.

6 Nothing in this subpart shall be construed as applying to
7 the business conducted in this state by any agriculturist,
8 horticulturist, tree expert, arborist, forester, gardenshop
9 operator, nursery operator or landscape nursery operator,
10 gardener, landscape gardener, landscape contractor, landscape
11 designer, landscape consultant, garden or lawn caretaker, or
12 cultivator of land, as these terms are generally used, except
13 that no person shall use the designation "landscape architect",
14 "landscape architectural", or "landscape architecture" unless
15 licensed under the provisions of this subpart.

16 All engineering work, architectural work, and landscape
17 architectural work in which the public safety or health is
18 involved shall be designed by and the construction observed by a
19 duly licensed professional engineer, architect, or landscape
20 architect, respectively.

21 **§ -119 Board of professional engineers, etc., members;**
22 **appointment; tenure; qualifications.** There shall be a state



1 board of professional engineers, architects, surveyors, and
2 landscape architects hereinafter called "the board". The board
3 shall consist of fourteen members, including at least four
4 professional engineers, three professional architects, two
5 professional surveyors, two professional landscape architects,
6 and three public members. Each county shall be represented by
7 at least one member who is a resident of the county. Each
8 member shall hold over after the expiration of the member's term
9 until the member's successor is duly appointed and qualified.

10 Each member shall have been a resident of the state for at
11 least three years. A member representing the profession shall
12 have been engaged in the practice of the member's profession for
13 at least five years immediately preceding the date of the
14 member's appointment. Any member of the board who incurs
15 expenses in connection with the preparation and grading of
16 examination papers shall be reimbursed for those expenses with
17 the approval of the authority.

18 **§ -120 Powers and duties of board; secretary; records.**

19 In addition to any other powers and duties authorized by law,
20 the board may compel the attendance of witnesses upon subpoena,
21 administer oaths, take testimony, and do all other things
22 necessary and proper to carry out this subpart in all matters



1 within its jurisdiction. It shall adopt and have an official
2 seal and adopt, subject to chapter 91 and with the approval of
3 the governor and the director, rules for the performance of its
4 duties and the carrying on of its business and the enforcement
5 of this subpart, including but not limited to rules which define
6 the branches of engineering in which licensure shall be offered,
7 clarify the qualifications needed for licensure, and set forth
8 practice requirements. It shall have a chairperson, a vice-
9 chairperson, and a secretary, and a quorum shall consist of not
10 less than six members.

11 The board shall keep a record of its proceedings and all
12 applicants for licensure as engineers, architects, surveyors, or
13 landscape architects, the date of application, name, educational
14 and other qualifications, address, whether or not an examination
15 was required, and whether or not the applicant was licensed and
16 a certificate issued to the applicant and the date of the
17 action. The records shall be prima facie evidence of all
18 matters therein contained.

19 **§ -121 Qualifications for licensure.** (a) No person
20 shall be eligible for licensure as a professional engineer
21 unless:



- 1 (1) The person is the holder of an unexpired license
2 issued to the person by any jurisdiction, domestic or
3 foreign, in which the requirements for licensure at
4 the time the person was first licensed are of a
5 standard satisfactory to the board; provided that if
6 the board is in doubt as to whether the standards are
7 satisfactory, or as to whether the holder was required
8 to fully comply with them, it shall require that the
9 holder successfully pass a written examination,
10 prescribed by the board and designed to test the
11 holder's knowledge, skill, and competency in the
12 profession of engineering;
- 13 (2) The person is the holder of a masters degree in
14 engineering from an institution of higher education
15 approved by the board; is a graduate of a school or
16 college approved by the board as of satisfactory
17 standing and has completed an engineering curriculum
18 of four years or more; has had three years of full-
19 time lawful experience in engineering work of a
20 character satisfactory to the board, or part-time
21 experience which the board finds to be the equivalent
22 thereof; and has successfully passed a written



1 examination, prescribed by the board and designed to
2 test the person's knowledge, skill, and competency in
3 the profession of engineering;

4 (3) The person is the holder of a masters degree in
5 engineering from an institution of higher education
6 approved by the board; has had four years of full-time
7 lawful experience in engineering work of a character
8 satisfactory to the board, or part-time experience
9 which the board finds to be the equivalent thereof;
10 and has successfully passed a written examination,
11 prescribed by the board and designed to test the
12 person's knowledge, skill, and competency in the
13 profession of engineering;

14 (4) The person is a graduate of a school or college
15 approved by the board as of satisfactory standing, and
16 has completed an engineering curriculum of four years
17 or more; has had four years of full-time lawful
18 experience in engineering work of a character
19 satisfactory to the board, or part-time experience
20 which the board finds to be the equivalent thereof;
21 and has successfully passed a written examination,
22 prescribed by the board and designed to test the



1 person's knowledge, skill, and competency in the
2 profession of engineering;

3 (5) The person is a graduate of a school or college
4 approved by the board as of satisfactory standing, and
5 has completed an engineering technology or arts and
6 science curriculum of four years or more; has had
7 eight years of full-time lawful experience in
8 engineering work of a character satisfactory to the
9 board, or part-time experience which the board finds
10 to be the equivalent thereof; and has successfully
11 passed a written examination, prescribed by the board
12 and designed to test the person's knowledge, skill,
13 and competency in the profession of engineering; or

14 (6) The person has had twelve years of full-time lawful
15 experience in engineering work of a character
16 satisfactory to the board, or part-time experience
17 which the board finds to be the equivalent thereof;
18 and has successfully passed a written examination,
19 prescribed by the board and designed to test the
20 person's knowledge, skill, and competency in the
21 profession of engineering.



1 (b) No person shall be eligible for licensure as a
2 professional architect unless:

3 (1) The person is the holder of an unexpired license in
4 architecture issued to the person by any jurisdiction,
5 domestic or foreign, and the person meets the
6 requirements of this subpart and the rules of the
7 board;

8 (2) The person is the holder of a bachelor's, master's, or
9 higher degree in architecture from a school or college
10 approved by the board as of satisfactory standing; has
11 had three years of full-time lawful experience in
12 architecture work of a character satisfactory to the
13 board, or part-time experience which the board finds
14 to be the equivalent thereof; and has successfully
15 passed a professional written examination, prescribed
16 by the board and designed to test the person's
17 knowledge, skill, and competency in the profession of
18 architecture;

19 (3) The person is a graduate of a school or college
20 approved by the board as of satisfactory standing and
21 has completed an architectural curriculum of four
22 years or a pre-architecture or arts and science



1 curriculum of four years or more; has had five years
2 of full-time lawful experience in architecture work of
3 a character satisfactory to the board, or part-time
4 experience which the board finds to be the equivalent
5 thereof; and has successfully passed a professional
6 written examination, prescribed by the board and
7 designed to test the person's knowledge, skill, and
8 competency in the profession of architecture;

9 (4) The person is a graduate of a community college or
10 other technical training school approved by the board
11 as of satisfactory standing, and has completed an
12 architectural technology curriculum of two years or
13 more; has had eight years of full-time lawful
14 experience in architecture work of a character
15 satisfactory to the board, or part-time experience
16 which the board finds to be the equivalent thereof;
17 and has successfully passed a professional written
18 examination, prescribed by the board and designed to
19 test the person's knowledge, skill, and competency in
20 the profession of architecture; or

21 (5) The person has had eleven years of full-time lawful
22 experience in architecture work of a character



1 satisfactory to the board, or part-time experience
2 which the board finds to be the equivalent thereof;
3 and has successfully passed a professional written
4 examination, prescribed by the board and designed to
5 test the person's knowledge, skill, and competency in
6 the profession of architecture;

7 provided that those persons who qualify under paragraphs (2)
8 through (5), as of June 30, 2000, shall be required to fulfill
9 the requirements of the intern development program of the
10 National Council of Architectural Registration Boards or of any
11 similar program satisfactory to the board, and approved by the
12 board. For paragraph (2), the intern development program shall
13 fulfill the experience requirement. For paragraphs (3), (4),
14 and (5), time participating in the intern development program
15 shall be credited toward the experience requirement.

16 (c) No person shall be eligible for licensure as a
17 professional land surveyor unless:

18 (1) (A) The person is the holder of an unexpired license
19 issued to the person by any jurisdiction,
20 domestic or foreign, in which the requirements
21 for licensure at the time the person was first
22 licensed are of a standard satisfactory to the



1 board; provided that if the board is in doubt as
2 to whether the standards are satisfactory, or as
3 to whether the holder was required to fully
4 comply with them, it shall require that the
5 holder successfully pass the national land
6 surveyor licensing examinations and a written,
7 multiple-choice examination on the subject of
8 Hawaii land matters and Hawaii land description;

9 (B) The person is a graduate of a school or college
10 approved by the board as of satisfactory
11 standing, and has completed a geoscience, civil
12 engineering, or general engineering curriculum of
13 four years or more; has had three years of full-
14 time lawful experience in land surveying of a
15 character satisfactory to the board, or part-time
16 experience which the board finds to be the
17 equivalent thereof; and has successfully passed
18 the national land surveyor licensing examinations
19 and a written, multiple-choice examination on the
20 subject of Hawaii land matters and Hawaii land
21 description;



- 1 (C) The person is a graduate of a school or college
2 approved by the board as of satisfactory
3 standing, and has completed a civil engineering
4 technology (survey option) curriculum of two
5 years or more or arts and sciences curriculum of
6 four years or more; has had seven years of full-
7 time lawful experience in land surveying of a
8 character satisfactory to the board, or part-time
9 experience which the board finds to be the
10 equivalent thereof; and has successfully passed
11 the national land surveyor licensing examinations
12 and a written, multiple-choice examination on the
13 subject of Hawaii land matters and Hawaii land
14 description; or
- 15 (D) The person has had eleven years of full-time
16 lawful experience in land surveying of a
17 character satisfactory to the board, or part-time
18 experience which the board finds to be the
19 equivalent thereof; and has successfully passed
20 the national land surveyor licensing examinations
21 and a written, multiple-choice examination on the



1 subject of Hawaii land matters and Hawaii land
2 description;

3 and

4 (2) Any applicant shall certify on the application that
5 the applicant has read, understood, and agrees to
6 comply with the laws and rules that the board
7 determines are required for licensure.

8 (d) No person shall be eligible for licensure as a
9 professional landscape architect unless:

10 (1) The person is the holder of an unexpired license
11 issued to the person by any jurisdiction, domestic or
12 foreign, in which the requirements for licensure at
13 the time the person was first licensed are of a
14 standard satisfactory to the board; provided that if
15 the board is in doubt as to whether the standards are
16 satisfactory, or as to whether the holder was required
17 to fully comply with them, it shall require that the
18 holder successfully pass the national landscape
19 architect licensing examination and a written
20 examination, prescribed by the board designed to test
21 the holder's knowledge of the state's climatic
22 conditions, native plants and native ecosystems, land



1 use ordinance and special management area
2 requirements, and cultural and historical conditions
3 affecting landscape architecture;

4 (2) The person is the holder of a masters degree in
5 landscape architecture from an institution of higher
6 education approved by the board; is a graduate of a
7 school or college approved by the board as of
8 satisfactory standing and has completed a landscape
9 architectural curriculum of four years or more; has
10 had two years of full-time lawful experience in
11 landscape architecture work of a character
12 satisfactory to the board, or part-time experience
13 which the board finds to be the equivalent thereof;
14 and has successfully passed the national landscape
15 architect licensing examination and a written
16 examination, prescribed by the board designed to test
17 the person's knowledge of the state's climatic
18 conditions, native plants and native ecosystems, land
19 use ordinance and special management area
20 requirements, and cultural and historical conditions
21 affecting landscape architecture;



1 (3) The person is a graduate of a school or college
2 approved by the board as of satisfactory standing, and
3 has completed a landscape architectural curriculum of
4 four years or more; has had three years of full-time
5 lawful experience in landscape architecture work of a
6 character satisfactory to the board, or part-time
7 experience which the board finds to be the equivalent
8 thereof; and has successfully passed the national
9 landscape architect licensing examination and a
10 written examination, prescribed by the board designed
11 to test the person's knowledge of the state's climatic
12 conditions, native plants and native ecosystems, land
13 use ordinance and special management area
14 requirements, and cultural and historical conditions
15 affecting landscape architecture;

16 (4) The person is a graduate of a school or college
17 approved by the board as of satisfactory standing, and
18 has completed a pre-landscape architecture or arts and
19 science curriculum of four years or more; has had five
20 years of full-time lawful experience in landscape
21 architecture work of a character satisfactory to the
22 board, or part-time experience which the board finds



1 to be the equivalent thereof; and has successfully
2 passed the national landscape architect licensing
3 examination and a written examination, prescribed by
4 the board designed to test the person's knowledge of
5 the state's climatic conditions, native plants and
6 native ecosystems, land use ordinance and special
7 management area requirements, and cultural and
8 historical conditions affecting landscape
9 architecture; or

- 10 (5) The person has had twelve years of full-time lawful
11 experience in landscape architecture work of a
12 character satisfactory to the board, or part-time
13 experience which the board finds to be the equivalent
14 thereof; and has successfully passed the national
15 landscape architect licensing examination and a
16 written examination, prescribed by the board designed
17 to test the person's knowledge of the state's climatic
18 conditions, native plants and native ecosystems, land
19 use ordinance and special management area
20 requirements, and cultural and historical conditions
21 affecting landscape architecture.



