

CHAPTER 36
MANAGEMENT OF STATE FUNDS

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Cross References

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"PART I. ADMINISTRATION

§36-1 Responsibility for moneys. The director of finance shall be responsible for the safekeeping of all moneys paid into the treasury, and for the proper disbursement and appropriation thereof, pursuant to the laws; and the director shall be liable therefor on the director's official bond, provided that in case of the larceny or embezzlement of any moneys, by any officer of the director's department, or other persons, the director shall be allowed to give that fact, and that the director had no collusive knowledge thereof, in evidence, and the establishment of these facts shall discharge the director from responsibility. [CC 1859, §473; RL 1925, §1247; RL 1935, §2206; RL 1945, §5807; RL 1955, §132-7; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-1; am L 1972, c 6, §1; gen ch 1985]

Cross References

Generally, see §26-8.

" **§36-2 Keep full records.** The director of finance shall keep, or cause to be kept, in appropriate books, a clear, distinct, and full record of all the transactions and business of the director's department. [CC 1859, §471; RL 1925, §1245; RL 1935, §2204; RL 1945, §5805; RL 1955, §132-5; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-2; gen ch 1985]

" **§36-2.5 Full disclosure of entities receiving state awards.** (a) In this section, unless the context indicates otherwise:

"Entity":

- (1) Includes, whether for profit or nonprofit:
 - (A) A corporation;
 - (B) An association;
 - (C) A partnership;
 - (D) A limited liability company;
 - (E) A limited liability partnership;
 - (F) A sole proprietorship;
 - (G) Any other legal business entity;
 - (H) Any other grantee or contractor that is not excluded by [paragraph] (2) or (3); and

- (I) Any state or county entity;
- (2) On and after January 1, 2010, includes any subcontractor or subgrantee; and
- (3) Does not include:
 - (A) An individual recipient of state public assistance; or
 - (B) A state employee.

"Searchable website" means a website that allows the public to:

- (1) Search state awards by any identifying element required by subsection (b);
- (2) Ascertain through a single search the total amount of funding awarded to an entity by state award that is a grant, subgrant, loan, awards cooperative agreement, or other form of financial assistance, by fiscal year;
- (3) Ascertain through a single search the total amount of funding awarded to an entity by a state award that is a contract, subcontract, purchase order, task order, or delivery order, by fiscal year; and
- (4) Download data included in paragraph (1) included in the outcome from searches.

"State award" means state financial assistance and expenditures that:

- (1) Are grants, subgrants, loans, awards, cooperative agreements, other forms of financial assistance, contracts, subcontracts, purchase orders, task orders, and delivery orders;
 - (2) Do not include single transactions less than \$25,000; and
 - (3) Before October 1, 2009, do not include credit card transactions.
- (b) Not later than January 1, 2009, the department of budget and finance, in accordance with this section, shall establish, implement, and maintain a single searchable website, accessible by the public at no cost, that includes for each state award:

- (1) The name of the entity receiving the award;
- (2) The amount of the award;
- (3) Information on the award, including transaction type, funding agency, program source, and an award title descriptive of the purpose of each funding action;
- (4) The full address of the entity receiving the award and the primary location of performance under the award;
- (5) A unique identifier of the entity receiving the award and of the parent entity of the recipient, if the entity is owned by another entity; and

- (6) Any other relevant information specified by the department of budget and finance.

The website shall include data for fiscal year 2008 and each fiscal year thereafter.

The director of finance is authorized to designate one or more state agencies to participate in the development, establishment, maintenance, and support of the website; provided that the department of accounting and general services, in collaboration with the department of budget and finance, is responsible for collecting and posting on the website, the information that is required by this subsection. In the initial designation, or in subsequent instructions and guidance, the director may specify the scope of the responsibilities of each agency.

State agencies shall comply with the instructions and guidance issued by the director of finance and shall provide appropriate assistance to the director upon request, so as to assist the director in ensuring the existence and operation of the website.

- (c) The website established under this section:
 - (1) Shall provide an opportunity for the public to provide input about the utility of the site and recommendations for improvements;
 - (2) Shall be updated not later than thirty days after the award of any state award requiring a posting; and
 - (3) Shall provide for separate searches for the state awards;

provided that, notwithstanding any provision under this section to the contrary, except for information that is disclosed in the aggregate, information on any state award that is tax related and authorized under title 14 shall be disclosed pursuant to taxpayer disclosure provisions under title 14.

(d) Not later than July 1, 2008, the director of finance shall establish and implement a pilot program to:

- (1) Test the collection and accession of data about subgrants and subcontracts; and
- (2) Determine how to implement a subaward reporting program across the State, including:
 - (A) A reporting system under which the entity issuing a subgrant or subcontract is responsible for fulfilling the subaward reporting requirement; and
 - (B) A mechanism for collecting and incorporating agency and public feedback on the design and utility of the website.

The pilot program shall terminate not later than January 1, 2010.

(e) Based on the pilot program, not later than January 1, 2010, the director of finance:

- (1) Shall ensure that data regarding subawards are disclosed in the same manner as data regarding other state awards; and
- (2) Shall ensure that the method for collecting and distributing data about subawards:
 - (A) Minimizes burdens imposed on state award recipients and subaward recipients;
 - (B) Allows state award recipients and subaward recipients to allocate reasonable costs for the collection and reporting of subaward data as indirect costs; and
 - (C) Establishes cost-effective requirements for collecting subaward data under block grants, formula grants, and other types of assistance to local governments.

For subaward recipients that receive state funds through county governments, the director of finance may extend the deadline for ensuring that data regarding such subawards are disclosed in the same manner as data regarding other state awards for a period not to exceed eighteen months, if the director determines that compliance would impose an undue burden on the subaward recipient.

