

SESSION LAWS
OF
HAWAII
PASSED BY THE
THIRTEENTH STATE LEGISLATURE

REGULAR SESSION
1985

Convened on Wednesday, January 16
and
Adjourned sine die on Monday, April 22

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Honolulu, Hawaii

AUTHORITY

Section 23G-13, Hawaii Revised Statutes, provides as follows:

Publishing of session laws. As soon as possible after the close of each session of the legislature, the revisor of statutes shall prepare for publication all laws duly enacted at such session, arranged in the order of their becoming law, together with a suitable index and tables showing what general statutes have been affected by such session laws.

PREFACE

This volume contains all the laws of the Regular Session of 1985. The text of the laws as enacted is followed except for palpable clerical errors, which have been corrected; and the text is printed in full except for laws repealing existing statutes.

As authorized by HRS §23G-16.5, amendatory legislation contains brackets (designating matter deleted from statutes) or underscoring (designating new matter added). However, the text is edited to omit the bracketed matter for HRS sections repealed in their entirety and to delete the underscoring from new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Samuel B. K. Chang
Revisor of Statutes

Honolulu, Hawaii
July 24, 1985

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1985**

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**Session Laws of Hawaii
Passed By The
Thirteenth State Legislature
Regular Session
1985**

ACT 1

H.B. NO. 2

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,475,524, or so much thereof as may be necessary, for defraying any and all session and non-session expenses of the Senate up to and including June 30, 1986, including but not limited to the 1985 regular session, Thirteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1985 and 1986 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,213,695, or so much thereof as may be necessary, for defraying any and all session and non-session expenses of the House of Representatives up to and including June 30, 1986, including but not limited to the 1985 regular session, Thirteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1985 and 1986 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1985 and 1986 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 1985 and 1986 regular sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 15, 1986, the Senate and the House of Representatives shall have their accounts audited and a full report of such audit shall be presented to the Senate and to the House of Representatives of the Legislature convening on January 15, 1986.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provision of section 78-15, Hawaii Revised Statutes, or by any other general

ACT 2

statute. Until otherwise prescribed by law, the expenses of such member shall be \$65 a day and authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,662,012 to the office of the legislative auditor for the following expenses: (a) the sum of \$1,333,000, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor during the fiscal year 1985-1986; (b) the sum of \$179,012, or so much thereof as may be necessary, for defraying the expenses of the office of the state ethics commission during the fiscal year 1985-1986; (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1985-1986, for (1) performing special studies, (2) improving capabilities for planning, programming and budgeting, (3) fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives, (4) legislative studies and for contractual services for such studies, and (5) such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,437,125, or so much thereof as may be necessary, to the legislative reference bureau for defraying the expenses of the bureau during the fiscal year 1985-1986, including equipment relating to computer systems programming and operations.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$380,350, or so much thereof as may be necessary, to the office of the ombudsman for defraying the expenses of the office during the fiscal year 1985-1986.

SECTION 9. As of the close of business on June 30, 1986, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 10. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 11. This Act shall take effect upon its approval.

(Approved February 6, 1985.)

ACT 2

H.B. NO. 269

A Bill for an Act Relating to Housing Loan and Mortgage Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part II, of chapter 356, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"§356-202 Owner-occupancy requirement. (a) An eligible borrower shall utilize the dwelling unit purchased under this part as the eligible borrower's permanent and primary residence.

(b) From time to time, the authority may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification

in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved March 28, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 3

H.B. NO. 271

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 359G-9.3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A dwelling unit purchased from the authority shall be occupied by the purchaser at all times[.] during the ten-year restriction period set forth in section 359G-9.2(a).

(b) [Violation] From time to time the authority may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section 359G-9.2(a)(1)[.] or 359G-9.2(a)(2), as applicable.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved March 28, 1985.)

ACT 4

H.B. NO. 1360

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Legislature finds that publicly held Hawaii corporations should be permitted to restrict or qualify cumulative voting by provision in their articles of incorporation and/or bylaws, to discourage the election of a director or directors who would exclusively represent a special stockholder or group of stockholders, and to encourage the election of directors who would represent all stockholders in their deliberations.

SECTION 2. Section 416-74, Hawaii Revised Statutes, is amended to read as follows:

“**§416-74 Cumulative voting.** If not less than forty-eight hours prior to the time fixed for any annual meeting, or prior to the time fixed for any special meeting to be held as provided in section 416-73, or prior to the time fixed for any other special meeting to be held in lieu of the annual meeting for the election of directors, any stockholder or stockholders or member or members of the

ACT 4

corporation deliver to the president, vice-president, secretary, or treasurer of the corporation a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each stockholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the stockholder or member multiplied by the number of directors to be elected at the meeting, or in the case of a nonprofit corporation each member shall have a number of votes equal to the number of directors to be elected at the meeting; each stockholder or member shall be entitled to cumulate [his] the votes of said stockholder or member and give all thereof to one nominee or to distribute [his] the votes of said stockholder or member in such manner as the stockholder or member determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of association or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of association or bylaws[.]; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the directors, which vacancies may be filled in such manner as may be provided in the articles of association or bylaws.”