1 The applicant shall also certify on the application that the
2 applicant has read, understood, and agrees to comply with the
3 laws and rules that the board determines are required for
4 licensure.

5 In addition to the foregoing requirements, the board, in
6 its discretion, may also require additional proof that the
7 applicant is competent to practice professionally, and whenever
8 the board is not fully satisfied from the results of an
9 examination that any applicant is competent to practice
10 professionally, it may give the applicant a further examination
11 or examinations.

12 No person shall be eligible for licensure as a professional
13 engineer, architect, land surveyor, or landscape architect if
14 the person does not possess a history of honesty, truthfulness,
15 financial integrity, and fair dealing.

16

17 **§ -122 Applications for and certificates of licensure;**
18 **renewal; fees; continuing education.** (a) Application for
19 licensure shall be made upon a form prescribed by the board and
20 shall be signed by the applicant. With each application there
21 shall be paid to the board a nonrefundable application fee.



1 For each examination, or repetition thereof in whole or in
2 part as shall be limited or permitted by the rules of the board,
3 the candidate shall pay to the board an examination fee;
4 provided where the candidate is eligible to take only that part
5 of the examination pertaining to engineering fundamentals the
6 candidate shall pay the appropriate fee. The fee paid shall not
7 be refundable; provided if a candidate after having paid the fee
8 is unable for any reason beyond the candidate's control to
9 participate in the examination, the board may extend the time of
10 the candidate's participation to the next regular examination
11 date and credit the candidate the amount of the fee paid.

12 (b) Upon qualifying for licensure, the applicant shall pay
13 a license fee, and upon receipt thereof by the board shall
14 thereupon be licensed as a professional engineer, architect,
15 land surveyor or landscape architect, and shall receive a
16 certificate thereof from the board signed by the chairperson.
17 Every person licensed who, as an individual or as a member of a
18 firm or corporation, conducts an office or other place of
19 business for the practice of the profession shall display the
20 original certificate in a conspicuous manner, in the principal
21 office or place of business.



1 (c) Every license expires on April 30 of each even-
2 numbered year following its issuance and becomes invalid after
3 that date unless renewed. At least one month in advance of the
4 date of expiration of the license, a notice shall be mailed to
5 every person licensed under this section informing them of the
6 date of expiration and the amount required for the renewal.
7 Licenses that have expired for failure to pay renewal fees on or
8 before the date required in this subsection may be restored
9 within two years of the expiration date upon payment of a fee
10 for each renewal. Any person who fails to restore the person's
11 license within two years of the date of its expiration shall
12 reapply for licensure as a new applicant and meet the
13 requirements in effect at that time.

14 (d) The board shall require continuing education to renew
15 a license for architects effective as of the renewal date for a
16 license expiring on April 30, 2008, and for every biennial
17 renewal period thereafter. All continuing education courses
18 shall be relevant to public protection subjects and shall be
19 approved by the board as provided in the board's rules; provided
20 that:



- 1 (1) Architects initially licensed in the first year of the
2 biennium shall have completed eight continuing
3 education credit hours;
- 4 (2) Architects initially licensed in the second year of
5 the biennium shall not be required to complete any
6 continuing education credit hours;
- 7 (3) All other architects shall have completed sixteen
8 continuing education credit hours;
- 9 (4) The board shall randomly audit an architect's
10 continuing education courses, and shall establish
11 guidelines for random audits in rules adopted in
12 accordance with chapter 91;
- 13 (5) An architect whose license is not renewed because of
14 failure to comply with the continuing education
15 requirement shall have two years from the expiration
16 date of the license to restore the license by
17 complying with all applicable continuing professional
18 education requirements and paying the appropriate
19 renewal and penalty fees. After the two-year
20 restoration period, the licensee shall be required to
21 apply as a new applicant, and meet the requirements in
22 effect at that time; and



- 1 (6) An architect licensee shall not be subject to the
2 continuing education requirement if the architect
3 otherwise meets all other renewal requirements and:
4 (A) Is a member of the armed forces, national guard,
5 or a reserve component on active duty and
6 deployed during a state or national crisis as
7 "state or national crisis" is defined in section
8 -28 of subpart A of this chapter;
9 (B) Is ill or disabled for a significant period of
10 time as documented by a licensed physician, and
11 is unable to meet the continuing education
12 requirements of this subsection;
13 (C) Can demonstrate undue hardship that prevented the
14 licensee from meeting the continuing education
15 requirements of this subsection; or
16 (D) Is retired from the practice of architecture and
17 is no longer performing or providing
18 architectural services;
19 provided that any exemption from the continuing education
20 requirements shall be subject to the board's approval.

21 **§ -123 Licensees; suspension or revocation of licenses;**
22 **finer; hearings.** In addition to any other actions authorized by



1 law, the board may revoke, suspend, or refuse to renew the
2 license of any licensee for any cause authorized by law,
3 including but not limited to fraud or deceit in obtaining the
4 license or gross negligence, incompetency, or misconduct in the
5 practice of the profession, or violating this subpart or the
6 rules of the board. Any person may prefer charges in writing
7 with the executive secretary of the board against any person
8 holding a license.

9 In every case where it is proposed to impose any penalty
10 under this section, the board shall give the licensee concerned
11 notice and hearing in conformity with chapter 91. The notice
12 shall be given in writing by registered or certified mail with
13 return receipt requested at least fifteen days before the
14 hearing.

15 In all proceedings before it, the board and each member
16 thereof shall have the same powers respecting administering
17 oaths, compelling the attendance of witnesses and the production
18 of documentary evidence, and examining witnesses, as are
19 possessed by circuit courts. In case of disobedience by any
20 person of any order of the board or of any member thereof, or of
21 any subpoena issued by it or by a member, or the refusal of any
22 witness to testify to any matter regarding which the person may



1 be questioned lawfully, any circuit judge, on application by the
2 board or a member thereof, shall compel obedience as in the case
3 of disobedience of the requirements of a subpoena issued by a
4 circuit court, or a refusal to testify therein.

5 Any licensee who violates this subpart or the rules adopted
6 pursuant thereto may also be fined not less than \$500 nor more
7 than \$1,000 per violation. Each day of violation or failure to
8 comply shall constitute a separate offense.

9 **§ -124 Contents of certificates; use of seal mandatory**
10 **when.** Each certificate of licensure issued hereunder shall bear
11 the date of the original license and shall specify whether the
12 person to whom it is issued is authorized by the board to
13 practice professional engineering, architecture, land surveying
14 or landscape architecture.

15 In the case of a certificate issued to a person authorizing
16 the person to practice professional engineering, the certificate
17 shall furthermore indicate the major branch or branches of
18 engineering in which the person has especially qualified.

19 Every licensee may use a seal or rubber stamp of the design
20 authorized by the board bearing the licensee's name and the
21 words "licensed professional engineer", "licensed architect",



1 "licensed land surveyor", or "licensed landscape architect", or
2 otherwise as may be authorized by the board.

3 All plans, specifications, maps, and reports prepared by or
4 under the supervision of a licensed engineer, architect,
5 surveyor, or landscape architect shall be stamped with such seal
6 or stamp when filed with public officials. It shall be unlawful
7 for anyone to seal or stamp any document with such seal or stamp
8 after the license has expired or has been revoked or suspended
9 unless such license has been renewed or reissued.

10 No official of the State nor of any political subdivision
11 thereof, charged with the enforcement of laws or ordinances
12 relating to the construction or alteration of buildings or
13 structures, shall accept or approve any plans or specifications
14 that are not stamped with the seal of a licensed architect or
15 with the seal of a licensed engineer who has qualified in the
16 structural engineering branch, unless the building or structure,
17 for which the plans or specifications are submitted is exempted
18 from this chapter, and no map or survey shall be filed in the
19 land court unless stamped with the seal of a licensed land
20 surveyor.

21 **§ -125 Corporations and partnerships.** A corporation or
22 copartnership may engage in the practice of professional



1 engineering, architecture, surveying, or landscape architecture
2 in the state if the person or persons connected with the
3 corporation or copartnership directly in charge of the
4 professional work is duly licensed.

5 **§ -126 Structures exempted from provisions of part. (a)**

6 The provisions of this subpart shall not apply to work in
7 respect to:

- 8 (1) Any privately owned or privately controlled one-
9 storied building, dwelling, or structure, the
10 estimated cost of which does not exceed \$40,000; or
11 (2) Any privately controlled two-storied building,
12 dwelling, or structure, the estimated cost of which
13 does not exceed \$35,000.

14 However, no structure, dwelling, or building in which the
15 principal structural members consist of reinforced concrete or
16 structural steel having riveted, bolted, or welded connections
17 shall be exempted from this subpart.

18 (b) The provisions of this subpart shall not apply to work
19 in respect to any privately owned or privately controlled one-
20 storied structure, which is used primarily as a residence, the
21 estimated cost of which does not exceed \$50,000, nor to any
22 privately owned or privately controlled two-storied structure,



1 which is used primarily as a residence, the cost of which does
2 not exceed \$45,000.

3 (c) Whenever the exemption provided for in subsection (b)
4 is applied to the construction of a new building, it shall be
5 noted and recorded with the bureau of conveyances.

6 **§ -127 Unlicensed activity; penalties.** (a) Any person
7 who:

- 8 (1) Practices, offers to practice, or holds oneself out as
9 authorized and qualified to practice professional
10 engineering, architecture, land surveying, or
11 landscape architecture in the state, except as
12 provided in sections -116 and -118;
- 13 (2) Uses the title "engineer", "architect", "land
14 surveyor" "landscape architect", or any title, sign,
15 card, or device to indicate that such person is
16 practicing professional engineering, architecture,
17 land surveying, or landscape architecture, or is a
18 professional engineer, architect, land surveyor, or
19 landscape architect, without having first acquired a
20 license in accordance with this subpart and without
21 having a valid unexpired license;



1 (3) Uses or attempts to use as the person's own the seal,
2 certificate or license of another;

3 (4) Falsely impersonates any duly licensed practitioner
4 hereunder; or

5 (5) Uses or attempts to use an expired, suspended, or
6 revoked license,

7 shall be fined not more than \$500 or imprisoned not more than
8 one year, or both.

9 (b) Any corporation or copartnership which:

10 (1) Advertises that it furnishes architectural,
11 engineering, land surveying, or landscape
12 architectural services in the making of plans or
13 specifications or in the construction of any building
14 or other structure, without first complying with
15 section -125; or

16 (2) Furnish architectural, engineering, land surveying, or
17 landscape architectural services for the construction
18 of any building, structure, project, or utility in the
19 state, without first complying with section -125,
20 shall be fined not more than \$1,000. Notwithstanding any law to
21 the contrary, persons, corporations, or copartnerships working



1 on structures exempted in section -126 shall not be affected
2 by this subsection.

3 **§ -128 Remedies or penalties cumulative.** Unless
4 otherwise expressly provided, the remedies or penalties provided
5 by this subpart are cumulative to each other and to the remedies
6 or penalties available under all other laws of this State.

7 **PART III. SAFETY AND HEALTH**

8 **A. Occupational Safety and Health**

9 **§ -129 Findings and purpose.** Through years of research
10 and study, Congress has found that the number of industrial
11 accidents that take place in the United States can be reduced if
12 certain minimum standards are established and enforced.

13 Congress has also found that personal injuries and
14 illnesses arising out of work situations impose a substantial
15 burden upon, and are a hindrance to, interstate commerce in
16 terms of lost production, wage loss, medical expenses, and
17 disability compensation payments. The overall congressional
18 findings would definitely be applicable to Hawaii. There is a
19 need to assure so far as possible, every working man and woman
20 in the state safe and healthful working conditions. This
21 subpart is also designed to permit and encourage employer and
22 employee efforts to reduce injury and disease arising out of



1 employment, and to stimulate them to institute new programs and
2 to perfect existing programs for providing safe and healthful
3 working environments.

4 **§ -130 Definitions.** When used in this subpart:

5 "Authority" means the Hawaii construction authority
6 established in section -2.

7 "Appeals board" means the Hawaii labor relations board.

8 "Certified safety professional" means an individual who is
9 certified by the board of certified safety professionals.

10 "Dealer" means, for the purpose of the section concerning
11 explosives, any person, corporation, partnership, association,
12 association of dealers, or other form of business enterprise
13 engaged in the business of buying and selling explosives.

14 "Director" means the executive director of the Hawaii
15 construction authority or the director's designee.

16 "Employee" means every natural person who is required or
17 directed or permitted or suffered by any employer to engage in
18 any employment, or to go to work or be at any time in any place
19 of employment.

20 "Employee of the State" includes officers and employees of
21 the authority, and persons acting in behalf of the authority in



1 an official capacity, whether temporarily or with or without
2 compensation.

3 "Employer" means:

- 4 (1) The State and every state agency;
- 5 (2) Each county and all public and quasi-public
6 corporations and public agencies therein;
- 7 (3) Every person which has any natural person in service;
- 8 (4) The legal representative of any deceased employer; and
- 9 (5) Every person having direction, management, control, or
10 custody of any employment, place of employment, or any
11 employee.

12 "Employment" includes the carrying on of any trade,
13 business, occupation, or work, including all excavation,
14 demolition, and construction work, or any process or operation
15 in any way related thereto, in which any person is engaged to
16 work for hire except domestic service in or about a private
17 home.

