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# A BILL FOR AN ACT

RELATING TO OUT-OF-STATE OFFICES.

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

1           SECTION 1. Prompted by concerns over the management of  
2 federal grant funds and the State's 2005 trade mission to China  
3 and Korea, the legislature requested that the office of the  
4 auditor investigate the department of business, economic  
5 development, and tourism, including the department's out-of-  
6 state offices. In early 2010, the auditor released Report No.  
7 10-01, *Investigation of Specific Issues of the Department of*  
8 *Business, Economic Development & Tourism.*

9           The legislature finds that in the auditor's attempt to  
10 track the reallocation of \$50,000 appropriated for community-  
11 based economic development into the Chinese office bank  
12 accounts, the existence of federal funds related to the federal  
13 market development cooperator program under the International  
14 Trade Administration of the United States Department of Commerce  
15 were found. In addition, certain aspects of the out-of-state  
16 offices were found to merit closer examination and the scope of  
17 the investigation was refocused.

1           In conclusion, the auditor's report found that the  
2 department has demonstrated a troubling pattern of nondisclosure  
3 regarding the 2005 China mission and provided misleading and  
4 inaccurate information regarding the department's market  
5 development cooperator program award. In addition, in two of  
6 the three operational areas examined, internal controls were  
7 found to be seriously lacking, which created opportunities for  
8 fraud and abuse.

9           The purpose of this Act is to implement recommendations of  
10 auditor's Report. No. 10-01, regarding the department of  
11 business, economic development, and tourism out-of-state  
12 offices.

13           SECTION 2. Chapter 201, part VI, Hawaii Revised Statutes,  
14 is amended by adding a new section to be appropriately  
15 designated and to read as follows:

16           "§201-       **Audits; frequency.**   Beginning July 1, 2010, the  
17 department shall conduct at least every two years a financial  
18 audit of the out-of-state offices. The department shall submit  
19 the audit report and recommendations to the legislature no later  
20 than twenty days prior to the convening of the regular session  
21 following the year in which the audit is conducted."

1 SECTION 3. Section 201-85, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§201-85 Exemptions.** The department is authorized to hire  
4 employees necessary to staff its out-of-state offices subject to  
5 chapter 76 and legislative appropriations. The department may  
6 also appoint such other employees exempt from chapter 76 as may  
7 be necessary to administer the affairs of its out-of-state  
8 offices. The initial appointment shall not exceed three years,  
9 during which time the department shall submit to the legislature  
10 a request for approval prior to continuation of the position.  
11 The department shall set the duties, responsibilities, salaries,  
12 holidays, vacations, leaves, hours of work, and working  
13 conditions for these employees. Subject to the approval of the  
14 director of [~~budget and~~] finance, the department may be exempted  
15 from the following state laws only to the extent necessary for  
16 the conduct of its business in operating out-of-state offices:

- 17 (1) Sections 36-27 and 36-30, relating to special fund  
18 transfers and reimbursements to the general fund;  
19 (2) Chapter 36, relating to management of state funds;  
20 (3) Chapter 38, relating to deposits of public funds;  
21 [~~(4) Chapter 40, relating to audit and accounting, except~~  
22 ~~that the department shall comply with section 40-81;~~

1       ~~(5)]~~ (4) Chapter 76, relating to civil service;  
2       ~~[(6) Chapter 77, relating to compensation;~~  
3       ~~(7)]~~ (5) Section 78-1, relating to public employment,  
4               except when expressly hiring personnel subject to  
5               section 78-1; and  
6       ~~[(8)]~~ (6) Section 171-30, relating to acquisition of real  
7               property.

8               All moneys necessary for the establishment and operation of  
9 out-of-state offices shall be allocated by the legislature  
10 through appropriations out of the state general fund. The  
11 department shall include in its budgetary request for each  
12 upcoming fiscal period, the amounts necessary to effectuate the  
13 purposes of this section."

14               SECTION 4. (a) The department of business, economic  
15 development, and tourism shall, beginning February 1, 2010,  
16 cease expending or transferring any of its remaining federal  
17 reimbursement marketing development cooperator program funds  
18 until it consults with the legislature and the department of  
19 budget and finance to determine whether the funds should remain  
20 in the possession of the department or be deposited in the state  
21 treasury.

1 (b) The department shall review and update the policies  
2 and procedures of the out-of-state offices to:

3 (1) Ensure that personnel engaged in both submitting and  
4 reviewing expenditures by out-of-state offices are  
5 proficient in reading and writing in both English and  
6 the official language of the country or jurisdiction  
7 where the out-of-state office is located;

8 (2) Include specific reporting and enforcement criteria  
9 regarding the purpose for expenditures made by out-of-  
10 state offices and ensure the policies are diligently  
11 enforced;

12 (3) Immediately adopt the trade mission policy of the  
13 United States Department of Commerce to ensure future  
14 department trade missions provide sufficient written  
15 criteria and transparency, and to restrict the  
16 government's influence in the use of private funds to  
17 a minimum; and

18 (4) Provide additional ethics training to employees of  
19 out-of-state offices.

20 (c) The department shall submit a report on the status of  
21 the marketing development cooperator program funds under  
22 subsection (a), and a copy of the updated policies procedures

1 under subsection (b) to the legislature no later than June 30,  
2 2010.

3 SECTION 5. (a) The state procurement office shall review  
4 all fiscal materials related to the 2005 trade mission, in  
5 consultation with the Pacific and Asian Affairs Council and the  
6 Hawaii Pacific Export Council, to determine whether the  
7 department of business, economic development, and tourism  
8 directly influenced or engaged in the expenditure of the mission  
9 funds and was subject to procurement laws.

10 (b) The state procurement office shall submit a report on  
11 its findings and recommendations to the legislature no later  
12 than September 30, 2010.

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon approval.

16

**Report Title:**

Out-of-State Offices; Audit; Policies and Procedures; State Procurement Office

**Description:**

Beginning July 1, 2010, requires at least every two years an audit of the department of business, economic development, and tourism out-of-state offices; repeals exemption from audit and accounting requirements for out-of-state offices; beginning February 1, 2010, requires the department to cease expending or transferring any remaining federal reimbursement marketing development cooperator program funds; requires the department to update policies and procedures of the out-of-state offices; requires the state procurement office to review financial records of the 2005 trade mission; requires reports to the legislature. (SD1)

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