(f) Any entity that demonstrates to the director of finance that the gross income, from all sources, for the entity did not exceed \$300,000 in the previous tax year of that entity shall be exempt from the requirement to report subawards under subsection (d), until the director determines that the imposition of such reporting requirements will not cause an undue burden on the entity.

(g) Nothing in this section shall prohibit the department of budget and finance from including through the website established under this section access to data that is publicly available in any other state database.

(h) The director of finance shall submit to the legislature not later than twenty days prior to the convening of each regular session an annual report regarding the website established under this section.

Each report shall include:

- (1) Data regarding the usage and public feedback on the utility of the site (including recommendations for improving data quality and collection);
- (2) An assessment of the reporting burden placed on state award and subaward recipients; and
- (3) An explanation of any extension of the subaward reporting deadline, if applicable.

The director of finance shall make each report publicly available on the website established under this section.

(i) Nothing in this section shall require the disclosure of classified information. [L 2007, c 272, §1; am L 2009, c 164, §1]

" **§36-3 Fiscal agents.** The director of finance may appoint, with the approval of the governor, such fiscal agents as may be necessary and expedient to facilitate the sale, purchase, and redemption of the bonds of the State and the payment of interest thereon. The director may authorize and empower the fiscal agents, for and on behalf of the State, to receive and receipt for moneys realized from the sale of the bonds and to pay out moneys for the redemption or purchase thereof and for the payment of interest thereon, and to receive receipts for all moneys so paid out. Moneys received by the fiscal agents from the sale of bonds on behalf of the State shall not, for a period of fifteen days after the sale of bonds, be considered as deposits within the meaning of chapter 38, and moneys placed with the fiscal agents for the purpose of purchase or redemption of bonds and coupons shall not be considered as deposits within the meaning of chapter 38.

The director may also appoint, with the approval of the governor, such mainland depositories as may be necessary or expedient for the safekeeping of securities owned by the State, and may authorize and empower these depositories, for and on behalf of the State, to pay for, receive delivery of, and receipt for, securities purchased by the State, to receive interest payments, to deliver and receive payment for securities sold or redeemed by the State and to perform all other acts in connection with these securities which are customarily performed by depositories. Moneys received by the depositories on behalf of the State from the sale or redemption of securities, or as interest, shall not for a period of fifteen days after the receipt thereof by the depository be considered as deposits within the meaning of chapter 38, and moneys placed with the depositories for the purpose of purchase of securities shall not be considered as deposits within the meaning of chapter 38. This paragraph may be applied with respect to any securities deposited in the director's custody or control by any agency, government or private, with the approval of and at the expense of the agency, which expenditures, in the case of a government agency, may be made from any funds available for its current expenses. Funds of any government agency awaiting investment, also funds received by the depository on behalf of the government agency from the sale or redemption of securities or

as interest for a period of fifteen days after receipt thereof, shall be deemed held by the director or in the treasury of the State within the meaning of any requirement of law, and any moneys, though required to be held in the treasury, shall not, under the foregoing circumstances, be considered as deposits within the meaning of chapter 38.

All appointments made under this section may be revoked by the director at any time. [L 1907, c 102, §1; am L 1927, c 233, §1; RL 1925, §1243; RL 1935, §2202; am L 1939, c 51, §1; RL 1945, §5803; am L 1945, c 59, §1(2); RL 1955, §132-3; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-3]

" **§36-4 Instruct subordinates.** The director of finance shall, from time to time, instruct the officers of the director's department in relation to their duties and business. [CC 1859, §472; RL 1925, §1246; am imp L 1932 2d, c 40; RL 1935, §2205; RL 1945, §5806; RL 1955, §132-6; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-4; gen ch 1985]

" **§36-5 Responsibility for drafts on treasury.** Except as otherwise provided, the head of each department shall be responsible for the correctness of all drafts or orders drawn by him upon the treasury, in pursuance of appropriations, and for the proper disbursements of all appropriations for his department. The responsibility of the director of finance, in these cases, shall be limited to the payment of the aggregate amount of appropriations made by the legislature. [CC 1859, §477; RL 1925, §1251; RL 1935, §2210; RL 1945, §5811; RL 1955, §132-11; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-5]

" **§36-6 Report to legislature.** The director of finance shall make an annual report to the legislature of the transactions and business of the director's department, showing the revenue and expenditure for the preceding year, and giving a full and detailed estimate of the revenue and expenditure for the succeeding year. [CC 1859, §470; RL 1925, §1244; RL 1935, §2203; RL 1945, §5804; RL 1955, §132-4; am L Sp 1959 1st, c 13, §2; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-6; gen ch 1985]

" **§36-7 Director's certificates, evidence.** The director of finance may certify, under the seal of the director's

department, copies of vouchers and other documents deposited in the director's office; and copies so certified shall be as valid evidence in any court as the originals. [CC 1859, §476; RL 1925, §1250; RL 1935, §2209; RL 1945, §5810; RL 1955, §132-10; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-7; gen ch 1985]

" **§36-8 Director may administer oaths.** The director of finance may administer all necessary oaths connected with the duties of the director's department. [CC 1859, §475; RL 1925, §1249; RL 1935, §2208; RL 1945, §5809; RL 1955, §132-9; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-8; gen ch 1985]

Case Notes

Cited: 13 H. 85.