18 "Hoisting machine" means a machine with a hoist line,
19 sling, or hydraulic lifting mechanism used in construction,
20 demolition, or excavation work.

21 "Hoisting machine operator" means any individual who
22 operates a hoisting machine in the state.



1 "Occupational safety and health standard" means a standard
2 which requires conditions, or the adoption or use of one or more
3 practices, means, methods, operations, or processes, reasonably
4 necessary or appropriate to provide safe or healthful employment
5 and places of employment.

6 "Place of employment" means any place, and the premises
7 appurtenant thereto, where employment is carried on.

8 "Safe" and "safety" as applied to an employment or place of
9 employment mean such freedom from danger to employees as the
10 nature of the employment reasonably permits.

11 "Safety device" and "safeguard" shall be given a broad
12 interpretation so as to include any practicable method of
13 mitigating or preventing a specific danger.

14 "Serious violation" means a violation that carries with it
15 a substantial probability that death or serious physical harm
16 could result from a condition that exists, or from one or more
17 practices, means, methods, operations, or processes that have
18 been adopted or are in use, in a place of employment, unless the
19 employer did not, and could not with the exercise of reasonable
20 diligence, have known of the presence of the violation.

21 "Wilful violation" means a voluntary act or omission by the
22 employer, as distinguished from an accidental act or omission,



1 that is done with intentional disregard of, or plain
2 indifference to, any standard, rule, citation, or order issued
3 under the authority of this subpart. A wilful violation does
4 not require a showing of malicious intent or bad motive.

5 **§ -131 Powers and duties of the authority. (a)**

6 Administration. The authority shall be responsible for
7 administering occupational safety and health standards
8 throughout the state.

9 (1) The authority shall prescribe and enforce rules under
10 chapter 91 as may be necessary for carrying out the
11 purposes and provisions of this subpart. The
12 authority shall make reports to the Secretary of Labor
13 in the form and containing the information that the
14 Secretary from time to time shall require pursuant to
15 federal law;

16 (2) The authority shall adopt, amend, or repeal
17 occupational safety and health standards in the manner
18 prescribed by rules adopted hereunder. Emergency
19 temporary standards may be adopted without conforming
20 to chapter 91 and without hearings to take immediate
21 effect upon giving a statewide public notice of the
22 emergency temporary standard or upon any other date



1 that may be specified in the notice. An emergency
2 temporary standard may be adopted if the director
3 determines:

4 (A) That employees are exposed to grave danger from
5 exposure to substances or agents determined to be
6 toxic or physically harmful or from new hazards;
7 and

8 (B) That the emergency standard is necessary to
9 protect employees from danger.

10 The emergency temporary standard shall be effective
11 until superseded by a standard adopted in accordance
12 with the procedures set forth in chapter 91, but in
13 any case shall be effective no longer than six months;

14 (3) Variances from occupational safety and health
15 standards adopted under this subpart may be granted
16 upon application of an employer or employers.

17 Application for variances must correspond to
18 procedures set forth in the rules of this subpart.

19 The director may issue an order for variance if the
20 director determines that the proponent of the variance
21 has demonstrated that the conditions, practices,
22 means, methods, operations, or processes used or



1 proposed to be used by the employer will provide
2 employment and places of employment to the employer's
3 employees which are as safe and healthful as those
4 which would prevail if the employer complied with the
5 standard. The employer shall also notify the
6 employer's employees upon each application for
7 variance and the employees shall be given an
8 opportunity to request and participate in hearings or
9 other proceedings relating to applications for
10 variance. No inference of admission of violation of a
11 standard shall be made against the employer by reason
12 of the employer's application for variance;

13 (4) The authority, upon the application of any employer or
14 other person affected thereby, may grant any time that
15 may reasonably be necessary for compliance with any
16 order. Any person affected by an order may petition
17 the authority for an extension of time, which may be
18 granted if the authority finds it necessary; and

19 (5) The authority shall regulate hoisting machines and
20 shall certify their operators.

21 (b) Inspection and investigation.



- 1 (1) Authorized representatives of the director shall have
2 the right to enter without delay any place of
3 employment during regular working hours and at other
4 reasonable times;
- 5 (2) The authority shall inspect places of employment and
6 machines, devices, apparatus, and equipment for the
7 purpose of insuring adequate protection to the life,
8 safety and health of workers;
- 9 (3) The authority shall inspect construction activities
10 for the purpose of protecting the health and safety of
11 employees and the general public. A construction
12 activity includes any activity related to the
13 erection, construction, alteration, demolition or
14 maintenance of buildings, structures, bridges,
15 highways, roadways, dams, tunnels, sewers, underground
16 buildings or structures, underground pipelines or
17 ducts, and any other construction project or facility;
- 18 (4) The authority may investigate the cause of all
19 industrial injuries resulting in disability or death
20 which occur in any employment, or place of employment,
21 and may make reasonable orders and recommendations
22 with respect to the cause of the injuries;



- 1 (5) The authority shall have the right to question
2 privately any employer, owner, operator, agent or
3 employee in investigation, enforcement and inspection
4 activities;
- 5 (6) There shall be a prohibition against advance notice of
6 inspection except that written exception may be
7 expressly authorized by the director in the director's
8 discretion and pursuant to the rules and regulations
9 promulgated under this subpart. Those inspections
10 requiring advance notice for preparation or for other
11 purposes of inspection as further defined in the rules
12 and regulations promulgated under this subpart shall
13 not be included in the prohibition against advance
14 notice; and
- 15 (7) An employee of the State acting within the scope of
16 the employee's office, employment, or authority under
17 this subpart shall not be liable in or made a party to
18 any civil action growing out of the administration or
19 enforcement of this subpart.
- 20 (c) Education and training.
- 21 (1) The authority may disseminate through exhibitions,
22 moving pictures, lectures, pamphlets, and any other



1 method of publicity, information to employers,
2 employees and the general public regarding the causes
3 and prevention of industrial accidents and injuries;
4 and

5 (2) Where appropriate, the authority shall undertake
6 programs in training and consultation with employers
7 and employees as a means of encouraging voluntary
8 compliance.

9 (d) Enforcement.

10 (1) Whenever right of entry or inspection is refused to an
11 authorized representative of the director, the
12 authority may apply to the circuit court of the
13 circuit where such place of employment exists for a
14 search warrant providing on its face that the wilful
15 interference with its lawful execution may be punished
16 as a contempt of court;

17 (2) Whenever the authority finds that any employment or
18 place of employment or the operation of any machine,
19 device, apparatus, or equipment is not safe, or that
20 any practice, means, method, operation, or process
21 employed or used in connection therewith is unsafe or
22 does not afford adequate protection to the life,



1 safety and health of employees in the employment, the
2 authority shall make a citation or an order relative
3 thereto which is necessary to render the employment or
4 place of employment safe and protect the life and
5 safety of employees therein and deliver the same to
6 the employer. The authority may in the citation or
7 order direct that, in the manner and within a time
8 specified, such additions, repairs, improvements, or
9 changes be made and such safety devices and safeguards
10 be furnished, provided and used as are reasonably
11 required to render the employment or place of
12 employment safe. The employer shall obey and observe
13 all citations or safety orders and post said citation
14 or order at or near the place where the violation,
15 referred to in the citation or order occurred;

- 16 (3) Whenever in the opinion of the authority the condition
17 of any employment or place of employment, or the
18 operation of any machine, device, apparatus, or
19 equipment, or any practice, means, method, operation,
20 or process employed or used, is in an unsafe condition
21 or is not properly guarded or is dangerously placed,
22 the use thereof may be prohibited by the authority,



1 and a citation or order to that effect shall be posted
2 prominently in the working place. The citation or
3 order shall be removed:

4 (A) When a determination has been made by the
5 authority that the place of employment, machine,
6 device, apparatus, or equipment is made safe and
7 the required safeguards or safety devices are
8 provided for; and

9 (B) By an authorized representative of the authority.

10 (4) Whenever in the opinion of the authority the condition
11 of any employment or place of employment, or the
12 operation of any machine, device, apparatus, or
13 equipment, or any practice, means, method, operation,
14 or process employed or used constitutes an imminent
15 hazard to the life or safety of any person, the
16 authority may apply to the circuit court of the
17 circuit in which such place of employment, machine,
18 device, apparatus, or equipment is situated or such
19 practice, means, method, operation, or process is
20 employed for an injunction restraining the use or
21 operation thereof until the use or operation is made
22 safe.



1 The application to the circuit court accompanied
2 by an affidavit showing that the use or operation
3 exists in violation of a standard, rule, regulation,
4 citation or order of the authority and constitutes an
5 imminent hazard to the life or safety of any employee,
6 and accompanied by a copy of the standard, rule,
7 regulation, citation or order applicable thereto,
8 shall warrant, in the discretion of the court, the
9 immediate granting of a temporary restraining order.

10 If the authority arbitrarily or capriciously fails to
11 seek relief under this section, any employee who may
12 be injured by reason of such failure or a
13 representative of said employee may bring an action
14 against the authority in the circuit court of the
15 circuit in which the imminent hazard is alleged to
16 exist for a writ of mandamus to compel the authority
17 to seek such an order and for such further relief as
18 may be appropriate. No bond shall be required from
19 the authority as a prerequisite to the granting of a
20 restraining order;

21 (5) The director and the director's authorized agents
22 shall have the same powers respecting the



1 administering of oaths, compelling the attendance of
2 witnesses, the production of documentary evidence, and
3 examining or causing to be examined witnesses as are
4 possessed by a court, and may take depositions and
5 certify to official acts. The circuit court of any
6 circuit upon application by the director shall have
7 power to enforce by proper proceedings the attendance
8 and testimony of any witness so subpoenaed. Subpoena
9 and witness fees and mileage in such cases shall be
10 the same as in criminal cases in the circuit courts.
11 Necessary expenses of or in connection with any such
12 hearings or investigations shall be payable from the
13 funds appropriated for expenses of administration of
14 the authority.

15 No person shall be excused from attending or
16 testifying or producing material, books, paper,
17 correspondence, memoranda, and other records before
18 the director or in obedience to subpoena on the
19 grounds that the testimony or evidence, documentary or
20 otherwise, required of the person may tend to
21 incriminate the person or subject the person to a
22 penalty or forfeiture; but no individual shall be



1 prosecuted or subjected to any penalty or forfeiture
2 for or on account of any transaction, matter, or thing
3 concerning which the individual is compelled, after
4 having claimed the individual's privilege against
5 self-incrimination, to testify or produce evidence,
6 documentary, or otherwise, except that such
7 individuals so testifying shall not be exempt from
8 prosecution and punishment for perjury committed in so
9 testifying;

10 (6) Where a condition or practice in a place of employment
11 could reasonably be expected to cause death or serious
12 physical harm, the authority shall have the right,
13 independent of any other enforcement powers under this
14 chapter, to:

15 (A) Immediately inform the employees and employers of
16 such hazard by meeting, posted notice, or
17 otherwise; and

18 (B) Take steps to obtain immediate abatement of the
19 hazard by the employer and, where appropriate, to
20 initiate necessary legal proceedings to require
21 such abatement; and



1 (7) The authority may prosecute, defend, and maintain
2 actions in the name of the authority for the
3 enforcement of the provisions of this subpart,
4 including the enforcement of any order issued by it,
5 the appeal of any administrative or court decision,
6 and other actions necessary to enforce this subpart.

7 **§ -132 Certification of safety and health professionals.**

8 (a) Only individuals receiving certification from the authority
9 as safety and health professionals shall be qualified to certify
10 that an employer:

11 (1) Has an effective safety and health program; and
12 (2) Qualifies for a reduction in workers' compensation
13 insurance premiums under section 431:14-103(b).

14 (b) Certification as a safety and health professional
15 shall be:

16 (1) Issued to an individual only; and
17 (2) Renewable.

18 (c) Certificates issued under this section may be revoked
19 or suspended by the director on any grounds specified in rules
20 adopted under this subpart.

21 **§ -133 Fees.** (a) The director may establish fees
22 pursuant to chapter 91 to be charged for the following:



- 1 (1) Any aspect relating to the issuance of permits,
2 certificates, or licenses required by this subpart or
3 rule adopted by the director;
- 4 (2) Searching, reviewing, segregating, and providing
5 records pursuant to chapter 92F requests where such
6 fees are not provided for under rules adopted by the
7 office of information practices;
- 8 (3) The costs of training materials used in authority
9 sponsored workshops; and
- 10 (4) The costs of public notices required for variances,
11 and public requests for adoption, amendment, or repeal
12 of rules.
- 13 (b) Fees received pursuant to subsection (a) shall be
14 deposited into the general fund.

15 **§ -134 Employer responsibility: safe place of**
16 **employment; safety devices and safeguards.** (a) Every employer
17 shall furnish to each of the employer's employees employment and
18 a place of employment which are safe as well as free from
19 recognized hazards. No employer shall require or direct or
20 permit or suffer any employee to go or be in any employment or
21 place of employment which is not free from recognized hazards
22 that are causing or likely to cause death or serious physical



1 harm to employees or which does not comply with occupational
2 safety and health standards, rules, regulations, citations, or
3 orders made pursuant to this subpart except for the specific
4 purpose of abating said hazard.

5 (b) Every employer shall furnish and use safety devices
6 and safeguards, and shall adopt and use practices, means,
7 methods, operations, and processes which are reasonably adequate
8 to render such employment and place of employment safe.