SECTION 3. Act 167, Session Laws of Hawaii 1983, is amended by amending section -33 of section 1 to read as follows:

“§ -33 **Voting of shares.** Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

Shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by [his] a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders delivers to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting; each shareholder shall be entitled to cumulate [his] the votes of said shareholder and give all thereof to one nominee or to distribute

[his] the votes of said shareholder in such manner as the shareholder determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws[.]; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the directors, which vacancies may be filled in such manner as may be provided in the articles of incorporation or bylaws.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

Shares held by a personal representative may be voted by [him,] that individual, either in person or by proxy, without a transfer of such shares into [his] that individual's name. Shares standing in the name of a trustee may be voted by [him,] the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held [by him] without a transfer of such shares into [his] said trustee's name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into [his] the receiver's name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 9, 1985.)

ACT 5

S.B. NO. 19

A Bill for an Act Relating to Export of Fruits, Vegetables, Nuts, and Coffee.

Be It Enacted by the Legislature of the State of Hawaii:

ACT 6

SECTION 1. Section 147-22, Hawaii Revised Statutes, is amended to read as follows:

"§147-22 Rules. The department shall have the necessary powers to carry out and effectuate the purposes of this part, including the following:

To establish, prescribe, modify, or alter, by rules, [which shall have the force and effect of law,] such grades, standards, grade labels, and classifications as shall be the minimum requirements for fresh and processed agricultural commodities destined for shipment by commercial exporters to points outside the State; provided that the provisions of such grades, standards, grade labels, and classifications shall not excuse failure to comply with the provisions of the federal and state food, drug, and cosmetic acts. The department in establishing such rules shall consult with appropriate state and federal agencies and with any appropriate industry or trade organization. The standards, grades, grade labels, and [classification] classifications so established shall be on the basis of what the department may deem best suited to the agricultural, horticultural, or other interests of the State; provided that the minimum requirements for the grades, standards, grade labels, and classifications so established for processed agricultural commodities shall not be higher than that of any standardized product which is sanitary and which has been demonstrated to be a commercially-acceptable product of the class to which it belongs and for which a market has been established; provided further that different minimum requirements may be applied to different styles of processed agricultural commodities; and provided further that any processed pineapple product, in which the fruit ingredient is at least ninety-five per cent pineapple in compliance with the provisions of the federal and state food, drug, and cosmetic acts, may be exported from the State."

SECTION 2. Section 147-23, Hawaii Revised Statutes, is amended to read as follows:

"§147-23 Prohibited acts. No commercial exporter shall ship any fresh or processed agricultural commodities to points outside the State unless such products meet the quality [and], condition, and labeling requirements of the rules adopted under this part."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 6

S.B. NO. 62

A Bill for an Act Relating to Mental Health and Substance Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A service area board shall be established to advise each service area center. The board shall consist of [fifteen] nine members appointed by the governor, who shall serve for a term to be determined by the governor. After the initial appointees, the governor shall fill each vacancy on a board by appointing a member from a list of four persons submitted by that board. The members of

the board shall be service area residents and service area providers with a majority being residents and nonproviders of mental health or other health services.

The board members shall elect a chairperson. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the board.”

SECTION 2. Section 334-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) The department shall specifically:
- (1) Perform statewide assessments of the need for prevention, treatment, and rehabilitation services in the areas of mental or emotional disorders and substance abuse;
 - (2) [Utilize geographical service areas for the delivery of services in the areas of mental or emotional disorders and substance abuse. These areas shall be defined by catchment boundaries existing as of June 30, 1984.] Adopt rules pursuant to chapter 91 for establishing the number and boundaries of the geographical service areas for the delivery of services in the areas of mental or emotional disorders and substance abuse. Each statewide four-year plan shall include a review of the effectiveness of the geographical service areas in promoting accessibility and continuity of appropriate care to all residents of that geographical area;
 - (3) Establish a service area center in each geographical service area that shall be the focal point for the development, delivery, and coordination of services in that area;
 - (4) Ensure statewide and community-based planning for the ongoing development and coordination of the service delivery system as guided by needs assessment data and performance related information;
 - (5) Establish standards and rules for psychiatric facilities and their licensing, where applicable;
 - (6) Establish standards and rules for services in the areas of mental health and substance abuse treatment, including assurances of the provision of minimum levels of accessible service to persons of all ages, ethnic groups, and geographical areas in the State;
 - (7) Ensure community involvement in determining the service delivery arrangements appropriate to each community of the State;
 - (8) Cooperate with public and private health, education, and human service groups, agencies, and institutions in establishing a coordinated system to meet the needs of persons with mental or emotional disorders and substance abuse difficulties;
 - (9) Evaluate and monitor all services in the fields of mental health and substance abuse where such services are supported fully or in part by state resources;
 - (10) Promote and conduct research, demonstration projects, and studies concerned with the nature, prevention, intervention, and consequences of mental or emotional disorders and substance abuse;
 - (11) Keep records, statistical data, and other information as may be necessary in carrying out the functions of the mental health system and this chapter;
 - (12) Advocate patients’ rights in all psychiatric facilities in the State and investigate any grievances submitted to the department by any