"PART II. INVESTMENTS; TRANSFERS

§36-21 Short-term investment of state moneys. (a) The director of finance may invest any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director's judgment the action will not impede or hamper the necessary financial operations of the State in:

- (1) Any bonds or interest-bearing notes or obligations:
 - (A) Of the State (including state director of finance's warrant notes issued pursuant to chapter 40);
 - (B) Of the United States;
 - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
- (2) Federal Farm Credit System notes and bonds;
- (3) Federal Agricultural Mortgage Corporation notes and bonds;
- (4) Federal Home Loan Bank notes and bonds;
- (5) Federal Home Loan Mortgage Corporation bonds;
- (6) Federal National Mortgage Association notes and bonds;
- (7) Student Loan Marketing Association notes and bonds;
- (8) Tennessee Valley Authority notes and bonds;
- (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof or repurchase agreements fully collateralized by any such bonds or securities;

- (10) Securities of a money market mutual fund that is rated AAA, or its equivalent, by a nationally recognized rating agency or whose portfolio consists of securities that are rated as first tier securities by a nationally recognized statistical rating organization as provided in 17 Code of Federal Regulations section 270.2a-7;
 - (11) Federally insured savings accounts;
 - (12) Time certificates of deposit;
 - (13) Certificates of deposit open account;
 - (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
 - (15) Student loan resource securities including:
 - (A) Student loan auction rate securities;
 - (B) Student loan asset-backed notes;
 - (C) Student loan program revenue notes and bonds; and
 - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues;
issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
 - (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
 - (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;
- provided that for authorized investments with stated maturity dates, the investment, as well as the underlying securities of those investments, are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation.

(b) Except with respect to an early withdrawal penalty on an investment permitted by this section, the amount of such penalty being mutually agreed at the time of acquisition of such

investment, no investment permitted by this section shall require or may in the future require payments by the State, whether unilateral, reciprocal, or otherwise, including margin payments, or shall bear interest at a variable rate which causes or may cause the market price of such investment to fluctuate; provided that such limitation shall not apply to money market mutual funds which:

- (1) Invest solely in:
 - (A) Direct and general obligations of the United States of America; or
 - (B) Obligations of any agency or instrumentality of the United States of America the payment of the principal and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America;
- (2) Are rated at the time of purchase "AAAm-G" or its equivalent by Standard & Poor's Ratings Group; and
- (3) Are open-end management investment companies regulated under the Investment Company Act of 1940, as amended, which calculate their current price per share pursuant to Rule 2a-7 (17 Code of Federal Regulations section 270.2a-7) promulgated under such act.

(c) Furthermore, the State shall not acquire any investment or enter into any agreement in connection with the acquisition of any investment or related to any existing investment held by the State, which would require or may in the future require any payment by the State, whether unilateral, reciprocal, or otherwise, such as swap agreements, hedge agreements, or other similar agreements. For purposes of this section, a swap or hedge payment is any payment made by the State in consideration or in exchange for a reciprocal payment by any person, such as a variable rate payment in exchange for a fixed rate payment, a fixed rate payment in exchange for a variable rate payment, a payment when a cap or a floor amount is exceeded, or other similar payment. [L 1945, c 59, §1; am L 1947, c 244, §1; RL 1955, §132-12; am L 1959, c 119, §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-21; am L 1977, c 105, §1; am L 1982, c 155, §1; gen ch 1985; am L 1988, c 78, §1; am L 1993, c 107, §1; am L 1995, c 109, §1; am L 1996, c 117, §1; am L 1997, c 47, §1; am L 1998, c 119, §1 and c 273, §1; am L 1999, c 160, §23; am L 2000, c 26, §1; am L 2001, c 39, §1; am L 2009, c 79, §§31, 34(4); am L 2010, c 127, §2; am L 2015, c 35, §50]

Attorney General Opinions

Interest from moneys deposited in qualified depository credited to special fund. Interest on other short term investments credited to general fund. Att. Gen. Op. 85-22.

" **§36-22 Loans for federal-aid projects.** (a) The director of finance may make loans to any state agency from the general, special, and revolving funds of the State for the purpose of enabling the State to prepay the costs reimbursable by the federal government on federal aid projects, when the director determines that:

- (1) There are any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director's judgment the action will not impede or hamper the necessary financial obligations of the State.
- (2) The project is authorized in compliance with section 103-7.
- (3) Federal aid in the form of reimbursable funds has been committed to the project in an amount sufficient to repay the principal on the loan.
- (4) Federal reimbursement is expected to be received within a reasonable period of time after the loan is made.

(b) In addition to any other conditions that the director of finance may impose, any loan made pursuant to this section shall be subject to the following conditions:

- (1) The full amount of the loan must be repaid to the fund from which the loan was made upon final settlement of accounts with the participating federal agency.
- (2) The term of the loans shall not exceed one calendar year from the time of the loan; provided, at the option of the director, the loans or the balances thereof may be renewed annually.

(c) The director may, in the director's discretion, require payment of interest on any loan made, the rate of interest not to exceed that which the State could have realized if it invested the same in time certificates of deposit.

(d) The director shall have the option at any time to recall the loan and recover the outstanding amount of the loan plus interest due, if any. [L 1965, c 130, §2; Supp, §132-12.5; HRS §36-22; gen ch 1985]

" **§36-23 Purchase of county bonds.** The director of finance, with the approval of the governor, may purchase bonds issued by

the several counties in conformity with the law, or loan money to the counties on the security of the bonds out of any funds that may be available for such purposes, or accept the bonds as payment for property sold to the counties, whenever they may deem it for the public interest so to do. [L 1907, c 66, §1; RL 1925, §1252; RL 1935, §2211; RL 1945, §5812; RL 1955, pt of §132-13; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-23]