9 (c) No employer shall construct or cause to be constructed
10 any place of employment that is not safe, and no employer shall
11 occupy or maintain any unsafe place of employment.

12 (d) Every employer shall make such reports as the
13 Secretary of Labor may require pursuant to Public Law 91596
14 Section 8(c).

15 (e) Each employer shall make, keep, and preserve and make
16 available to the authority such records regarding the employer's
17 activities relating to this subpart as the authority may
18 prescribe by regulation as necessary or appropriate for the
19 enforcement of this subpart or for developing information
20 regarding the causes and prevention of occupational accidents
21 and illnesses.



1 The authority shall prescribe regulations requiring
2 employers to maintain accurate records of, and to make periodic
3 reports on work-related deaths, injuries, and illnesses other
4 than minor injuries requiring only first aid treatment and which
5 do not involve medical treatment, loss of consciousness,
6 restriction of work or motion, or transfer to another job.

7 (f) All employers shall be required to post prominently in
8 the working place all posters and information provided by the
9 authority for posting as well as notices informing employees of
10 their rights and obligations under this subpart.

11 **§ -135 Toxic materials.** (a) The authority shall issue
12 regulations requiring employers to maintain accurate records of
13 employee exposures to potentially toxic materials or harmful
14 physical agents which are required to be monitored or measured
15 as prescribed under the rules and regulations.

16 (b) All employers shall prominently post information
17 regarding hazards in the employer's workplace, including
18 information about suitable precautions, relevant symptoms, and
19 emergency treatment in case of exposure, and where appropriate,
20 medical examination at no cost to employees with the results of
21 such medical examinations being furnished only to appropriate
22 state officials, and if the employee so requests, to the



1 employee's own physician. Where possible, said information
2 shall additionally be posted or labeled on or near said hazard.
3 Where suitable protective equipment is available, all employers
4 shall provide information concerning their availability and use
5 to the affected employees including control or technological
6 procedures with respect to such hazards including monitoring or
7 measuring exposure.

8 (c) No employee shall be permitted regular exposure to any
9 substance which may materially impair the employee's health or
10 functional capacity.

11 (d) All employers shall provide prompt information to
12 employees when they have been or are being exposed to toxic
13 materials and harmful physical agents in concentrations or at
14 levels in excess of those prescribed in the applicable safety
15 and health standards. This information may be fulfilled by:

- 16 (1) Observation by employees of the monitoring or
17 measuring of such materials or agents; and
- 18 (2) Employee access to the records of such monitoring or
19 measuring after notice of exposure, and explanation of
20 said monitoring or measuring procedures where
21 necessary;



1 In addition to the above, information shall be provided to
2 the employees of corrective action being taken.

3 **§ -136 Employee responsibility and rights.** (a)

4 Employee compliance. Each employee shall comply with
5 occupational safety and health standards and all rules,
6 regulations, and orders issued under this subpart which are
7 applicable to the employee's own actions and conduct.

8 (b) Complaints to the authority. Complaints may be made
9 to the authority and where reasonable grounds exist for the
10 authority to believe there may be a hazard, there shall be an
11 inspection in response to the complaint.

12 (c) Opportunity for employees to participate in
13 inspections. At the time and place of inspections under section
14 -131(b)(2), (3), and (4), an opportunity shall be provided
15 for employees and their representatives to bring possible
16 violations to the attention of the authorized representative of
17 the director conducting said inspection in order to aid
18 inspections. This requirement may be fulfilled by allowing a
19 representative of the employees and a representative of the
20 employer to accompany the director's authorized representative
21 during the physical inspection of the workplace, or in absence



1 of the employees' representative, there shall be a consultation
2 with a reasonable number of employees.

3 (d) Notice of nonaction to employees. The authority shall
4 notify the employees when the authority decides not to take
5 compliance action as a result of violations alleged by any
6 employee or any representative of the employees. This notice
7 shall state the decision not to take compliance action, the
8 reasons therefor, and the procedures for informal review of such
9 decision.

10 (e) Discharge or discrimination against employees for
11 exercising any right under this chapter is prohibited. In
12 consideration of this prohibition:

13 (1) No person shall discharge, suspend, or otherwise
14 discriminate in terms and conditions of employment
15 against any employee by reason of:

16 (A) The employee's failure or refusal to operate or
17 handle any machine, device, apparatus, or
18 equipment which is in any unsafe condition; or

19 (B) The employee's failure or refusal to engage in
20 unsafe practices in violation of this subpart or
21 of any standard, rule, regulation, citation or
22 order issued under the authority of this subpart;



- 1 (2) Upon discretion of the director or request, names of
2 complainants may be withheld from the employer;
- 3 (3) No person shall discharge or in any manner
4 discriminate against any employee because the employee
5 has filed any complaint or instituted or caused to be
6 instituted any proceeding under or related to this
7 subpart, or has testified or intends to testify in any
8 such proceeding, or acting to exercise or exercised on
9 behalf of the employee or others any right afforded by
10 this subpart;
- 11 (4) Any employee who believes that there has been a
12 discharge or discrimination against the employee by
13 any person in violation of this subsection may, within
14 sixty days after the violation occurs, file a
15 complaint with the director alleging unlawful
16 discharge or discrimination and setting forth the
17 circumstances thereof;
- 18 (5) Upon receipt of the complaint, the director shall
19 investigate to determine if a discharge or
20 discrimination in violation of this subsection has
21 occurred;



1 (6) If upon investigation the director determines that the
2 provisions of this subsection have been violated, the
3 director shall order the employer to provide all
4 appropriate relief to the employee, including rehiring
5 or reinstating the employee to the former position
6 with back pay and restoration of seniority;

7 (7) Within ninety days of receipt of a complaint filed
8 under this subsection, unless extended by the
9 director, the director shall notify the employee of
10 the final determination and any subsequent action the
11 authority will take to resolve the complaint; and

12 (8) Nothing in this subsection shall preclude any employee
13 or representative of an employee from simultaneously
14 pursuing a cause of action for injunctive relief or
15 any other remedy provided by law.

16 (f) Except for those complainants alleging violations
17 under subsection (e) above, names of all complainants and
18 witnesses shall be withheld from the employer unless prior
19 permission is given by the complainant or witness to release the
20 complainant's or witness' name.

21 **§ -137 Explosives.** (a) No person shall use, store, or
22 deal in explosives unless the person has first obtained a



1 certificate of fitness. A certificate of fitness shall only be
2 issued to an individual and shall set forth the individual's
3 competency and provide for the individual's positive
4 identification. Certificates of fitness may be limited as to
5 types or kinds of explosives or to the use of explosives for
6 specific purposes.

7 (b) No dealer shall sell or deliver explosives to any
8 person who does not hold a certificate of fitness.

9 (c) It shall be unlawful for any person to use or possess
10 any explosives unless the person has a certificate of fitness or
11 is using the explosives under the immediate supervision and
12 direction of a holder of the certificate.

13 Any person who violates this section shall be subject to
14 arrest and upon conviction, shall be fined not more than \$1,000
15 or imprisoned not more than one year, or both; provided that an
16 employer or an employee acting within the scope of employment
17 shall not be deemed to be in violation of this section.

18 (d) Any certificate of fitness issued under this section
19 may be revoked or suspended by the director on any ground
20 specified in the rules adopted under this subpart, or for any
21 violation of this section.



1 (e) Any certificate issued under this section, during any
2 time of national emergency or crisis, may be suspended or
3 canceled by the director. A national emergency or crisis shall
4 be deemed to exist when it has been so determined under section
5 134-34.

6 (f) This section shall not apply to the armed forces of
7 the United States, to employees of the United States, or the
8 state or county police or fire departments who are authorized to
9 handle explosives.

10 **§ -138 Violations and penalties.** (a) Any employer who
11 violates this subpart, or any occupational safety and health
12 standard promulgated hereunder or any rule or regulation issued
13 under the authority of this subpart, or who violates or fails to
14 comply with any citation, notice or order made under or by
15 virtue of this subpart or under or by virtue of any rule or
16 regulation of the authority, or who defaces, displaces,
17 destroys, damages, or removes without the authority of the
18 authority any safety device, safeguards, notice or warning
19 required by this subpart or any rule or regulation of the
20 authority may be assessed a civil penalty as specified in this
21 subpart.



1 (b) Any employer who has received an order or citation for
2 a serious violation of any standard or rule adopted pursuant to
3 this subpart shall be assessed a civil penalty of not more than
4 \$7,000 for each violation.

5 (c) Any employer who has received an order or citation for
6 a violation of any standard or rule adopted pursuant to this
7 subpart, and the violation is specifically determined not to be
8 of a serious nature, may be assessed a civil penalty of up to
9 \$7,000 for each violation.

10 (d) Each day a violation continues shall constitute a
11 separate violation except that during an abatement period only,
12 no additional penalty shall be levied against the employer.

13 (e) Any employer who violates any of the posting
14 requirements prescribed under this subpart shall be assessed a
15 civil penalty of up to \$7,000 for each violation.

16 (f) Any employer who wilfully or repeatedly violates this
17 subpart, or any standard, rule, citation, or order issued under
18 the authority of this part, shall be assessed a civil penalty of
19 not less than \$5,000 nor more than \$70,000 for each violation.

20 (g) Any employer convicted of wilful or repeated violation
21 of any standard, rule, citation, or order issued under authority
22 of this subpart resulting in the death of an employee shall be



1 punished by a fine of not more than \$70,000, or by imprisonment
2 for not more than six months, or both, except that if the
3 conviction is for a violation committed after a first
4 conviction, punishment shall be by a fine of not more than
5 \$70,000, or by imprisonment for not more than one year, or both.
6 Failure to correct a violation for which an order or citation of
7 arrest has been issued shall be evidence of wilful conduct.

8 (h) Any employer who has received an order for violation
9 under section -136(e) may be assessed a civil penalty of not
10 more than \$1,000 for each violation.

11 (i) Any person who gives advance notice of any inspection
12 to be conducted under this subpart, without authority from the
13 director or the director's designees shall, upon conviction be
14 punished by a fine of not more than \$1,000 or by imprisonment
15 for not more than six months, or by both.

16 (j) The director shall have authority to assess all civil
17 penalties provided in this section, giving due consideration to
18 the appropriateness of the penalty with respect to the size of
19 the business of the employer being charged, the gravity of the
20 violation, the good faith of the employer, and the history of
21 previous violations.



1 (k) Civil penalties imposed under this subpart shall be
2 paid to the authority and may be recovered by civil action in
3 the name of the authority and the State brought in the district
4 or circuit court for the circuit where the violation is alleged
5 to have occurred or where the employer has its principal office.

6 (l) When an alleged violation of any provision of this
7 subpart or any standard, rule, or order made thereunder has
8 occurred, the authority shall promptly issue a written citation,
9 order, or notice thereof to the employer who shall be required
10 to post the citation, order, or notice. The citation, order, or
11 notice thereof shall include the abatement requirements and
12 within a reasonable time the employer shall be advised of the
13 proposed sanctions, including proposed penalties. Whenever
14 reference is made to posting of any citation, order, notice,
15 petition, decision, or any other type of document issued by the
16 director under this subpart and rules adopted pursuant to this
17 subpart, the employer shall post copies of the document at the
18 work site involved or affected and at the place or places where
19 notices to the employees involved are normally posted. Where
20 posting starts the time for notice of action to or for appeal by
21 employees under this subpart and rules adopted under this



1 subpart, the document shall be posted by the employer upon
2 receipt or on the next business day following receipt.

3 (m) Whoever knowingly makes any false statement,
4 representation, or certification in any application, record,
5 report, plan, or other document filed or required to be
6 maintained pursuant to this subpart shall, upon conviction, be
7 punished by a fine of not more than \$10,000, or by imprisonment
8 for not more than six months, or by both.

9 (n) Criminal offenses committed against any employee of
10 the State acting within the scope of the employee's office,
11 employment, or authority under this subpart shall be subject to
12 the penalties set forth in the Hawaii Penal Code; provided that:

13 (1) Ten years shall be added to the maximum term of
14 imprisonment (unless life imprisonment is imposed) and
15 \$50,000 shall be added to the maximum fine imposed for
16 conviction of a class A felony;

17 (2) Five years shall be added to the maximum term of
18 imprisonment and \$25,000 shall be added to the maximum
19 fine imposed for conviction of a class B felony;

20 (3) Three years shall be added to the maximum term of
21 imprisonment and \$10,000 shall be added to the maximum
22 fine for conviction of a class C felony;



1 (4) One year shall be added to the maximum term of
2 imprisonment and \$2,000 shall be added to the maximum
3 fine for conviction of a misdemeanor; and

4 (5) The maximum term of imprisonment and maximum fines
5 prescribed for misdemeanors under the Hawaii Penal
6 Code shall apply to convictions of a petty
7 misdemeanor.

8 **§ -139 Review.** (a) Any citation, proposed penalty, or
9 order of the director shall be final and conclusive against the
10 employer unless the employer files with the director a written
11 notice of contest of the citation, the abatement period stated
12 in the citation, the proposed penalty, or order within twenty
13 days after receipt of the citation, proposed penalty, or order.