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- patient in a psychiatric facility, except as provided in section 334E-2(d). The department shall establish rules and procedures for the purpose of this paragraph within one year after January 1, 1985, and post the rules in a conspicuous manner and accessible place;
- (13) Promote and conduct a systematic program of accountability for all services provided, funds expended, and activities carried out under its direction or support in accordance with sound business, management, and scientific principles;
 - (14) Coordinate mental health resources in each service area by the presentation of a mental health systems service plan incorporating the planning of each service area. The service area center and the service area board, in collaboration with private and public agencies serving their population, shall submit recommendations for the statewide four-year plan, including needs assessment, program planning, resource development, priorities for funding, monitoring, and accountability activities;
 - (15) Oversee and coordinate service area programs and provide necessary administrative and technical assistance to assist service area programs in meeting their program objectives; and
 - (16) Provide staffing to the state council and service area boards to assist in the performance of their functions.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 7

S.B. NO. 72

A Bill for an Act Relating to Drug Abuse and Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[]§329-2[]~~ **Hawaii advisory commission on drug abuse and controlled substances; number; appointment.** There shall be established a state advisory commission on drug abuse and controlled substances hereinafter called the commission, consisting of fifteen members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. The commission shall elect its ~~[chairman.]~~ chairperson. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission.

The commission shall be a part of the ~~[office of the governor]~~ department of health for administrative purposes, as provided for in section 26-35.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 8

S.B. NO. 110

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 359G-9.2, Hawaii Revised Statutes is amended by amending subsection (a) to read as follows:

“(a) [The] Except for dwelling units which are financed under a federally subsidized mortgage program, the following restrictions shall apply to the transfer of a dwelling unit purchased from the authority, whether on fee simple or leasehold property:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the authority shall have the first option to purchase the unit and property or lease at a price which shall not exceed the sum of:
 - (A) The original cost to the purchaser;
 - (B) The cost of any improvements added by the purchaser; and
 - (C) Simple interest on the [purchasers'] purchaser's equity in the property at the rate of seven per cent a year.

The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage.

If by outright purchase, the authority shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In such cases, the amount to be paid to the purchaser by the authority shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the authority the sum of:
 - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the authority;
 - (B) Any subsidy made by the authority in the acquisition, development, construction, and sale of the unit, and any other amount expended by the authority not counted as cost under section 359G-8 but charged to the dwelling unit by good accounting practice as determined by the authority whose

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books shall be prima facie evidence of the correctness of the cost; and

- (C) Interest on the subsidy and any other amount expended at the rate of seven per cent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that if any proposed sale or transfer will not generate an amount sufficient to pay the authority the sum as computed under paragraph (2) above the authority shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1) above.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 9

S.B. NO. 191

A Bill for an Act Relating to the Board of Dental Examiners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

“(b) The board of dental examiners shall establish and administer a restorative technique examination to all qualified applicants under section 448-9.5. [The examination shall consist of preparation and restorative procedures in gold foil and amalgam on a special typodont model.] In administering the examination the State shall consider current trends in dental education. No applicant shall be permitted to take the practical examination under subsection (a) unless the applicant has passed the restorative technique examination. The restorative technique examination fee, together with all other fees or charges in this chapter or in rules adopted by the board, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 10

S.B. NO. 195

A Bill for an Act Relating to the Board of Registration of Professional Engineers, Architects, Surveyors, and Landscape Architects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 464-8, Hawaii Revised Statutes, is amended to read:

“§464-8 Qualifications for registration. No person shall be eligible for registration as a professional engineer, architect, land surveyor or landscape architect unless:

- (1) The person is the holder of an unexpired certificate of registration issued to the person by any jurisdiction, domestic or foreign, in which the requirements for registration at the time the person was first registered were of a standard satisfactory to the board [of registration of professional engineers, architects, surveyors, and landscape architects]; provided, this paragraph shall be only applicable to professional engineering, architecture and landscape architecture and provided, that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written or oral examination, or both, prescribed by the board and designed to test the holder’s knowledge, skill, and competency in the profession for which registration is desired; or
- (2) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering or landscape architectural curriculum of four years or more, all as the case may be; and also has had [three] four years of full-time lawful experience in engineering or three years of full-time lawful experience in landscape architecture work, as the case may be, of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has also successfully passed a written or oral examination, or both, prescribed by the board and designed to test the person’s knowledge, skill, and competency in the profession for which registration is desired; or
- (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering technology curriculum of four years or more, all as the case may be, and also has had eight years of full-time lawful experience in engineering work, as the case may be, of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has also successfully passed a written or oral examination, or both, prescribed by the board and designed to test the person’s knowledge, skill, and competency in the profession of engineering; or
- [(3)] (4) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a¹ pre-landscape architecture or arts and science curriculum of four years or more; and has also had five years of full-time lawful experience in landscape architectural work of a character satisfactory to the board, and has also successfully passed a professional written or oral examination, or both, prescribed by the board and designed to test the person’s knowledge, skill, and competency in the profession of landscape architecture; or
- [(4)] (5) The person has had twelve years of full-time lawful experience in engineering or landscape architecture work as the case may be, of a character satisfactory to the board, or part-time experience which

the board finds to be the equivalent thereof; and has also successfully passed a written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession for which registration is desired; or