" **§36-24 Loans to state and county agencies.** When there are moneys in the general, special, or revolving funds of the State which in the director of finance's judgment are in excess of the amounts necessary for the immediate state requirements, the director may make temporary loans therefrom to the employees retirement system, the board of water supply of the city and county of Honolulu, the Hawaii housing finance and development corporation, or to any state or county department, board, commission, officer, authority, or agency authorized under the laws of the State to issue bonds, or to the several counties, if in the director's judgment the action will not impede or hamper the necessary financial operations of the State. The loans to any county shall not at any time be more than \$100,000 over the amount of tax moneys which the director estimates will be paid by the director to the county during the balance of the calendar year, provided that in the case of the city and county of Honolulu the loans may be made up to \$250,000 over the amount of tax moneys which the director estimates will be paid by the director to the city and county during the balance of the calendar year. The loans to other organizations shall not at any time exceed the amount of moneys which the director estimates the organization will be in receipt of, from bond funds or other sources, during the twelve months following the loan. The loans shall be without interest. Loans to counties shall be made only upon the request of the county treasurer approved by the county council. All loans shall be repaid upon the demand of the director. In the absence of any demand, loans to counties shall be repaid before June 30 of the following year, pursuant to the following procedure: from time to time as tax moneys which are payable to the borrowing county are deposited into the treasury, the director shall retain therefrom sufficient moneys to cover the amounts of all loans, and shall reimburse the general, special, or revolving funds therewith. [L 1945, c 133, §1; am L 1947, c 167, pt of §1; am L 1949, c 342, pt of §1; RL 1955, pt of §132-13; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-24; gen ch 1985; am L 1987, c 337,

§3; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

"Council" substituted for "board of supervisors".

Cross References

Transfer for revenue bond purposes, see §39-72.

Attorney General Opinions

Agencies eligible for loans; amount. Att. Gen. Op. 63-24.

" **§36-25 Transfers to loan fund; interest.** (a) When there are excess moneys, as provided in section 36-21, the director of finance may make temporary transfers of the moneys to the loan fund for the temporary uses thereof. The total of the transfers to the loan fund shall not exceed the sum of unissued general obligation bonds of the State as authorized by the legislature. The general, special, or revolving funds shall be reimbursed from the proceeds of bond sales upon the eventual issuance and sale of the bonds.

(b) The director of finance may, in the director's discretion, require payment of interest on any moneys, including loan fund moneys, used to fund any expenditure as provided in any act of the legislature for which general obligation bonds have been authorized but unissued, the debt service of which is required to be repaid from revenues, user taxes or a combination of both, of the public undertaking, improvement or system. Interest shall be paid by the public undertaking, improvement or system which incurred such expenditures and shall be computed on the aggregate amount of moneys used by that public undertaking, improvement or system on a monthly basis as determined and reported by the comptroller of the State; provided that the rate of interest shall not exceed that which the State could have realized if it invested the same in time certificates of deposit. Income derived from the temporary use of moneys as provided herein shall be a realization of the general fund. Upon the eventual issuance and sale of the bonds, debt service shall be paid by the public undertaking, improvement or system as provided by law. [L 1947, c 167, pt of §1; am L 1949, c 342, pt of §1; RL 1955, pt of §132-13; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-25; am L 1978, c 116, §1; gen ch 1985]

Cross References

Transfer for revenue bond purposes, see §39-72.

" **§36-26 Transfer of unrequired funds for redemption of serial bonds.** The director of finance, with the approval of the governor, may transfer all balances of moneys received from the sale of state bonds for state improvements on deposit in loan funds, which are no longer required for the purposes for which the state bonds were issued, from the loan funds to the general fund in case the moneys were received from the sale of serial bonds. The amounts so transferred shall be used for the redemption of the serial bonds as they become due. The amounts transferred to the general fund shall be deemed to be appropriated for the purpose of the redemption of serial bonds as they become due. [L 1941, c 100, §1; RL 1945, §5930; RL 1955, §132-15; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §36-26]

" **§36-27 Transfers from special funds for central service expenses.** (a) Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) *[Repealed July 1, 2023. L 2013, c 157, §9(1).]* State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Funds of the employees' retirement system created by section 88-109;
- (9) Hawaii hurricane relief fund established under chapter 431P;
- (10) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (11) Tourism special fund established under section 201B-11;

- (12) Universal service fund established under section 269-42;
- (13) Emergency and budget reserve fund under section 328L-3;
- (14) Public schools special fees and charges fund under section 302A-1130;
- (15) Sport fish special fund under section 187A-9.5;
- [(16)] Neurotrauma special fund under section 321H-4;
- [(17)] Glass advance disposal fee established by section 342G-82;
- [(18)] Center for nursing special fund under section 304A-2163;
- [(19)] Passenger facility charge special fund established by section 261-5.5;
- [(20)] Solicitation of funds for charitable purposes special fund established by section 467B-15;
- [(21)] Land conservation fund established by section 173A-5;
- [(22)] Court interpreting services revolving fund under section 607-1.5;
- [(23)] Trauma system special fund under section 321-22.5;
- [(24)] Hawaii cancer research special fund;
- [(25)] Community health centers special fund;
- [(26)] Emergency medical services special fund;
- [(27)] Rental motor vehicle customer facility charge special fund established under section 261-5.6;
- [(28)] Shared services technology special fund under section 27-43;
- [(29)] Automated victim information and notification system special fund established under section 353-136;
- [(30)] Deposit beverage container deposit special fund under section 342G-104;
- [(31)] [*Repealed December 31, 2017. L 2016, c 60, §4.*] Hospital sustainability program special fund under [section 346G-4];
- [(32)] [*Repealed December 31, 2017. L 2016, c 59, §3.*] Nursing facility sustainability program special fund under [section 346F-4];
- [(33)] Hawaii 3R's school improvement fund under section 302A-1502.4;
- [(34)] After-school plus program revolving fund under section 302A-1149.5; and
- [(35)] Civil monetary penalty special fund under section 321-30.2,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate

or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.