14 (b) The employer may petition the director for
15 modification of the abatement requirements in a citation;
16 provided the employer shall file the petition no later than the
17 close of the next business day following the date on which
18 abatement is required, or under exceptional circumstances and
19 for good cause shown, at a later date. The petition for
20 modification may be filed after the twenty-day period for
21 contesting the citation has expired if the initial abatement



1 period stated in the citation expires after the twenty-day
2 period for filing a notice of contest has run.

3 (c) The director shall issue an order either affirming or
4 modifying the abatement requirement. The director may issue an
5 order modifying the abatement requirement upon a showing by the
6 employer of a good faith effort to comply with the abatement
7 requirements of a citation and that abatement has not been
8 completed because of factors beyond the employer's reasonable
9 control.

10 (d) Any employee or representative of employees may file
11 with the director a written notice of contest of the initial
12 abatement period stated in a citation or order alleging that the
13 period of time fixed for abatement is unreasonable; provided the
14 notice is filed within twenty days after the citation or order
15 has been posted. Any employee or representative of employees
16 may also file a written notice of contest of an order granting
17 modification of the abatement period; provided the notice shall
18 be filed within ten days of the posting of the order.

19 (e) Any employee or representative of employees may file a
20 notice of contest of an order of the director denying a
21 complaint of discrimination filed by an employee pursuant to
22 section -136(e); provided that in each case the notice is



1 filed within twenty days after receipt of the order by the
2 employee.

3 (f) Any employee or representative of employees may file a
4 notice of contest of an order granting an employer's application
5 for a variance under section -131(a)(3); provided the notice
6 is filed within twenty days after the posting of a final order
7 or decision of the director.

8 (g) Upon receipt, the director shall advise the appeals
9 board of any notice of contest.

10 (h) The appeals board shall afford an opportunity for a de
11 novo hearing on any notice of contest except where rules require
12 a prior formal hearing at the authority level, the proceedings
13 of which are required to be transcribed, in which case review
14 before the appeals board shall be confined to the record only.

15 (i) The appeals board may affirm, modify, or vacate the
16 citation, the abatement requirement therein, or the proposed
17 penalty or order or continue the matter upon terms and
18 conditions as may be deemed necessary, or remand the case to the
19 director with instructions for further proceedings, or direct
20 other relief as may be appropriate.



1 (j) The affected employees or representatives of affected
2 employees shall be provided an opportunity to participate as
3 parties to hearings under this section.

4 (k) The director shall submit annual reports to the
5 legislature on the number of contests filed pursuant to this
6 section, the disposition of each, and information indicating
7 whether the issue involved an employee or employees of the
8 authority who failed to act within the scope of their office,
9 employment, or authority under this subpart.

10 **§ -140 Judicial review.** Except where an order has
11 already become final for failure to contest, the decision and
12 order of the appeals board shall be final and conclusive unless
13 the director or any party to the proceedings before the appeals
14 board obtains a review thereof in the manner provided in chapter
15 91 by instituting proceedings in the circuit court of the
16 circuit in which the place of employment, machine, device,
17 apparatus, or equipment is situated or such practice, means,
18 method, operation, or process is employed. The hearing on
19 review shall be on the record and the authority shall be deemed
20 a party to any such proceedings. The court shall give
21 precedence to such proceedings over all other civil cases.



1 **§ -141 Trade secrets.** Information obtained by the
2 authority containing or revealing a trade secret shall be held
3 confidential and access shall be limited to authorized
4 representatives of the director concerned with carrying out this
5 subpart or when relevant in any proceeding under this subpart.
6 In such proceeding the director, the appeals board, or the court
7 shall issue such orders as may be appropriate to protect the
8 confidentiality of trade secrets.

9 **§ -142 Evidence.** No record or determination of any
10 administrative proceeding under this subpart or any statement or
11 report of any kind obtained, received, or prepared in connection
12 with the administration or enforcement of this subpart shall be
13 admitted or used, whether as evidence or as discovery, in any
14 civil action growing out of any matter mentioned in the record,
15 determination, statement, or report other than an action for
16 enforcement or review under this subpart.

17 **§ -143 Exception to liability.** Any employee who is
18 required by the regulations under this subpart to be trained and
19 certified in first aid, and consequently renders first aid care
20 as provided by this subpart, shall not be liable for any civil
21 damages resulting from the employee's acts or omissions, except



1 for such damages as may result from the employee's gross
2 negligence or wanton acts or omissions.

3 **§ -144 Exception for federal jurisdiction.** Nothing in
4 this subpart shall apply to working conditions of employees with
5 respect to which any federal agency exercises statutory
6 authority to prescribe and enforce standards or regulations
7 affecting occupational safety or health.

8 **§ -145 Safety and health programs for contractors**
9 **bidding on state construction jobs.** (a) All bids and proposals
10 in excess of \$100,000 for state construction jobs as defined in
11 section 103D-104 shall include a signed certification from the
12 bidder or offerer that a written safety and health plan for the
13 job will be available and implemented by the notice to proceed
14 date of the project. The written safety and health plan shall
15 include:

- 16 (1) A safety and health policy statement reflecting
17 management commitment;
- 18 (2) A description of the safety and health
19 responsibilities of all levels of management and
20 supervisors on the job and a statement of
21 accountability appropriate to each;
- 22 (3) The details of:



- 1 (A) The mechanism for employee involvement in job
2 hazard analysis;
- 3 (B) Hazard identification, including periodic
4 inspections and hazard correction and control;
- 5 (C) Accident and "near-miss" investigations; and
6 (D) Evaluations of employee training programs;
- 7 (4) A plan to encourage employees to report hazards to
8 management as soon as possible and to require
9 management to address these hazards promptly; and
- 10 (5) A certification by a senior corporate or company
11 manager that the plan is true and correct.
- 12 (b) Failure to submit the required certification may be
13 grounds for disqualification of the bid or proposal.
- 14 (c) Failure to have available on site or failure to
15 implement the written safety and health plan by the project's
16 notice to proceed date shall be considered wilful noncompliance
17 and be sufficient grounds to disqualify the award and terminate
18 the contract.

19 **§ -146 Hoisting machine operators advisory board.** (a)
20 There is created a hoisting machine operators advisory board,
21 which shall be placed in the authority to be composed of five
22 members to serve without compensation and without reimbursement



1 for expenses. Members shall be appointed by the governor under
2 section 26-34.

3 The board shall adopt rules pursuant to chapter 91 for the
4 certification of hoisting machine operators.

5 (b) The hoisting machine operators advisory board may
6 employ a 0.5 full-time equivalent executive director, without
7 regard to chapters 76 and 89 and may dismiss such person as it
8 finds necessary for the performance of its function and duties.
9 The board shall have the authority to fix the executive
10 director's compensation.

11 **§ -147 Hoisting machine operators' certification**
12 **revolving fund.** (a) There is established in the state treasury
13 a revolving fund to be known as the hoisting machine operators'
14 certification revolving fund, into which shall be deposited all
15 fees, penalties, fines, and interest collected from:

- 16 (1) Certification of hoisting machine operators;
17 (2) Interest and investment moneys earned on any moneys in
18 the fund; and
19 (3) All moneys received for the fund from any source.

20 The moneys in the fund may be used to carry out the purposes of
21 this section. The director of finance shall disburse the moneys
22 in the fund in accordance with instructions from the director.



- 1 (b) The fund may be used for:
- 2 (1) Personnel and operating expenses for an executive
- 3 director for the hoisting machine operators advisory
- 4 board;
- 5 (2) All necessary board costs and reimbursements;
- 6 (3) Preparation and dissemination of public information on
- 7 hoisting machine operators' certification and
- 8 training;
- 9 (4) Preparation of annual reports on certification program
- 10 activities and accomplishments and on the fund; and
- 11 (5) Any reimbursements to the state general fund for funds
- 12 appropriated by the legislature to establish the
- 13 revolving fund.
- 14 (c) The director shall submit an annual report to the
- 15 legislature on the status of the fund, including expenditures
- 16 and program results, not less than twenty days prior to the
- 17 convening of each regular session.

18 B. BOILER AND ELEVATOR SAFETY

19 **§ -148 Definitions.** As used in this subpart:

20 "Appeals board" means the department of labor and

21 industrial relations appeals board.

22 "Authority" means the Hawaii construction authority.



1 "Boiler" means a closed vessel in which water is heated,
2 steam is generated, steam is superheated or any combination
3 thereof by the direct application of heat. The term "boiler"
4 includes fired units for heating or vaporizing liquids other
5 than water where these units are separate from processing
6 systems and complete within themselves.

7 "Contractor" means any person, firm or corporation
8 installing, repairing or servicing and responsible for the safe
9 operation of any boiler, pressure system, amusement ride, and
10 elevator and kindred equipment or structure inspected pursuant
11 to this subpart.

12 "Director" means the executive director of the Hawaii
13 construction authority.

14 "Elevator" means a hoisting and lowering mechanism
15 permanently installed in a structure, designed to carry
16 passengers or authorized personnel, equipped with a car or
17 platform which moves in fixed guides and serves two or more
18 fixed landings.

19 "Elevators and kindred equipment" as used in this chapter
20 means elevators, escalators, dumbwaiters, moving walks, stage
21 lifts, mechanized parking elevators, manlifts, inclined lifts,
22 personnel hoists, aerial tramways, permanently installed



1 material lifts, personal automatic trains and any other similar
2 mechanized equipment used to convey people in places other than
3 a public right-of-way.

4 "National Board" means the National Board of Boiler and
5 Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio
6 43229.

7 "Owner" means any person, firm or corporation with legal
8 title to any boiler, pressure system, amusement ride, and
9 elevator and kindred equipment inspected pursuant to this
10 subpart who may or may not be the user.

11 "Pressure piping" means piping systems specified in the
12 American National Standard Code for Pressure Piping developed
13 and promulgated by the American Society of Mechanical Engineers.

14 "Pressure systems" means both pressure vessels and pressure
15 piping as defined in this section.

16 "Pressure vessel" means a closed vessel in which pressure
17 is obtained from an external source or by the direct application
18 of heat from a direct or indirect source.

19 "User" means any person, firm or corporation legally in
20 possession and responsible for the safe operation of any boiler,
21 pressure system, amusement ride, and elevator and kindred
22 equipment inspected pursuant to this subpart.



1 "Vendor" means any person, firm or corporation that sells
2 or distributes any boiler, pressure system, amusement ride, and
3 elevator and kindred equipment required to be inspected pursuant
4 to this subpart.

5 § -149 Powers and duties. (a) Administration.

6 (1) The authority shall establish a boiler and elevator
7 inspection section for the enforcement of the rules
8 adopted under this subpart and other duties as
9 assigned;

10 (2) The authority shall:

11 (A) Implement and enforce the requirements of this
12 subpart; and

13 (B) Keep adequate and complete records of the type,
14 size, location, identification data, and
15 inspection findings for boilers, pressure
16 systems, amusement rides, and elevators and
17 kindred equipment required to be inspected
18 pursuant to this subpart;

19 (3) The authority shall formulate definitions and adopt
20 and enforce standards and rules pursuant to chapter 91
21 that may be necessary for carrying out this subpart.

22 Definitions and rules adopted in accordance with



1 chapter 91 under the authority of chapter 396, prior
2 to the adoption of this subpart that pertain to
3 boilers, pressure systems, amusement rides, and
4 elevators and kindred equipment required to be
5 inspected pursuant to this subpart, shall be continued
6 in force under the authority of this subpart;

7 (4) Emergency temporary standards may be adopted without
8 conforming to chapter 91 and without hearings to take
9 immediate effect upon giving public notice of the
10 emergency temporary standards or upon another date
11 that may be specified in the notice. An emergency
12 temporary standard may be adopted, if the director
13 determines:

14 (A) That the public or individuals are exposed to
15 grave danger from exposure to hazardous
16 conditions or circumstances; and

17 (B) That the emergency temporary standard is
18 necessary to protect the public or individuals
19 from danger.

20 Emergency temporary standards shall be effective until
21 superseded by a standard adopted under chapter 91, but



1 in any case shall be effective no longer than six
2 months;

3 (5) Variances from standards adopted under this subpart
4 may be granted upon application of an owner, user,
5 contractor, or vendor. Application for variances
6 shall correspond to procedures set forth in the rules
7 adopted pursuant to this subpart. The director may
8 issue an order for variance, if the director
9 determines that the proponent of the variance has
10 demonstrated that the conditions, practices, means,
11 methods, operations, or processes used or proposed to
12 be used will provide substantially equivalent safety
13 as that provided by the standards;

14 (6) Permits.