- [(5)] (6) (A) The person holds a masters degree in architecture from an approved institution of higher education with training and education in the field of architecture adequate to the satisfaction of the board; and has also had one year of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- (B) The person holds a bachelors degree in architecture from a school or college approved by the board as of satisfactory standing, and has completed an architectural curriculum of five years; and also had two years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- [(6)] (7) The person is a graduate of a school or college approved by the board as of satisfactory standing and has completed a pre-architecture or arts and science curriculum of four years or more; and has also had five years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a [qualifying written examination and a] professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- [(7)] (8) The person is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; and has also had eight years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a [qualifying written examination and a] professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- [(8)] (9) The person has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a [qualifying written examination and a] professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- [(9)] (10) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a geo-science, civil engineering or general engineering curriculum of four years or more; and has also had three years of full-time lawful experience in land surveying of a character satisfactory to the board; and has also

successfully passed a professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill and [competence] competency in the profession of land surveying; or

[(10)] (11) The person is a graduate of a community college approved by the board as of satisfactory standing, and has completed a civil engineering technology (survey option) curriculum of two years or more; and has also had seven years of full-time lawful experience in land surveying of a character satisfactory to the board; and has also successfully passed a qualifying written examination and a professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of land surveying; or

[(11)] (12) The person has had eleven years of full-time lawful experience in land surveying of a character satisfactory to the board; and has also successfully passed a qualifying written examination and a professional written or oral examination, or both, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of land surveying.

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

No person shall be eligible for registration as a professional engineer, architect, land surveyor, or landscape architect who is not of good character and reputation."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

Note

1. The word "a" added by Revisor.

ACT 11

H.B. NO. 163

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) The department of health with the approval of the governor, may prescribe such rules as it deems necessary for the public health or safety respecting:

- (1) The occupations or practices of midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, physical therapists, tattoo artists, and sanitarians;

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- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for such occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding such certificates or permits; or
- (4) The grounds or causes for revoking or suspending such certificates or permits.

Such rules shall have the force and effect of law.”

SECTION 2. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1985.)

ACT 12

S.B. NO. 34

A Bill for an Act Relating to Private Activity Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to set forth the State's allocation of private activity bonds among the governmental units in the State authorized to issue such bonds.

The Deficit Reduction Act of 1984 (DEFRA), P.L. No. 98-369, put a \$200 million ceiling on the principal amount of tax-exempt private activity bonds which may be issued within Hawaii during any calendar year. Although DEFRA includes a formula for the allocation of the \$200 million among the governmental units authorized to issue such bonds, DEFRA also allows a state to establish a different formula for allocating the state ceiling among its governmental units by state law.

This Act modifies the federal allocation formula to provide more flexibility and to better serve the needs of issuers of private activity bonds within the State.

SECTION 2. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read:

“PART . ALLOCATION OF PRIVATE ACTIVITY BONDS

§39A- Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

“Annual state ceiling” means the principal amount of private activity bonds which may be issued in each calendar year by all issuers and counties in the State under DEFRA.

“DEFRA” means the federal Deficit Reduction Act of 1984, P.L. 98-369.

“Department” means the department of budget and finance.

“Governing body” means the councils of the counties, or any other body exercising the legislative powers of a county.

“Issuer” means any state department, board, commission, officer, authority, or private not-for-profit corporation authorized under the laws of the State to issue private activity bonds.

“Private activity bond” shall have the same meaning as the term is defined in DEFRA, section 621. (Section 103(n) of the federal Internal Revenue Code of 1954, as amended.)

§39A- Allocation of annual state ceiling. (a) The annual state ceiling shall be allocated for each calendar year, for so long as DEFRA is in effect, in the following proportions:

- (1) An amount equal to fifty per cent of the annual state ceiling to the State;
- (2) An amount equal to 38.72 per cent of the annual state ceiling to the city and county of Honolulu;
- (3) An amount equal to 5.13 per cent of the annual state ceiling to the county of Hawaii;
- (4) An amount equal to 2.15 per cent of the annual state ceiling to the county of Kauai; and
- (5) An amount equal to 4.00 per cent of the annual state ceiling to the county of Maui.

(b) The department, with the approval of the governor, may assign the allocation of the State to any issuer or any county for a specific calendar year or years. At the request of the department, any issuer or county to which the State's allocation has been assigned shall return all or part of the assignment, in which case the department may provide for its reassignment.

(c) The department may request return of the allocations of one or more counties made pursuant to subsection (a), and may assign and reassign the allocation to any other county or issuer for a specified calendar year or years.