(b) Notwithstanding any other law to the contrary, the director shall deposit three per cent of all moneys collected pursuant to subsection (a) into the shared services technology special fund established pursuant to section 27-43. [L 1955, c 247, §1; RL 1955, §132-16; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; am L 1964, c 34, §1A; am L 1967, c 281, §2; HRS §36-27; am L 1969, c 269, §1; am L 1970, c 115, §1; am L 1976, c 123, §1; am L 1986, c 123, §1; am L 1989, c 368, §4; am L 1993, c 280, §44; am L Sp 1993, c 7, §14; am L 1994, c 106, §1, c 136, §1, c 137, §1, and c 232, §4; am L 1995, c 161, §5 and c 211, §§3, 17; am L Sp 1995, c 11, §6; am L 1996, c 89, §3 and c 123, §1; am L 1997, c 123, §1, c 124, §3, and c 216, §§3, 13; am L 1998, c 115, §6, c 142, §2, c 156, §4, and c 311, §3; am L 1999, c 98, §2, c 129, §2, c 135, §1, c 155, §2, c 163, §8, c 194, §1, and c 304, §3; am L 2000, c 205, §3 and c 297, §23; am L 2001, c 163, §2, c 239, §3, and c 270, §4; am L 2002, c 16, §4, c 39, §2, c 86, §1, c 160, §3, c 176, §6, and c 253, §4; am L 2003, c 177, §2, c 179, §1, and c 198, §4; am L 2004, c 93, §2 and c 101, §1; am L 2005, c 156, §2 and c 184, §2; am L 2006, c 75, §3, c 305, §3, and c 316, §4; am L 2007, c 9, §2 and c 290, §7; am L 2008, c 226, §3; am L 2009, c 79, §§27, 34(3); am L 2010, c 200, §3; am L 2011, c 84, §3; am L 2012, c 190, §2; am L 2013, c 100, §2, c 157, §3 and c 228, §1; am L 2014, c 123, §3, c 124, §§3, 7(3) and c 232, §2; am L 2015, c 69, §3, c 70, §§3, 4, c 71, §2, and c 237, §14]

Note

L 2015, c 121 does not specifically amend this section but §171-172(d), enacted by L 2015, c 121, §2, exempts the Turtle Bay conservation easement special fund from the central service expenses of this section.

" **§36-28 Transfers from state highway fund for central service expenses.** Except as hereinafter provided, and notwithstanding any other law to the contrary, there shall be deducted from time to time by the director of finance, for the

purpose of defraying the prorated estimate of central service expenses of government in relation to the state highway fund created by section 248-8, five per cent of all receipts and deposits in the fund, after deducting therefrom any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the current year, from which receipts or deposits no deduction of five per cent has been previously made, which deductions shall be transferred to the general fund of the State and become general realizations of the State. The state department of transportation shall cooperate with the director of finance in effecting these transfers. [L 1957, c 69, §2; am L Sp 1959 2d, c 1, §§14, 26; am L 1963, c 114, §1; Supp, §132-16.5; HRS §36-28]

" **[§36-28.5] Transfer from airport revenue fund.** Any law to the contrary notwithstanding, there shall be deducted from time to time by the director of finance for the purpose of defraying the prorated estimate of central service expenses of government in relation to the airport revenue fund five per cent of all receipts and deposits in the airport revenue fund after deducting therefrom any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the current year, from which receipts or deposits no deduction of five per cent has previously been made. The deductions shall be transferred to the general fund of the State and become general realizations of the State. For the purpose of this section, the term "any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the current year" shall include:

- (1) Amounts which are so pledged, charged or encumbered;
- (2) Amounts otherwise required to be applied to the payment of principal of and interest on revenue bonds or other revenue obligations; and
- (3) Amounts required by law to be paid from the airport revenue fund into the general fund of the State to reimburse the general fund for bond requirements for general obligation bonds issued for airport purposes.

The director of transportation shall cooperate with the director of finance in effecting the transfer. [L 1970, c 14, §1]

Cross References

Airport revenue fund, see §248-8.

" **§36-29 Transfer from harbor special fund.** Any other law to the contrary notwithstanding, there shall be deducted from time to time by the director of finance for the purpose of defraying the prorated estimate of central service expenses of government in relation to the harbor special fund five per cent of all receipts and deposits in the harbor special fund after deducting therefrom any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the current year, from which receipts or deposits no deduction of five per cent has previously been made. The deductions shall be transferred to the general fund of the State and become general realizations of the State. For the purposes of this section, the term "any amount pledged, charged, or encumbered for the payment of bonds or interest thereon during the current year" shall include:

- (1) Amounts which are so pledged, charged or encumbered;
- (2) Amounts otherwise required to be applied to the payment of principal of and interest on revenue bonds or other revenue obligations;
- (3) Amounts required to be paid into a separate special fund for the payment of principal of and interest on revenue bonds or other revenue obligations payable from the second separate special fund; and
- (4) Amounts required by law to be paid from the harbor special fund into the general fund of the State to reimburse the general fund for bond requirements for general obligation bonds issued for harbor purposes.

The second separate special fund maintained by deposits from the harbor special fund shall not be deemed to be a special fund within the meaning of section 36-27 or section 36-30. The director of transportation shall cooperate with the director of finance in effecting the transfer. [L 1955, c 247, §3; RL 1955, §132-18; am L Sp 1959 2d, c 1, §§14, 26; am L 1963, c 114, §1; am L 1967, c 221, §7; HRS §36-29]

Cross References

Harbor special fund, see §266-19.