15 (A) The authority shall issue a "permit to operate"
16 regarding any boiler, pressure system, amusement
17 ride, or elevator and kindred equipment if found
18 to be safe in accordance with rules adopted
19 pursuant to chapter 91;

20 (B) The authority may immediately revoke any "permit
21 to operate" of any boiler, pressure system,
22 amusement ride, or elevator and kindred equipment



1 found to be in an unsafe condition or where a
2 user, owner, or contractor ignores prior
3 authority orders to correct specific defects or
4 hazards and continues to use or operate the above
5 mentioned apparatus without abating the hazards
6 or defects;

7 (C) The authority shall reissue a "permit to operate"
8 to any user, owner, or contractor who
9 demonstrates that the user, owner, or contractor
10 is proceeding in good faith to abate all
11 nonconforming conditions mentioned in authority
12 orders and the boilers, pressure systems,
13 amusement rides, and elevators and kindred
14 equipment are safe to operate; and

15 (D) The authority shall establish criteria for the
16 periodic reinspection and renewal of the permits
17 to operate, and may provide for the issuance of
18 temporary permits to operate while any
19 noncomplying boiler, pressure system, amusement
20 ride, and elevator and kindred equipment are
21 being brought into full compliance with the
22 applicable standards and rules adopted pursuant



1 to this subpart; provided that the period between
2 an initial safety inspection or the inspection
3 used as a basis for the issuance of a permit to
4 operate, and any subsequent inspection of
5 elevators and kindred equipment shall not exceed
6 one year;

7 (7) No boiler, pressure system, amusement ride, or
8 elevator and kindred equipment which are required to
9 be inspected by this subpart or by any rule adopted
10 pursuant to this subpart shall be operated, except as
11 necessary to install, repair, or test, unless a permit
12 to operate has been authorized or issued by the
13 authority and remains valid; and

14 (8) The authority, upon the application of any owner or
15 user or other person affected thereby, may grant time
16 that may reasonably be necessary for compliance with
17 any order. Any person affected by an order may for
18 cause petition the authority for an extension of time.

19 (b) Inspection and investigation.

20 (1) Authorized representatives of the director shall have
21 the right to enter without delay during regular
22 working hours and at other reasonable times any place,



1 establishment or premises in which are located
2 boilers, pressure systems, amusement rides, and
3 elevators and kindred equipment requiring inspection
4 pursuant to this subpart.

5 (2) The authority shall inspect for the purpose of
6 insuring compliance with the purposes and provisions
7 of this subpart any activity related to the erection,
8 construction, alteration, demolition or maintenance of
9 buildings, structures, bridges, highways, roadways,
10 dams, tunnels, sewers, underground buildings or
11 structures, underground pipelines or ducts, and other
12 construction projects or facilities.

13 (3) The authority shall review plans and make inspections,
14 and investigations of boilers, and pressure systems,
15 and the premises appurtenant to each at times and at
16 intervals determined by the director for the purpose
17 of insuring compliance with the purpose and provisions
18 of this subpart. This section shall not apply to
19 single family dwellings or multiple dwelling units of
20 less than six living units.

21 (4) The authority shall review plans and make inspections,
22 and investigations of elevators and kindred equipment



1 and the premises appurtenant to each at times and at
2 intervals determined by the director for the purpose
3 of insuring compliance with the purposes and
4 provisions of this subpart. This section shall not
5 apply to single family dwellings.

6 (5) The authority shall inspect, at least semi-annually
7 all mechanically or electrically operated devices
8 considered as major rides and used as amusement rides
9 at a carnival, circus, fair, or amusement park for the
10 purpose of protecting the safety of the general
11 public. This section shall not apply to any coin
12 operated ride or mechanically or electrically operated
13 devices considered or known in the amusement trade as
14 kiddie rides.

15 (6) The authority may investigate accidents involving
16 boilers, pressure systems, amusement rides, and
17 elevators and kindred equipment inspected under this
18 subpart and may issue orders and recommendations with
19 respect to the elimination and control of the cause
20 factors.

21 (7) The authority shall have the right to question any
22 employer, owner, operator, agent or employee in



1 investigation, enforcement, and inspection activities
2 covered by this subpart.

3 (8) Any employee of the State acting within the scope of
4 the employee's office, employment, or authority under
5 this subpart shall not be liable in or made a party to
6 any civil action growing out of the administration and
7 enforcement of this subpart.

8 (c) Education and training.

9 (1) The authority may disseminate through exhibitions,
10 pictures, lectures, pamphlets, letters, notices, and
11 any other method of publicity, to owners, users,
12 vendors, architects, contractors, employees, and the
13 general public information regarding boilers, pressure
14 systems, amusement rides, and elevators and kindred
15 equipment required to be inspected pursuant to this
16 subpart.

17 (2) Where appropriate, the authority may undertake
18 programs in training and consultation with owners,
19 users, property management firms, vendors, architects,
20 contractors, employees, and the general public
21 regarding the safety requirements of this subpart and
22 the rules and regulations.



- 1 (d) Enforcement.
- 2 (1) Whenever right of entry to a place to inspect any
3 boiler, pressure system, amusement ride, or elevator
4 and kindred equipment required by this subpart to be
5 inspected is refused to an authorized representative
6 of the director, the authority may apply to the
7 circuit court where such place exists for a search
8 warrant providing on its face that the wilful
9 interference with its lawful execution may be punished
10 as a contempt of court.
- 11 (2) Whenever the authority finds that the construction of
12 or the operation of any boiler, pressure system,
13 amusement ride, or elevator and kindred equipment
14 required to be inspected by this subpart is not safe,
15 or that any practice, means, method, operation or
16 process employed or used is unsafe or is not in
17 conformance with the rules and regulations promulgated
18 pursuant to this subpart, the authority shall issue an
19 order to render the construction or operation safe or
20 in conformance with this subpart or rules and
21 regulations and deliver the same to the contractor,
22 owner, or user. Each order shall be in writing and



1 may be delivered by mail or in person. The authority
2 may in the order direct that, in the manner and within
3 a time specified such additions, repairs,
4 improvements, or changes be made and such safety
5 devices and safeguards be furnished, provided and used
6 as are reasonably required to insure compliance with
7 the purposes and provisions of this subpart. The
8 owner, or user, or contractor shall obey and observe
9 all orders issued by the authority or be subject to
10 appropriate civil penalties.

- 11 (3) Whenever in the opinion of the authority the condition
12 of, or the operation of boilers, pressure systems,
13 amusement rides, or elevators and kindred equipment
14 required to be inspected by this subpart, or any
15 practice, means, method, operation, or process
16 employed or used, is unsafe, or is not properly
17 guarded or is dangerously placed, the use thereof may
18 be prohibited by the authority, an order to that
19 effect shall be posted prominently on the equipment,
20 or near the place or condition referred to in the
21 order. The order shall be removed when a
22 determination has been made by an authorized



1 representative of the authority that the boilers,
2 pressure systems, amusement rides, or elevators and
3 kindred equipment are safe and the required safeguards
4 or safety devices are provided.

- 5 (4) When in the opinion of the authority the operation of
6 boilers, pressure systems, amusement rides, or
7 elevators and kindred equipment, required to be
8 inspected by this subpart or any practice, means,
9 method, operation or process employed or used
10 constitutes an imminent hazard to the life or safety
11 of any person, or to property, the authority may apply
12 to the circuit court of the circuit in which such
13 boilers, pressure systems, amusement rides, or
14 elevators and kindred equipment are situated or such
15 practice, means, method, operation or process is
16 employed for an injunction restraining the use or
17 operation until the use or operation is made safe.
18 The application to the circuit court accompanied by an
19 affidavit showing that the use or operation exists in
20 violation of a standard, rule, regulation, variance,
21 or order of the authority and constitutes an imminent
22 hazard to the life or safety of any person or to



1 property and accompanied by a copy of the standard,
2 rule, regulation, variance, or applicable order, shall
3 warrant, in the discretion of the court, the immediate
4 granting of a temporary restraining order. No bond
5 shall be required from the authority as a prerequisite
6 to the granting of a restraining order.

7 (5) The director and the director's authorized
8 representative shall have the same powers respecting
9 the administering of oaths, compelling the attendance
10 of witnesses, the production of documentary evidence,
11 and examining or causing to be examined witnesses as
12 are possessed by the court and may take depositions
13 and certify to official acts. The circuit court of
14 any circuit upon application by the director shall
15 have the power to enforce by proper proceedings the
16 attendance and testimony of any witness so subpoenaed.
17 Subpoena and witness fees and mileage in such cases
18 shall be the same as in criminal cases in the circuit
19 courts. Necessary expenses of, or in connection with,
20 such hearings or investigations shall be payable from
21 the funds appropriated for expenses of administration
22 of the department. No person shall be excused from



1 attending or testifying or producing materials, books,
2 papers, correspondences, memoranda, and other records
3 before the director or in obedience to subpoena on the
4 grounds that the testimony or evidence, documentary or
5 otherwise, required of the person may tend to
6 incriminate the person or subject the person to a
7 penalty or forfeiture; but no individual shall be
8 prosecuted or subjected to any penalty or forfeiture
9 for or on account of any transaction, matter, or thing
10 concerning which the individual is compelled, after
11 having claimed the individual's privilege against
12 self-incrimination, to testify or produce evidence,
13 documentary, or otherwise, except that such
14 individuals so testifying shall not be exempt from
15 prosecution and punishment for perjury committed in so
16 testifying.

17 (6) Where a condition or practice involving any boiler,
18 pressure system, amusement ride, or elevator and
19 kindred equipment required to be inspected by this
20 subpart could reasonably be expected to cause death or
21 serious physical harm, the authority shall have the



1 right, independent of any other enforcement powers
2 under this subpart, to:

3 (A) Immediately take steps to obtain abatement by
4 informing the owners, users, contractors, and all
5 persons in harms way of such hazard by meeting,
6 posted notice, or otherwise;

7 (B) Take steps to immediately obtain abatement
8 through direct control or elimination of the
9 hazard if after reasonable search, the user,
10 owner or contractor or their representative is
11 not available;

12 (C) Take steps to obtain immediate abatement when the
13 nature and imminency of the danger or hazard does
14 not permit a search for the owner, user, or
15 contractor; and

16 (D) Where appropriate, initiate necessary legal
17 proceedings to require abatement by the owner,
18 user or contractor.

19 (7) The authority may prosecute, defend and maintain
20 actions in the name of the authority for the enforcement of the
21 provisions of this subpart, including the enforcement of any



1 order issued by it, the appeal of any administrative or court
2 decision, and other actions necessary to enforce this subpart.

3 **§ -150 Fees.** (a) The director may prescribe reasonable
4 fees to be charged for inspection, examination, other services
5 rendered and for permits, certificates, or licenses, the
6 issuance of which are required by this subpart or by any rule or
7 regulation of the authority promulgated pursuant to this
8 subpart, and for:

9 (1) Inspection by the authority of any boiler, pressure
10 system, amusement ride, and elevator and kindred
11 equipment for which a permit or certificate is
12 required for its installation, operation or use and
13 which is required to be inspected by this subpart or
14 by any rule or regulation of the authority; and

15 (2) Examination of any person applying for permits,
16 certificates or licenses as required by this subpart
17 or by any rule or regulation of the authority.

18 (b) All fees received by the authority pursuant to this
19 section shall be paid into the general fund of the State.

20 **§ -151 Safety inspection by qualified inspectors.** (a)
21 All safety inspections required under this subpart of boilers
22 and pressure systems shall be performed by deputy boiler



1 inspectors in the employ of the authority who are qualified
2 boiler inspectors and, when authorized by the director, may be
3 performed by special inspectors who are qualified boiler
4 inspectors in the employ of insurance companies insuring boilers
5 or pressure systems in this State.

6 (b) A qualified boiler inspector is a person eligible for
7 or in possession of a valid commission issued by the National
8 Board of Boiler and Pressure Vessel Inspectors and who has
9 received from the director or the director's authorized agent
10 briefings and instructions regarding the rules and regulations
11 pertaining to boilers and pressure systems in this State.

12 (c) All safety inspections required under this subpart of
13 elevators and kindred equipment shall be performed by deputy
14 elevator inspectors of the authority who are qualified elevator
15 inspectors and who are employed primarily for purposes of
16 elevator and related inspection work.

17 (d) A qualified elevator inspector is a person who meets
18 the criteria of the American Society of Mechanical Engineers and
19 the standards for the qualification of elevator inspectors of
20 the American National Standards Institute and has satisfied
21 requirements established by the authority.



1 **§ -152 Complaints to the authority.** (a) Complaints may
2 be made to the authority and where reasonable grounds exist for
3 the authority to believe there may be a hazard, there shall be
4 an inspection in response to the complaint.

5 (b) Names of all complainants and witnesses shall be held
6 in confidence by the authority unless prior permission has been
7 given by the complainant or witness to release the complainant's
8 or witness' name or unless it has been determined by the
9 attorney general that disclosure is necessary for enforcement
10 and review of this subpart.

11 **§ -153 Violations and penalties.** (a) The director
12 shall have authority to assess all civil penalties provided in
13 this section, giving due consideration to the appropriateness of
14 the penalty with respect to the gravity of the violation, the
15 good faith of the owner, user, contractor, or vendor and the
16 history of previous violations.

17 (b) Any owner, user, contractor, or vendor who violates
18 this subpart, or any safety standard promulgated hereunder or
19 any rule issued under the authority of this subpart, or who
20 violates or fails to comply with any order made under or by
21 virtue of this subpart or under or by virtue of any rule of the
22 authority, or who defaces, displaces, destroys, damages, or



1 removes without the authority of the authority any safety
2 device, safeguard, notice, order, or warning required by this
3 subpart or by any rule of the authority shall be assessed a
4 civil penalty of not more than \$10,000 for each such violation.

5 (c) Each day a violation continues shall constitute a
6 separate violation except during an abatement period.

7 (d) Whoever knowingly makes any false statement,
8 representation, or certification in any application, record,
9 report, plan or other document filed or required to be
10 maintained pursuant to this subpart, shall, upon conviction, be
11 punished by a fine of not more than \$10,000, or by imprisonment
12 for not more than six months, or by both.