(d) A county, by resolution of its governing body, may request additional bond allocations from, or assign all or part of its bond allocation to, the State for a specified calendar year or years."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 13

S.B. NO. 193

A Bill for an Act Relating to the Board of Dental Examiners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448-12, Hawaii Revised Statutes, is amended to read:

“§448-12 Temporary license. (a) The board of dental examiners may issue without examination to any resident or nonresident otherwise qualified to be examined a temporary license to practice dentistry in the employment of the State or any county, or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall [remain in force only while] authorize the person to whom the license is issued [is in such] to practice dentistry exclusively while engaged in that employment[;] and [the temporary license shall be automatically canceled when such person has been examined by the state board; and it shall, further be subject to revocation by the board at any time.] shall be in force until:

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- (1) The date the person leaves the employment authorized under the temporary license;
- (2) The three hundred sixty-fifth calendar day following the date of issuance of the temporary license;
- (3) The date on which the person takes the licensure examination under this chapter; or
- (4) The date on which the board revokes the temporary license;

whichever occurs first; provided that the board may revoke the temporary license at any time for cause.

No person who has failed an examination shall have the benefit of any temporary license.

(b) The board of dental examiners may issue without examination to any resident or nonresident licensed in another state and otherwise qualified to be examined a temporary license to practice dentistry while in the employment of the department of health to provide dental services to leprosy patients. The temporary license shall be valid for a period of three years or until the first board examination after the conclusion of the three-year period and only while the person to whom the temporary license is issued is in the employment of the department of health and works under the general direction and supervision of a duly licensed dentist. The temporary license shall not be renewed and shall be reviewed annually by the board of dental examiners for continuance and shall be subject to revocation and suspension as provided in section 448-17. The temporary licensee shall not be eligible for examination by the board of dental examiners while the temporary license is in effect.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 14

S.B. NO. 194

A Bill for an Act Relating to Dental Hygienists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 447-2, Hawaii Revised Statutes, is amended to read as follows:

“§447-2 Temporary license. The board of dental examiners may issue, without examination, to any person qualified to be examined, a temporary license to practice as a dental hygienist in the employment of the State or any county or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall [be in force only while the dental hygienist is in such] authorize the person to whom the license is issued to practice clinical dental hygiene exclusively while engaged in that employment and shall [automatically be canceled when the dental hygienist has been examined by the board, and shall be subject to revocation by the board at any time.] be in force until:

- (1) The date the person leaves the employment authorized under the temporary license;
- (2) The three hundred sixty-fifth calendar day following the date of issuance of the temporary license;

(3) The date on which the person takes the licensure examination under this chapter; or

(4) The date on which the board revokes the temporary license; whichever occurs first; provided that the board may revoke the temporary license at any time for cause."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 15

S.B. NO. 218

A Bill for an Act Relating to Hearing Aid Dealers and Fitters.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

(b) The following chapters are hereby repealed effective December 31, 1985:

(1) Chapter 460 (Board of Osteopathic Examiners)

(2) Chapter 461 (Board of Pharmacy)

(3) Chapter 455 (Board of Examiners in Naturopathy)

(4) Chapter 463E (Podiatry)

[5] Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(6) [5] Chapter 457B (Board of Examiners of Nursing Home Administrators)

[7] [6] Chapter 448H (Elevator Mechanics Licensing Board)

[8] [7] Chapter 462A (Board of Pilot Commissioners)

(c) The following chapters are hereby repealed effective December 31, 1986:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

(d) The following chapters are hereby repealed effective December 31, 1987:

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

(4) Chapter 471 (Board of Veterinary Examiners)

(5) Chapter 441 (Cemeteries and Mortuaries)

(6) Chapter 463 (Board of Detectives and Guards)

(e) The following chapters are hereby repealed effective December 31, 1988:

(1) Chapter 465 (Board of Certification for Practicing Psychologists)

- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 359L (Factory Built Housing Advisory Board)
- (4) Chapter 468B (Solar Energy Device Dealers)
- (5) Chapter 468K (Travel Agencies)
- (6) Chapter 373 (Commercial Employment Agencies)
- (7) Chapter 442 (Board of Chiropractic Examiners)
- (8) Chapter 448 (Board of Dental Examiners)

1989: (f) The following chapters are hereby repealed effective December 31,

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)

1990: (g) The following chapters are hereby repealed effective December 31,

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)[.]
- (h) The following chapter is hereby repealed effective December 31,

1991: (1) Chapter 451A (Board of Hearing Aid Dealers and Fitters)."

SECTION 2. Section 451A-2, Hawaii Revised Statutes, is amended to read as follows:

"[[]§451A-2[]] License required. It shall be unlawful for any person not licensed under this chapter to engage in the sale or practice of dealing and fitting of hearing aids or to use any sign, card, or device to indicate that [he] the person is licensed and registered.

Any person wishing to obtain a license, or a permit or certificate of endorsement shall make application to the board and shall furnish to the board:

- (a) Satisfactory evidence of good moral character.
- (b) (a) Satisfactory proof that [he] the person is a graduate of a high school approved and recognized by the board.
- (c) (b) Satisfactory proof that [he] the person has fulfilled all of the requirements of the board.

An applicant shall be required to pass a written and practical examination.

For a period of six months after [[]July 1, 1970[]], an applicant shall be issued a license without examination; provided that [he] the applicant has been principally engaged in the State as a hearing aid dealer and fitter for a total period of not less than two years within a period of five years immediately prior to [[]July 1, 1970[]]."