" **[\$36-29.5] Transfer from boating special fund.** Notwithstanding any law to the contrary, including section 36-27, there shall be deducted from time to time by the director of finance for the purpose of defraying the prorated estimate of central service expenses of government in relation to the boating special fund, five per cent of all receipts and deposits in the boating special fund after subtracting therefrom any

amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the time period for which the deduction is to be made. The deductions shall be transferred to the general fund of the State and shall become general realizations of the State.

For the purpose of this section, the term "any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon" shall include:

- (1) Amounts that are so pledged, charged, or encumbered; and
- (2) Amounts required by law to be paid from the boating special fund into the general fund of the State to reimburse the general fund for bond requirements for general obligation bonds issued for boating facility purposes.

The chairperson of the board of land and natural resources shall cooperate with the director of finance in effecting the transfer. [L 2000, c 47, §1]

Cross References

Boating special fund, see §248-8.

- " **§36-30 Special fund reimbursements for departmental administrative expenses.** (a) Each special fund, except the:
- (1) Special out-of-school time instructional program fund under section 302A-1310;
 - (2) School cafeteria special funds of the department of education;
 - (3) Special funds of the University of Hawaii;
 - (4) *[Repealed July 1, 2023. L 2013, c 157, §9(1).]* State educational facilities improvement special fund;
 - (5) Special funds established by section 206E-6;
 - (6) Aloha Tower fund created by section 206J-17;
 - (7) Funds of the employees' retirement system created by section 88-109;
 - (8) Hawaii hurricane relief fund established under chapter 431P;
 - (9) Convention center enterprise special fund established under section 201B-8;
 - (10) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
 - (11) Tourism special fund established under section 201B-11;
 - (12) Universal service fund established under section 269-42;

- (13) Emergency and budget reserve fund under section 328L-3;
- (14) Public schools special fees and charges fund under section 302A-1130;
- (15) Sport fish special fund under section 187A-9.5;
- [(16)] Neurotrauma special fund under section 321H-4;
- [(17)] Center for nursing special fund under section 304A-2163;
- [(18)] Passenger facility charge special fund established by section 261-5.5;
- [(19)] Court interpreting services revolving fund under section 607-1.5;
- [(20)] Trauma system special fund under section 321-22.5;
- [(21)] Hawaii cancer research special fund;
- [(22)] Community health centers special fund;
- [(23)] Emergency medical services special fund;
- [(24)] Rental motor vehicle customer facility charge special fund established under section 261-5.6;
- [(25)] Shared services technology special fund under section 27-43;
- [(26)] [*Repealed December 31, 2017. L 2016, c 59, §§2, 3.*] Nursing facility sustainability program special fund established pursuant to [section 346F-4];
- [(27)] Automated victim information and notification system special fund established under section 353-136;
- [(28)] [*Repealed December 31, 2017. L 2016, c 60, §§3, 4.*] Hospital sustainability program special fund under [section 346G-4]; and
- [(29)] Civil monetary penalty special fund under section 321-30.2,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.

(b) Administrative expenses shall include:

- (1) Salaries;
- (2) Maintenance of buildings and grounds;
- (3) Utilities;
- (4) General office expenses; and
- (5) Implementation of information technology policies developed by the chief information officer and the information technology steering committee pursuant to section 27-43.

(c) The pro rata share of each special fund shall be that proportion of the administrative expenses of the department, including those paid from all special funds administered by the department, which the expenditures of the special fund bear to the total expenditures of the department; provided that in

determining the amount to be charged to each special fund for its pro rata share:

- (1) Credit shall be given for any administrative expenses paid from the special fund concerned; and
- (2) Other adjustments shall be made as necessary to achieve an equitable apportionment.

(d) The director of finance may determine the amount to be charged to each special fund and may cause the amounts to be transferred to the general fund as reimbursements.

(e) No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all departmental administrative expenses assessments made during the preceding fiscal year. [L 1955, c 247, §2; RL 1955, §132-17; am L 1957, c 69, §1; am L 1963, c 193, §38; am L 1964, c 34, §1B; am L 1967, c 281, §3; HRS §36-30; am L 1969, c 269, §2; am L 1970, c 115, §2; am L 1976, c 123, §2; am L 1986, c 123, §2; am L 1989, c 309, §4 and c 368, §5; am L 1993, c 280, §45; am L 1994, c 136, §2, c 137, §2, and c 232, §5; am L 1995, c 161, §6 and c 211, §§4, 17; am L Sp 1995, c 11, §7; am L 1996, c 89, §4, c 123, §2, and c 262, §28; am L 1997, c 123, §2, c 124, §4, and c 216, §§4, 13; am L 1998, c 115, §7 and c 156, §5; am L 1999, c 98, §§3, 13(3), c 129, §§3, 22(1), (3), c 135, §§2, 7(1), c 155, §§3, 7(1), c 163, §§9, 17, c 194, §1, and c 304, §§4, 10(1); am L 2000, c 205, §4 and c 297, §24; am L 2001, c 163, §3, c 239, §4, and c 270, §5; am L 2002, c 39, §3, c 86, §2, c 160, §4, and c 253, §5; am L 2003, c 177, §3, c 179, §2, c 198, §5, and c 213, §15; am L 2004, c 101, §2; am L 2005, c 184, §3; am L 2006, c 75, §4, c 305, §4, and c 316, §5; am L 2007, c 9, §3 and c 290, §8; am L 2008, c 226, §4; am L 2009, c 79, §28; am L 2009, c 79, §§28, 34(3); am L 2010, c 200, §4; am L 2012, c 156, §§3, 5, c 190, §3, and c 217, §§3, 5; am L 2013, c 100, §3, c 141, §2, c 142, §3, and c 157, §4; am L 2014, c 123, §§2, 4 and c 124, §§2, 4, 7; am L 2015, c 69, §§2, 3, c 70, §§2, 3, 5, c 71, §3, and c 237, §5]

Note

L 2015, c 121 does not specifically amend this section but §171-172(d), enacted by L 2015, c 121, §2, exempts the Turtle Bay conservation easement special fund from the departmental administrative expenses of this section.