13 (e) Civil penalties owed under this subpart shall be paid
14 to the authority and may be recovered in a civil action in the
15 name of the authority and the State brought in the district or
16 circuit court for the circuit where the violation is alleged to
17 have occurred or where the owner, user, contractor or vendor has
18 the owner's, user's, contractor's, or vendor's principal office.

19 (f) Criminal offenses committed against any employee of
20 the State acting within the scope of the employee's office, or
21 employment, or authority under this subpart shall be subject to
22 the penalties set forth in the Hawaii Penal Code provided that:



1 (1) Ten years shall be added to the maximum term of
2 imprisonment (unless life imprisonment is imposed) and
3 \$10,000 shall be added to the maximum fine imposed for
4 conviction under a class A felony.

5 (2) Five years shall be added to the maximum term of
6 imprisonment and \$5,000 shall be added to the maximum
7 fine imposed for conviction under a class B felony.

8 (3) Three years shall be added to the maximum term of
9 imprisonment and \$1,000 shall be added to the maximum
10 fine for conviction under a class C felony.

11 (4) One year shall be added to the maximum term of
12 imprisonment and \$500 shall be added to the maximum
13 fine for conviction for a misdemeanor.

14 (5) The maximum term of imprisonment and maximum fines
15 prescribed for misdemeanors under the Hawaii Penal
16 Code shall apply to convictions for a petty
17 misdemeanor.

18 § -154 **Review and appeal.** Any order of the director
19 shall be final and conclusive against the owner, user, vendor,
20 or contractor unless the owner, user, vendor, or contractor
21 files with the director a written notice of contest of the
22 order, the abatement period stated in the order, or the penalty



1 stated in the order within twenty days after receipt of such
2 order.

3 The owner, user, vendor, or contractor may petition the
4 director for modification of the abatement requirements in an
5 order. The owner, user, vendor, or contractor shall file said
6 petition no later than the close of the next business day
7 following the date on which abatement is required or under
8 exceptional circumstances and for good cause shown at a later
9 date. The petition for modification may be filed after the
10 twenty-day period for contesting the order has expired where the
11 initial abatement period stated in the order expires after the
12 twenty-day period for filing a notice of contest has run.

13 The director shall issue an order either affirming or
14 modifying the abatement requirement. The director may issue an
15 order modifying the abatement requirement upon a showing by the
16 owner, user, vendor, or contractor of a good faith effort to
17 comply with the abatement requirements of an order and that
18 abatement has not been completed because of factors beyond the
19 owner's, user's, vendor's, or contractor's reasonable control.

20 The director shall advise the appeals board of a notice of
21 contest upon receiving any such notice.



1 The appeals board shall afford an opportunity for a hearing
2 on any notice of contest. Such hearings before the appeals
3 board shall be de novo except where rules and regulations
4 require a prior formal hearing at the authority level, the
5 proceedings of which are required to be transcribed, in which
6 case review before the appeals board shall be confined to the
7 record only.

8 The appeals board may affirm, modify, or vacate the order
9 or continue the matter upon such terms and conditions as may be
10 deemed necessary, or remand the case to the director with
11 instructions for further proceedings or direct such other relief
12 as may be appropriate.

13 **§ -155 Judicial review.** Except where an order has
14 already become final for failure to contest, the decision and
15 order of the appeals board shall be final and conclusive, unless
16 the director or any party to the proceedings before the appeals
17 board obtains a review thereof in the manner provided in chapter
18 91 by instituting proceedings in the circuit court of the
19 circuit in which the boiler, pressure system, amusement ride, or
20 elevator and kindred equipment is situated or such practice,
21 means, method, operation, or process is employed. The hearing
22 on review shall be on the record and the authority shall be



1 deemed a party to any such proceedings. The court shall give
2 precedence to such proceedings over all other civil cases.

3 § -156 **Trade secrets.** Information obtained by the
4 authority containing or revealing a trade secret shall be held
5 confidential and access shall be limited to authorized
6 representatives of the director concerned with carrying out this
7 subpart or when relevant in any proceeding under this subpart.
8 In such proceeding the director, the appeals board, or the court
9 shall issue such orders as may be appropriate to protect the
10 confidentiality of trade secrets.

11 § -157 **Evidence.** No record or determination of any
12 administrative proceeding under this subpart or any statement or
13 report of any kind obtained, received, or prepared in connection
14 with the administration or enforcement of this subpart shall be
15 admitted or used, whether as evidence or as discovery, in any
16 civil action growing out of any matter mentioned in the record,
17 determination, statement, or report other than an action for
18 enforcement or review under this subpart.

19 **PART V. PREVAILING WAGES**

20 § -158 **Definitions.** Whenever used in this part, unless
21 a different meaning clearly appears from the context:



1 "Authority" means the Hawaii construction authority
2 established in section -2.

3 "Basic hourly rate" means the hourly wage paid to a laborer
4 or mechanic for work performed during non-overtime hours, but
5 shall not include the cost to an employer of furnishing fringe
6 benefits whether paid directly or indirectly to the laborer or
7 mechanic as provided in paragraph (7);

8 "Construction" includes alteration, repair, painting and
9 decorating;

10 "Director" means the executive director of the Hawaii
11 construction authority;

12 "Governmental contracting agency" means the State, any
13 county and any officer, bureau, board, commission, or other
14 agency or instrumentality thereof;

15 "Overtime compensation" means compensation based on one and
16 one-half times the laborers or mechanics basic hourly rate of
17 pay plus the cost to an employer of furnishing a laborer or
18 mechanic with fringe benefits as described in paragraph (7);

19 "Wages", "rate of wages", "wage rates", "minimum wages" and
20 "prevailing wages" mean the basic hourly rate and the cost to an
21 employer of furnishing a laborer or mechanic with fringe
22 benefits, including but not limited to health and welfare



1 benefits, vacation benefits, and pension benefits, whether paid
2 directly or indirectly to the laborer or mechanic.

3 **§ -159 Applicability; wages, hours, and other**
4 **requirements.** (a) This part shall apply to every contract in
5 excess of \$2,000 for construction of a public work project to
6 which a governmental contracting agency is a party; provided
7 that this part shall not apply to experimental and demonstration
8 housing developed pursuant to section 46-15 or housing developed
9 pursuant to chapter 201G if the cost of the project is less than
10 \$500,000 and the eligible bidder or eligible developer is a
11 private nonprofit corporation.

12 For the purposes of this subsection:

13 "Contract" includes but is not limited to any agreement,
14 purchase order, or voucher in excess of \$2,000 for construction
15 of a public work project.

16 "Governmental contracting agency" includes any person or
17 entity that causes either directly or indirectly the building or
18 development of a public work.

19 "Party" includes eligible bidders for and eligible
20 developers of any public work and any housing under chapter
21 201G; provided that this subsection shall not apply to any
22 housing developed under section 46-15 or chapter 201G if the



1 entire cost of the project is less than \$500,000 and the
2 eligible bidder or eligible developer is a private nonprofit
3 corporation.

4 "Public work" means any project, including development of
5 any housing pursuant to section 46-15 or chapter 201G, and
6 development, construction, renovation, and maintenance related
7 to refurbishment of any real or personal property, where the
8 funds or resources required to undertake the project are to any
9 extent derived either directly or indirectly from public
10 revenues of the State or any county, or from the sale of
11 securities or bonds whose interest or dividends are exempt from
12 state or federal taxes.

13 **§ -160 Payrolls and payroll records.** (a) Every such
14 contract and the specifications for such contract shall contain
15 a provision that a certified copy of all payrolls shall be
16 submitted weekly to the governmental contracting agency for
17 review. The general contractor shall be responsible for the
18 submission of certified copies of the payrolls of all
19 subcontractors. The certification shall affirm that:

20 (1) The payrolls are correct and complete;



1 (2) The wage rates contained therein are not less than the
2 applicable rates contained in the wage determination
3 decision of the director attached to the contract; and

4 (3) The classifications set forth for each laborer or
5 mechanic conform with the work the laborer or mechanic
6 performed.

7 Any certification discrepancy found by the contracting agency
8 shall be reported to the general contractor and the director to
9 effect compliance.

10 (b) Payroll records for all laborers and mechanics working
11 at the site of the work shall be maintained by the general
12 contractor and the general contractor's subcontractors, if any,
13 during the course of the work and preserved for a period of
14 three years thereafter. The records shall contain the name of
15 each employee, the employee's correct classification, rate of
16 pay, daily and weekly number of hours worked, deductions made
17 and actual wages paid.

18 (c) The contractor shall make payroll records available
19 for examination within ten days from the date of a written
20 request by a governmental contracting agency, director, or any
21 authorized representatives thereof. Any contractor who:



- 1 (1) Fails to make payroll records accessible within ten
2 days;
- 3 (2) Fails to provide information requested for the proper
4 enforcement of this chapter within ten days; or
- 5 (3) Fails to keep or falsifies any record required under
6 this chapter,

7 shall be assessed a penalty as provided in section -163.

8 **§ -161 Termination of work on failure to pay agreed**
9 **wages; completion of work; contract and specifications**
10 **provision.** Every contract and the specifications for such
11 contract shall contain a provision that if the governmental
12 contracting agency finds that any laborer or mechanic employed
13 on the job site by the contractor or any subcontractor has been
14 or is being paid wages at a rate less than the required rate by
15 the contract or the specifications, or has not received the
16 laborer's or mechanic's full overtime compensation, the
17 governmental contracting agency may, by written notice to the
18 contractor, terminate the contractor's right, or the right of
19 any subcontractor, to proceed with the work or with the part of
20 the work in which the required wages or overtime compensation
21 have not been paid and may complete such work or part by
22 contract or otherwise, and the contractor and the contractor's



1 sureties shall be liable to the governmental contracting agency
2 for any excess costs occasioned thereby.

3 **§ -162 Governmental contracting agency responsibilities.**

4 The governmental contracting agency shall:

- 5 (1) Pay or cause to be paid, within sixty days of a
6 determination made by the director, directly to
7 laborers and mechanics or to the director, from any
8 accrued payment withheld under the terms of the
9 contract, any wages or overtime compensation found to
10 be due to laborers or mechanics under the terms of the
11 contract subject to this part, or any penalty
12 assessed;
- 13 (2) Order any contractor to pay, within sixty days of a
14 determination made by the director, any wages or
15 overtime compensation which the contractor, or any of
16 the contractor's subcontractors, should have paid to
17 any laborer or mechanic under any contract subject to
18 this part, or any penalty assessed which the
19 contractor, or any of the contractor's subcontractors,
20 should have paid to the director; and



1 (3) Report to the director any violation of this part, the
2 rules adopted thereunder, or the terms of the contract
3 subject to this part.

4 **§ -163 Investigation; penalties.** (a) The authority may
5 conduct investigations to determine compliance with this part.
6 The authority may enter the job site, examine records of any
7 contractor, either during or after the performance of any
8 contract, or subpoena the records. The authority may also
9 interview employees during working hours on the job.

10 (b) If any contractor interferes with or delays any
11 investigation by the authority, the governmental contracting
12 agency, on receipt of written notice from the director of the
13 interference or delay, shall withhold from the contractor all
14 further payments until the director has notified the
15 governmental contracting agency in writing that the interference
16 or delay has ceased. Interference or delay includes:

17 (1) Failure to provide requested records under section
18 -160;

19 (2) Failure to allow employees to be interviewed during
20 working hours on the job; and

21 (3) Falsification of records required under this part.



1 The authority shall assess a penalty of \$1,000 per project for
2 interference or delay. For each day thereafter that the
3 employer fails to cooperate, the director shall assess a penalty
4 of \$100 per project.

5 **§ -164 Notification of violation.** (a) When the
6 authority, either as a result of a report by a contracting
7 agency or as a result of the authority's own investigation,
8 finds that a violation of this part or of the terms of the
9 contract subject to this part has been committed, the authority
10 shall issue a notification of violation to the contractor or
11 subcontractor involved.

12 (b) A notification of violation shall be final and
13 conclusive twenty days after a copy was mailed to the violator,
14 unless within the twenty-day period the violator files a written
15 notice of appeal with the director.

16 (c) A hearing on the written notice of appeal shall be
17 held by a hearings officer appointed by the director in
18 conformance with chapter 91.

19 Hearings on appeal shall be held within sixty days of the
20 notice of appeal and a decision shall be rendered by the
21 hearings officer within sixty days after the conclusion of the
22 hearing, stating the findings of fact and conclusions of law.



1 The hearings officer may extend the due date for decision for
2 good cause; provided that all parties agree.

3 **§ -165 Violations; penalties.** (a) Where the authority
4 finds that a first violation of this part has been committed,
5 the authority shall assess a penalty equal to ten per cent of
6 the amount of back wages found due or \$25 per offense, whichever
7 is greater.

8 (b) Where the authority finds that a second violation of
9 this part has been committed, whether on the same contract or
10 another, within two years of the first notification of
11 violation, the authority, after proper notice and opportunity
12 for hearing, shall order the person or firm in violation to pay
13 a penalty equal to the amount of back wages found due or \$100
14 for each offense, whichever is greater.