SECTION 3. Section 451A-5, Hawaii Revised Statutes is amended to read as follows:

"[[]§451A-5[]] Powers and duties of the board. The powers and duties of the board are to:

- (1) Adopt rules [and regulations] in accordance with chapter 91 to carry out the purposes of this chapter.
- (2) Develop standards for licensure.
- (3) Prepare and administer examinations.

- (4) Issue, renew, suspend, and revoke licenses.
- (5) Register applicants and holders of a license, permit and certificate of endorsement.
- (6) Investigate and conduct hearings regarding any violation of this chapter and any rules and regulations of the board.
- (7) Maintain a record of its proceedings.
- (8) Do all things necessary to carry out the functions, powers and duties set forth in the chapter.
- (9) Monitor medical authorizations and waiver records.
- (10) Develop policies and procedures, in consultation with the state ethics commission, for handling real or potential conflicts of interest."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 16

S.B. NO. 479

A Bill for an Act Relating to Administration of Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 212-8, Hawaii Revised Statutes, is amended to read as follows:

"§212-8 Exemption from taxes. Notwithstanding any law to the contrary, sales of all products which are categorized as privileged foreign merchandise, privileged domestic merchandise, nonprivileged foreign merchandise, nonprivileged domestic merchandise, or zone-restricted merchandise, and which are admitted into a foreign trade zone, as more specifically set forth in the Act of Congress, and any rules and regulations promulgated thereunder, made directly to any common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by the crew or passengers on the shipper's vessels or airplanes, or for use out-of-state by the vessels or airplanes, shall be exempt from those taxes imposed under chapters 237, 238, 243, [244,] 244D, and 245."

SECTION 2. Section 231-3, Hawaii Revised Statutes, is amended to read as follows:

"§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To assess, pursuant to law, all real property for taxation and to make any other assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed by chapters 231 to 249 [and], 236D, and 244D except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the

- department's duties, whenever requested by any officer acting under such laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of his deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws in respect to the assessment and taxation of property;
 - (5) Forms: To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
 - (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
 - (7) Recommendations for legislation: To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of property for taxation or any other assessment of or for taxes;
 - (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
 - (9) Rules and regulations: To make such rules and regulations as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
 - (10) Compromises: With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
 - (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;

- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in chapter 246 for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, and receiving and enforcing payment of the taxes imposed under the authority of chapters 235, 237 to 239, 243 to 245, [and] 236D, and 244D, as far as the provisions of chapter 246 are not superseded by and are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions and regulations prescribed under chapter 246, except as aforesaid, shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

SECTION 3. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

"§231-6 Oaths, power to administer. The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters 231 to 249 [and], 236D, and 244D, with respect to any matters coming within the scope of the duties of the department."

SECTION 4. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

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“§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections. Except as otherwise specifically provided by chapters 231 to 249 [and], 236D, and 244D, the several district judges shall have jurisdiction to try misdemeanors arising under such chapters and all complaints for the violation of such chapters and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.”

SECTION 5. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue his warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to 246, [and], 236D, and 244D, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund shall be made out of the tax reserve fund. The director of taxation may, from time to time, deposit taxes collected by him under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated.”

SECTION 6. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“§231-29 Joinder of party defendant when State claims tax liens. The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters 233, 235, 237 to 239, 241, 243 [to], 244D, 245, and 383; provided[,] that the jurisdiction herein conferred shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to

or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action herein contemplated, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action."

SECTION 7. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

"§237-24 **Amounts not taxable.** This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter [244] 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale, and the amounts of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected

- from him and collects the same from those purchasing from him as provided by chapter 245;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;
 - (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
 - (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
 - (14) Amounts received by an organization enumerated under section 237-23(a)(5) to (8) from the sale of brooms which are manufactured by blind persons working at the adult blind broom shop;
 - (15) Amounts received by a producer of sugarcane from the manufacturer to whom he sells the sugarcane, where (A) the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and (B) the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and (C) the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and (D) the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
 - (16) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;
 - (17) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative corporation is a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;
 - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation;
 - (18) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1;
 - (19) Amounts received from sales of (A) intoxicating liquor as defined in chapter [244,] 244D, (B) tobacco products as defined in chapter

- 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;
- (20) Amounts received by the manager or board of directors of an association of apartment owners of a horizontal property regime established in accordance with chapter 514A in reimbursement of sums paid for common expenses;
- (21) Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978 for amounts received by any person or common carrier engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter to the extent and under the conditions such exemptions or exclusions have theretofore been previously allowed in the State under the provisions of the Constitution of the United States or an act of the Congress of the United States.

SECTION 8. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the taxes imposed by chapters 237, [244,] 244D, and 245 all sales, and the gross proceeds of all sales, of:

- (1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter [244] 244D but not including national banks), or to any organization to which such sale is permitted by the proviso of “Class 3” of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, [244,] 244D, and 281 be deemed to be a licensed seller.
- (2) Tobacco products, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks), but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.
- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under [paragraphs] paragraph (1), (2), or (3) [of this subsection].”

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SECTION 9. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The tax imposed by this chapter shall not apply to any intoxicating liquor as defined in chapter [244] 244D and tobacco products as defined in chapter 245, imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on the shipper’s vessels or airplanes.”