" **§36-31 Transfers from special funds, limited or suspended, when.** (a) If any transfer contemplated by sections 36-27, 36-29, and 36-30 might, if effected, result in loss to the State or to any special fund affected, of any federal funds, or would be

in violation of the Constitution or any law of the United States, the governor shall issue an executive order setting forth the facts and suspending the application of sections 36-27, 36-29, and 36-30 to the special fund affected in whole or in part, or limiting the transfer, as shall be necessary to avoid the loss of federal funds or to avoid the unconstitutionality or violation. The transfer shall not be made except to the extent, if at all, which will not result in the loss of federal funds or violation.

(b) If any transfer contemplated by section 36-28 might, if effected, cause an expenditure out of the state highway fund in excess of moneys available in such fund, result in loss to the State or to the state highway fund or any federal funds, or would be in violation of the Constitution or any law of the United States, the governor shall issue an executive order setting forth the facts and suspending the application of section 36-28 to the state highway fund in whole or in part, or limiting the transfer, as shall be necessary to avoid the expenditure of moneys in excess of moneys available in the state highway fund, the loss of federal funds or to avoid the unconstitutionality or violation. The transfer shall not be made except to the extent, if at all, which will not result in the loss of federal funds or violation.

(c) Effective July 1, 1995, transfers for central services expenses shall be limited to the current fiscal year; provided that this subsection shall not apply to assessments made but not collected for prior years. [L 1955, c 247, §7; RL 1955, §132-19; HRS §36-31; am L 1989, c 287, §1; am L Sp 1995, c 15, §3]

" **§36-32 State educational facilities improvement special fund.** [*Section repealed July 1, 2023. L 2013, c 157, §9(1).*]

(a) There is created in the treasury of the State the state educational facilities improvement special fund. The special fund shall be used solely to plan, design, acquire lands for, and to construct public school facilities and to provide equipment and technology infrastructure to improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects authorized by the legislature for fiscal years ending prior to July 1, 2016, and shall be subject to sections 37-31, and 37-33 through 37-40. Appropriations or authorizations from the

special fund shall be expended by the superintendent of education.

(b) There is established within the state educational facilities improvement special fund a separate account, to be known as the lease payments for schools account, for lease payments required by financing agreements entered into prior to July 1, 2013, by the department of education pursuant to this section and sections 37D-2 and 302A-1506. The lease payments for schools account shall be funded by legislative appropriations and expended by the superintendent of education. Expenditures from the lease payments for schools account shall be exempt from chapters 103 and 103D and are restricted to lease payments on new schools included within the department of education's current six year capital improvement programs and for which:

- (1) The legislature adopted a concurrent resolution directing the department of education to:
 - (A) Build a new school in a specific geographic area using the design-build method; and
 - (B) Pursue the use of a financing agreement to build the new school; or
- (2) The legislature appropriated planning and design funds and specified that the remainder of the costs necessary to complete the project are eligible for funding through a financing agreement;

provided that any school to which the legislature has appropriated planning and design funds prior to July 1, 2007, and for which a private developer is willing to enter into a lease-purchase agreement with the department of education within twelve months of July 1, 2007, is exempt from the requirements of paragraphs (1) and (2).

(c) The department of education shall annually post on the department's website information related to a financial statement of the special fund, the lease payments for schools account established under subsection (b), and the status of projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. [L 1989, c 368, §2; am L 1993, c 364, §24; am L 1994, c 272, §32; am L 2005, c 189, §2; am L 2007, c 220, §2; am L 2013, c 157, §§1, 6; am L 2014, c 232, §3]

" **§36-35 State educational facilities repair and maintenance account.** (a) There is created in the state general fund under EDN 400 (school support) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use

solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education, appropriations or authorizations from the account shall be expended by the superintendent of education.

(b) The department of education shall review the existing condition of school facilities and establish specific vision plans for each school complex based on current repair and maintenance requirements and overall repair and maintenance priorities.

(c) Criteria used to establish current repair and maintenance requirements may include:

- (1) The remaining useful life of the school facility and its major components;
- (2) The adjusted life of the school facility and its major components after repair or maintenance; and
- (3) The current and future repair and maintenance requirements of the school facility and its components based on established industry standards or product manufacturer recommendations;

provided that demolition of a facility or any of its components may be recommended if the cost of the repairs do not justify the adjusted life or remaining life of the facility.

(d) Criteria used to establish overall repair and maintenance requirements may include:

- (1) Whether a school facility will continue to be used for the next twenty-five years; and
- (2) Whether a repair or maintenance project is required:
 - (A) For health or safety reasons;
 - (B) To comply with legal mandates;
 - (C) To comply with current building codes; or
 - (D) For preventive maintenance reasons;

provided that in developing criteria, consideration shall be given to school facilities that were more than twenty-five years of age on July 1, 2000.

(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from section 464-4; provided that:

- (1) The superintendent of education shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices;

- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the superintendent of education;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the superintendent of education shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other means to improve communications and accelerate repairs while preserving the quality of the repairs.

(f) The superintendent of education shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The superintendent of education shall develop project specifications based on generic specifications or prescriptive specifications using standard commercial products. Prescriptive specifications may include a qualified product list.

For the purposes of this subsection:

"Generic specification" means a technical specification that is written in a clear, unambiguous, and nonrestrictive manner establishing:

- (1) Design, performance, or functional requirements to identify the work to be performed; and
- (2) Material standards to be used on a project.