15 (c) Where the authority finds that a third violation of
16 this part has been committed, whether on the same contract or
17 another, within two years of the second notification of
18 violation, the authority, after proper notice and opportunity
19 for hearing, shall order the person or firm in violation:

20 (1) To pay a penalty equal to two times the amount of back
21 wages found due or \$200 for each offense, whichever is
22 greater; and



1 (2) To be suspended from doing any new work on any public
2 work of a governmental contracting agency for a period
3 of three years except as provided in section
4 -166(a)(2). "New work on any public work"
5 includes any public works project in which the
6 suspended person or firm has not begun work at the job
7 site as of the date of the suspension order.

8 (d) A first, second, or third violation refers to each
9 investigation involving one or more projects in which the
10 authority finds that a contractor has failed to comply with this
11 part.

12 (e) For purposes of this section, "offense" means each
13 section of this part under which the contractor is cited;
14 provided that, with respect to prevailing wage and overtime
15 citations under section -169, each employee and each project
16 shall be considered a separate offense.

17 **§ -166 Suspension.** (a) The director shall suspend a
18 person or firm as follows:

19 (1) For a first or second violation, if a person or firm
20 fails to pay wages found due, any penalty assessed, or
21 both, the person or firm shall be immediately
22 suspended from doing any work on any public work of a



1 governmental contracting agency until all wages and
2 penalties are paid in full; and

3 (2) For a third violation, the suspension shall be as
4 prescribed in section -165(c); provided that, if
5 the person or firm continues to violate this part or
6 fails to pay wages found due or any penalty assessed,
7 or both, then the contractor shall immediately be
8 suspended from doing any work on any public work of a
9 governmental contracting agency for a mandatory three-
10 year period. If after the three-year suspension
11 period the wages found due or penalties assessed are
12 still unpaid, the suspension shall remain in force
13 until payment is made in full.

14 (b) The director shall immediately notify the comptroller
15 and the auditor or director of finance of the county of any
16 suspension order.

17 (c) No contract shall be awarded to the person or firm so
18 suspended or to any firm, corporation, partnership, or
19 association in which the person or firm has an interest, direct
20 or indirect, until three years have elapsed from the date of
21 suspension, unless the period of suspension is reduced as herein



1 provided. Any contract awarded in violation of this subsection
2 shall be void.

3 **§ -167 Judicial review.** (a) Any party to an appeal
4 under this part may obtain judicial review of the decision on
5 the appeal in the manner provided in chapter 91.

6 (b) Any suspension or dismissal of any complaint under
7 this part shall be subject to appeal in circuit court by the
8 aggrieved party, under section 91-14 and rule 72 of the Hawaii
9 rules of civil procedure.

10 **§ -168 Liability.** If the accrued payments withheld
11 under the terms of the contract are insufficient to reimburse
12 all the laborers and mechanics for wages or overtime
13 compensation due under this part, and the contractor has failed
14 to pay the wages or overtime compensation, the contractor and
15 the contractor's sureties shall be liable to the laborers and
16 mechanics in the amount of the unpaid wages and overtime
17 compensation due, and in an additional equal amount as
18 liquidated damages. However, any claim for liquidated damages,
19 insofar as the surety or sureties are concerned, shall not be
20 paid until the claims of all other creditors have been
21 satisfied.



1 **§ -169 Civil action.** (a) Action to recover unpaid
2 wages or overtime compensation may be maintained in any court of
3 competent jurisdiction by any one or more laborers or mechanics
4 for and on behalf of oneself or themselves and others similarly
5 situated.

6 (b) The court, in its action and in addition to any
7 judgment awarded to the plaintiff or plaintiffs, shall allow
8 reasonable attorney's fee and costs of the action to be paid by
9 the defendant.

10 (c) It shall be no defense that the laborers and mechanics
11 accepted or agreed to accept less than the required rate of
12 wages or overtime compensation or voluntarily made refunds.

13 (d) When a written request is filed by any laborer or
14 mechanic with the director claiming unpaid wages or overtime
15 compensation under this part, the director, after receiving an
16 assignment from the laborer or mechanic, may bring an action in
17 any court of competent jurisdiction to recover the amount of the
18 claim. The consent of any laborer or mechanic to the bringing
19 of such action by the director, unless the action is dismissed
20 without prejudice on motion of the director, shall constitute a
21 waiver by the laborer or mechanic of any right of action the
22 laborer or mechanic may have under subsection (a). Any amount



1 recovered by the director before suit and accepted by the
2 laborer or mechanic as payment in full shall constitute a waiver
3 of any rights under this chapter.

4 **§ -170 Rules.** Subject to chapter 91, the director shall
5 adopt reasonable rules for determining the prevailing wages,
6 enforcement, administration, and general purposes of this part.
7 These rules shall have the force and effect of law.

8 **§ -171 Application of this part to contracts entered**
9 **into without regard to other laws.** The fact that a contract is
10 or was entered into without regard to chapter 103D, or upon a
11 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage
12 basis, or without advertising for proposals, shall not render
13 this part inapplicable to the contract, if otherwise this part
14 would be applicable.

15 **§ -172 Effect on other laws.** Neither this part nor any
16 rule or other action under this part shall supersede or impair
17 any minimum wage or maximum hour law or any authority otherwise
18 granted by law to provide for the establishment of specific
19 minimum or other wage rates.

20 **§ -173 Suspension during emergency.** During a national
21 emergency declared by the President or the Congress of the
22 United States, or a state of emergency declared by the governor,



1 the governor, by executive order in writing, may suspend this
2 part.

3 **§ -174 Inspection.** (a) If work performed in accordance
4 with this part, in excess of eight hours in any day or on a
5 Saturday, Sunday, or legal holiday of the State, requires
6 inspection by the State or any political subdivision thereof,
7 the inspection shall be conducted by the State or a political
8 subdivision, as the case may be.

9 (b) In such event, it shall be lawful, notwithstanding any
10 other provision of law to the contrary, for the State or any
11 political subdivision thereof to alter the normal working hours
12 of public employees, as may be needed for these purposes, and to
13 pay these public employees for all hours worked in excess of
14 eight hours per day or on a Saturday, Sunday, or legal holiday
15 of the State.

16 **§ -175 Submission of collective bargaining agreement to**
17 **the director.** (a) Parties to a collective bargaining agreement
18 covering classes of laborers or mechanics, which are included in
19 the prevailing wage determinations made pursuant to this part,
20 shall submit a copy of the agreement to the director within five
21 days after execution of the agreement.



1 (b) Except as otherwise provided herein, the terms of
2 agreement shall be kept confidential by the director. The
3 director may disclose terms of the agreement to any federal or
4 state agency for the purpose of enforcing this part.

5 (c) Any contract for the furnishing of commodities or
6 services by an unlicensed, unregistered, or uncertified person
7 shall be void and shall prevent such person from recovering the
8 contract price or the reasonable value thereof."

9 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) The board of acupuncture, board of public
12 accountancy, board of barbering and cosmetology, boxing
13 commission, board of chiropractic examiners, [~~contractors~~
14 ~~license board,~~] board of dental examiners, [~~board of~~
15 ~~electricians and plumbers, elevator mechanics licensing board,~~
16 ~~board of professional engineers, architects, surveyors, and~~
17 ~~landscape architects,~~] board of massage therapy, board of
18 medical examiners, motor vehicle industry licensing board, motor
19 vehicle repair industry board, board of examiners in
20 naturopathy, board of nursing, board of examiners in optometry,
21 pest control board, board of pharmacy, board of physical
22 therapy, board of psychology, board of private detectives and



1 guards, real estate commission, board of veterinary examiners,
2 board of speech pathology and audiology, and any board,
3 commission, program, or entity created pursuant to or specified
4 by statute in furtherance of the purpose of this section
5 including but not limited to section 26H-4, or chapters 484,
6 514B, and 514E shall be placed within the department of commerce
7 and consumer affairs for administrative purposes."

8 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
9 amended as follows:

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

11 "(a) No department of the State other than the attorney
12 general may employ or retain any attorney, by contract or
13 otherwise, for the purpose of representing the State or the
14 department in any litigation, rendering legal counsel to the
15 department, or drafting legal documents for the department;
16 provided that the foregoing provision shall not apply to the
17 employment or retention of attorneys:

18 (1) By the public utilities commission, the labor and
19 industrial relations appeals board, and the Hawaii
20 labor relations board;

21 (2) By any court or judicial or legislative office of the
22 State;



- 1 (3) By the legislative reference bureau;
- 2 (4) By any compilation commission that may be constituted
- 3 from time to time;
- 4 (5) By the real estate commission for any action involving
- 5 the real estate recovery fund;
- 6 (6) By the contractors license board for any action
- 7 involving the contractors recovery fund;
- 8 (7) By the trustees for any action involving the travel
- 9 agency recovery fund;
- 10 (8) By the office of Hawaiian affairs;
- 11 (9) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and 485;
- 13 (10) As grand jury counsel;
- 14 (11) By the Hawaiian home lands trust individual claims
- 15 review panel;
- 16 (12) By the Hawaii health systems corporation or any of its
- 17 facilities;
- 18 (13) By the auditor;
- 19 (14) By the office of ombudsman;
- 20 (15) By the insurance division;
- 21 (16) By the University of Hawaii;
- 22 (17) By the Kahoolawe island reserve commission;



1 (18) By the division of consumer advocacy;

2 (19) By the office of elections;

3 (20) By the campaign spending commission;

4 (21) By the Hawaii tourism authority, as provided in
5 section 201B-2.5; [~~or~~]

6 (22) By the Hawaii construction authority, as provided in
7 section -3; or

8 [~~(22)~~](23) By a department, in the event the attorney
9 general, for reasons deemed by the attorney general
10 good and sufficient, declines, to employ or retain an
11 attorney for a department; provided that the governor
12 thereupon waives the provision of this section.

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

14 "(c) Every attorney employed by any department on a full-
15 time basis, except an attorney employed by the public utilities
16 commission, the labor and industrial relations appeals board,
17 the Hawaii labor relations board, the office of Hawaiian
18 affairs, the Hawaii health systems corporation, the department
19 of commerce and consumer affairs in prosecution of consumer
20 complaints, insurance division, the division of consumer
21 advocacy, the University of Hawaii, the Hawaii tourism authority
22 as provided in section 201B-2.5, the Hawaii construction



1 authority as provided in section -3, the Hawaiian home lands
2 trust individual claims review panel, or as grand jury counsel,
3 shall be a deputy attorney general."

4 SECTION 5. Section 480-2, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) No person other than a consumer, the attorney
7 general, the director of the Hawaii construction authority, or
8 the director of the office of consumer protection may bring an
9 action based upon unfair or deceptive acts or practices declared
10 unlawful by this section."

11 SECTION 6. Chapters 104, 396, 397, 436B, 444, 448E, 448H,
12 and 464, Hawaii Revised Statutes, are repealed.

13 SECTION 7. All officers and employees of the departments
14 of commerce and consumer affairs and labor and industrial
15 relations whose functions are transferred by this Act shall be
16 transferred with their functions and shall continue to perform
17 their regular duties upon the transfer, subject to the state
18 personnel laws and this Act.

19 No officer or employee of the State having tenure who
20 is transferred by this Act shall suffer any loss of
21 salary, seniority, prior service credit, vacation, sick
22 leave, or other employee benefit or privilege as a



1 consequence of this Act, and such officer or employee may
2 be transferred or appointed to a civil service position
3 without the necessity of examination; provided that the
4 officer or employee possesses the minimum qualifications
5 for the position to which transferred or appointed; and
6 provided that subsequent changes in status may be made
7 pursuant to applicable civil service and compensation
8 laws.

9 An officer or employee of the State who does not have
10 tenure and who may be transferred or appointed to a civil
11 service position as a consequence of this Act shall become
12 a civil service employee without any loss of salary,
13 seniority, prior service credit, vacation, sick leave, or
14 other employee benefits or privileges and without the
15 necessity of examination; provided that the officer or
16 employee possesses the minimum qualifications for the
17 position to which transferred or appointed.

18 In the event that an office or position held by an officer
19 or employee having tenure is abolished, the officer or employee
20 shall not thereby be separated from public employment, but shall
21 remain in the employment of the State with the same pay and
22 classification and shall be transferred to some other office or



1 position for which the officer or employee is eligible under the
2 personnel laws of the State as determined by the head of the
3 department or the governor.

4 SECTION 8. All appropriations, records, equipment,
5 machines, files, supplies, contracts, books, papers, documents,
6 maps, and other personal property heretofore made, used,
7 acquired, or held by the departments of commerce and consumer
8 affairs and labor and industrial relations relating to the
9 functions transferred to the Hawaii construction authority by
10 this Act shall be transferred with the functions to which they
11 relate.

12 SECTION 9. Upon the repeal of chapters 104, 396, 436B,
13 444, 448E, 448H, and 464, Hawaii Revised Statutes, the revisor
14 of statutes shall substitute all references to "chapter 104,
15 396, 436B, 444, 448E, 448H, and 464" or any specific section or
16 part of chapters 104, 396, 436B, 444, 448E, 448H, and 464, as
17 the case may be, with the corresponding chapter, part, or
18 section number of the new chapter enacted by this Act as
19 appropriate.

20 SECTION 10. If any provision of this Act, or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 11. This Act does not affect rights and duties
5 that matured, penalties that were incurred, and proceedings that
6 were begun, before its effective date.

7 SECTION 12. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so much
9 thereof as may be necessary for fiscal year 2006-2007 for the
10 establishment of the Hawaii construction authority.

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

13 SECTION 13. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 14. This Act shall take effect on July 1, 2006.

16

INTRODUCED BY: _____