SECTION 10. Section 281-33.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the case of a shipment of wine or beer which is otherwise available in the State, the permit shall not be issued unless the applicant shall pay a fee equal to the tax that would be imposed by section [244-4] 244D-4 upon the use of liquor having a wholesale price equal to the price paid or to be paid by applicant for the wine or beer being shipped, and such fee shall be in lieu of the imposition by section [244-4] 244D-4 of any tax upon the use of such wine or beer.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 17

S.B. NO. 1240

A Bill for an Act Relating to Child Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 350-1.1, Hawaii Revised Statutes, is amended to read as follows:

“**§350-1.1 Reports.** (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a child has been abused or neglected or is threatened with abuse or neglect shall promptly report the matter orally to the department of social services and housing or to the police department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services to a minor, including but not limited to physicians, psychologists, dentists, nurses, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, correctional institutions, and parole or probation offices;
- (5) Employees or officers of any licensed day care center, foster care home, group child care center, or similar institution;
- (6) Medical examiners or coroners.

(b) Whenever a person designated in this section is a member of the staff of any public or private school, agency, or institution, that staff member shall immediately notify the person in charge, or a designated delegate, who shall promptly report, or cause reports to be made, in accordance with this chapter. Nothing in this section is intended to require more than one report from any school, agency, or institution.

(c) This section does not prohibit any of the persons enumerated in subsection (a) from reporting incidents which such persons have reason to believe involve abuse or neglect which come to their attention in any private or non-professional capacity.

(d) Any other person who has reason to believe that a minor has been abused or neglected or is threatened with abuse or neglect may report the matter orally to the department[.] of social services and housing or to the police department.

(e) The initial oral report shall be followed as soon thereafter as possible by a report in writing; provided that where a police department is the initiating agency a written report shall not be required to be filed with the department of social services and housing unless the police department has declined to take further action and the department of social services and housing informs the police department that it intends to pursue the matter of the orally reported incident of child abuse or neglect. All written reports shall contain the name and address of the minor and the minor's parents or other persons responsible for the minor's care, if known, the minor's age, the nature and extent of the minor's injuries and any other information that the reporter believes might be helpful in establishing the cause of the injuries.

(f) The director of social services may adopt, amend, or repeal rules, subject to chapter 91, to further define or clarify the specific forms of child abuse and neglect enumerated in section 350-1 for use in implementing this chapter; provided that rules adopted under this subsection shall be limited to such further or clarifying definitions."

SECTION 2. Section 350-7, Hawaii Revised Statutes, is amended to read as follows;

"[[]§350-7[]] **Nonreporting; penalty.** Any person subject to section 350-1.1(a) who knowingly fails to provide additional information as required by section 350- , or who knowingly fails to report an incident which the person has reason to believe involves child abuse or neglect as required by this chapter or wilfully prevents another person from reporting such an incident pursuant to this chapter shall be guilty of a petty misdemeanor."

SECTION 3. Chapter 350, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§350- **Additional information.** Any person subject to section 350-1.1(a) shall, upon demand of the department of social services and housing or any police department, provide all information related to the alleged incident of child abuse, including but not limited to medical records and medical reports, which was not stated in the written report required by section 350-1.1(e)."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 18

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 18

H.B. NO. 112

A Bill for an Act Relating to Chicken Eggs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 147-71, Hawaii Revised Statutes, is amended by amending the definition of "eggs" to read:

“Eggs” means chicken eggs[:] in the following forms:

- (1) [In] Uncooked in the shell; and
- (2) Liquid, frozen, or dried whole egg meats, whites of eggs or egg yolks.”

SECTION 2. Section 147-80, Hawaii Revised Statutes, is amended to read:

“[[§147-80[]] Administrative penalties. The department of agriculture may, after notice and opportunity for hearing, fine any person who violates this part or any rule adopted under this part, not more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 19

H.B. NO. 275

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended to read:

“§235-2.3 Conformance to the federal Internal Revenue Code[.]; general application. (a) For all taxable years beginning after [December 31, 1983,] December 31, 1984, as used in this chapter “Internal Revenue Code” means subtitle A, chapter 1 of the federal Internal Revenue Code of 1954 as amended as of [December 31, 1983] December 31, 1984, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal Public Law which pursuant to this chapter [and], this section, and sections 235-2.4 and 235-2.5 do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine (1) the basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978, and (2) gross income, adjusted

gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 58) (with respect to determination of tax liability).
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
- (4) Section 103 (with respect to interest on certain governmental obligations). For treatment, see section 235-7(b).
- (5) Section 103A (with respect to mortgage subsidy bonds).
- [(5)] (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see [subsection (e) of this section and] sections 235-2.4, 235-7(a)(10) to (12), and 235-9(a)(2) and (5).
- [(6)] (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- [(7)] (8) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- [(8)] (9) Section 169 (with respect to amortization of pollution control facilities). For treatment, see section 235-11.
- [(9)] (10) Section 196 (with respect to deduction for certain unused investment credits).
- [(10)] (11) Section 221 (with respect to deduction for two-earner married couples).
- [(11)] (12) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations), except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- [(13)] Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- [(12)] (14) Section 280C (with respect to [portion of wages for which credit is claimed under section 40 or 44B].) certain expenses for which credits are allowable.
- [(15)] Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- [(13)] (16) Section 291 (with respect to special rules relating to corporate preference items).
- [(14)] (17) Section 367 (with respect to foreign corporations).
- [(15)] (18) Subchapter F (sections 501 to 528) (with respect to exempt organizations), except as provided in [subsection (e) of this] section[.] 235-2.4. For treatment, see section 235-9.
- [(16)] (19) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- [(17)] (20) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
- [(18)] (21) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).