"Prescriptive specification" means a technical specification:

- (1) Establishing that the required work to be performed is written in a clear, unambiguous, and nonrestrictive manner; and
- (2) Listing manufacturers or products that are acceptable for use on the project.

"Standard commercial product" means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.

This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.

(g) The superintendent of education shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of repair and maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. Expenditures for repair and maintenance projects undertaken pursuant to this section shall be posted electronically on the Internet by the department of education within thirty days of each project's completion.

(h) This section shall be repealed on July 1, 2020. [L 2001, c 316, pt of §2; am L 2002, c 115, §2; am L 2003, c 188, §4; am L 2004, c 51, §50 and c 216, §6; am L 2005, c 189, §3; am L 2012, c 133, §3]

" **§36-36 School physical plant operations and maintenance account; maintenance schedule.** (a) There is created in the state general fund under EDN 400 (school support) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education, appropriations or authorizations from the account shall be expended by the superintendent of education.

(b) Every school facility newly constructed or renovated after June 30, 2001, shall include a preventive maintenance schedule prepared by the architect or engineer of the facility or the capital improvement project. The maintenance schedule shall include:

- (1) A description of each major component of a facility or capital improvement project and the component's maintenance;
- (2) The starting date of each maintenance project;
- (3) The current, future, and any recurring cost of each maintenance project;
- (4) The useful life of the facility or capital improvement project;

- (5) The present value of the cost of normally scheduled maintenance over the useful life of the facility;
- (6) The adjusted life of the facility or capital improvement project; and
- (7) The replacement date of the facility or capital improvement project.

(c) Moneys in physical plant operations and maintenance account shall be allocated according to departmental school districts based on:

- (1) Estimated preventive and scheduled maintenance costs that reflect the age and condition of existing school facilities in the State in the following categories: re-roofing, electrical, athletic facilities, re-surfacing, equipment, exterior painting, plumbing, structural integrity, termite ground treatment, termite tent treatment, interior painting, air conditioning change out, and re-carpeting; and
- (2) Budgeted recurring maintenance, health and safety requirements, and legal mandates.

(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from section 464-4; provided that:

- (1) The superintendent of education shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, subject to chapter 103D;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the superintendent of education;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

(e) The department shall annually post on its website information related to a financial statement of the account and the status of school repair and preventive maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. The department

of education shall also post the following information on its website and update the information quarterly:

- (1) Expenditures for school repair and preventive maintenance projects undertaken pursuant to this section, shall be posted within thirty days of each project's completion; and
- (2) A list of each school's repair and maintenance needs to be undertaken. [L 2001, c 316, pt of §2; am L 2003, c 188, §5; am L 2004, c 51, §51 and c 216, §7; am L 2012, c 133, §4; am L 2014, c 232, §4]

" **§36-41 Energy retrofit and performance contracting for public facilities.** (a) All agencies shall evaluate and identify for implementation energy efficiency retrofitting through performance contracting. Agencies that perform energy efficiency retrofitting may continue to receive budget appropriations for energy expenditures at an amount that shall not fall below the pre-retrofitting energy budget but shall rise in proportion to any increase in the agency's overall budget for the duration of the performance contract or project payment term.

(b) Any agency may enter into a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility or facilities. An energy performance contract may include but shall not be limited to financing options such as leasing, lease-purchase, financing agreements, third-party joint ventures, guaranteed-savings plans, or energy service contracts, or any combination thereof; provided that in due course the agency may receive title to the energy system being financed. Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal

- responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
 - (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
 - (4) The term of any energy performance contract entered into pursuant to this section shall not exceed twenty years;
 - (5) Any contract entered into shall contain the following annual allocation dependency clause:
"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made";
 - (6) Any energy performance contract may provide that the agency shall ultimately receive title to the energy system being financed under the contract;
 - (7) Any energy performance contract shall provide that total payments shall not exceed total savings; and
 - (8) For any guaranteed-savings plan:
 - (A) The payment obligation for each year of the contract, including the year of installation, shall be guaranteed by the private sector person or company to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee, at the option of the agency, shall be a bond or insurance policy, or some other guarantee determined sufficient by the agency to provide a level of assurance similar to the level provided by a bond or insurance policy; and
 - (B) In the event that the actual annual verified savings are less than the annual amount guaranteed by the energy service company, the energy service company, within thirty days of being invoiced, shall pay the agency, or cause

the agency to be paid, the difference between the guaranteed amount and the actual verified amount.

(d) For purposes of this section:

"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.

"Energy performance contract" means an agreement for the provision of energy services and equipment, including but not limited to building or facility energy conservation enhancing retrofits, water saving technology retrofits, and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases. Energy conservation retrofits also include energy saved off-site by water or other utility conservation enhancing retrofits.

"Facility" means a building or buildings or similar structure, including the site owned or leased by, or otherwise under the jurisdiction of, the agency.

"Financing agreement" shall have the same meaning as in section 37D-2.

"Guaranteed-savings plan" means an agreement under which a private sector person or company undertakes to design, install, operate, and maintain improvements to an agency's facility or facilities and the agency agrees to pay a contractually specified amount of verified energy cost savings.

"Verified" means the technique used in the determination of baseline energy use, post-installation energy use, and energy and cost savings by the following measurement and verification techniques: engineering calculations, metering and monitoring, utility meter billing analysis, computer simulations, mathematical models, and agreed-upon stipulations by the customer and the energy service company. [L 1986, c 72, §1; am L 1989, c 275, §1; am L Sp 1993, c 8, §54; am L 1997, c 192, §1; am L 2000, c 158, §1; am L 2004, c 98, §1]