- [(19)] (22) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- [(20)] (23) Subchapter L (sections 801 to [844]) 845 (with respect to insurance companies). For treatment, see sections 431-318 and 431-320.
- [(21)] (24) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- [(22)] (25) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- [(23)] (26) Section 1055 (with respect to redeemable ground rents).
- [(24)] (27) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- [(25)] (28) Section 1201 (with respect to alternative tax). For treatment, see section 235-71(a).
- [(26)] (29) Subchapter Q (sections 1301 to 1351) (with respect to readjustment of tax between years and special limitations).
- [(27)] (30) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.

[(c)] **§235-2.4 Operation of certain Internal Revenue Code provisions.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the zero-bracket amount in section 63(d) of the Internal Revenue Code shall instead mean:

- (1) \$1,000 in the case of:
 - (A) A joint return as provided by section 235-93, or
 - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
- (2) \$800 in the case of an individual who is not married and who is not a surviving spouse (as so defined),
- (3) \$500 in the case of a married individual filing a separate return, or
- (4) Zero in any other case.

[(d)] (b) In administering the provisions of sections 410 to 415 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.) [and], sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to [418E.] 419A.

In administering sections 401 to [418E] 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

[(e)] (c) Sections 512 to 515 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

The persons and organizations exempted by section 235-9 shall, if subject to tax under the Internal Revenue Code upon their “unrelated business taxable income”, be taxed thereon under this chapter. For the purposes of this subsection the term “taxable income” as used in subsection [(f)(2)] (d)(2) of this section and section 235-71 shall be read as “unrelated business taxable income”.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction under section 235-7(d) there shall not be taken into account any amount of income or deduction which is excluded in computing the unrelated business taxable income. Unrelated business income shall not include any income from a prepaid legal service plan.

[(f)] (d) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b).
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51(e).

[(g)] (e) Section 644 (with respect to special rule for gain on property transferred to trust at less than market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

[(h)] (f) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

[(i)] (g) Sections 991 to 997 (with respect to domestic international sales corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that any corporation electing to be a domestic international sales corporation under this chapter shall be incorporated and have its principal place of business in this State.

[(j)] (h) Section 1034 (with respect to rollover of gain on sale of principal residence) of the Internal Revenue Code shall be operative for the purpose of this chapter; provided section 1034(a) (with respect to nonrecognition of gain) of the Internal Revenue Code shall apply only to:

- (1) A taxpayer who purchases a replacement residence which is located within the State, or
- (2) A taxpayer who is a resident of the State, taxable upon the taxpayer’s entire income, computed without regard to source within the State.

[(k)] (i) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a), shall be limited to five years.

[(l)] (j) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The term S corporation as defined in section 1361 of the Internal Revenue Code means a corporation which does not have:
 - (A) A nonresident as a shareholder; or
 - (B) A resident who is an individual who has taken up residence in the State after attaining the age of sixty-five years and before July 1, 1976 and who is taxed under this chapter only on the basis of income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State;

unless the individual resident in subparagraph (B) shall have waived the benefit of section 3, Act 60, Session Laws of Hawaii 1976, as to income includible in the individual's gross income under this chapter and as to such gross income shall have consented to the taxation thereof in the same manner as if the individual had taken up residence in the State after June 30, 1976.
- (2) An election under section 1362 of the Internal Revenue Code shall not be effective for any taxable year of the corporation unless there is also in effect for such taxable year an election for federal income tax purposes under subchapter S of chapter 1 of the Internal Revenue Code.
- (3) The tax imposed by section 1374 of the Internal Revenue Code is hereby imposed by this chapter at an amount equal to 3.08 per cent on the amount by which the net capital gain of the corporation exceeds \$25,000. For the purposes of section 1374(c)(3) of the Internal Revenue Code the amount of tax to be determined shall not exceed 3.08 per cent on the net capital gain attributable to property acquired as provided in section 1374(c)(3)(B) of the Internal Revenue Code and having a basis described in section 1374(c)(3)(C) of the Internal Revenue Code.
- (4) The tax imposed by section 1375(a) of the Internal Revenue Code is hereby imposed by this chapter at an amount equal to 6.435 per cent of the amount of the net passive income for the taxable year.

[(m)] **§235-2.5 Administration, adoption, and interrelationship of Internal Revenue Code and Public Laws with this chapter.** (a) Reference in provisions of subtitle A, chapter 1, of the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income and loss, and taxable income; provided that references to time limits and other administrative provisions in subtitle F (sections 6001 to 7852) of the Internal Revenue Code contained in operative sections of subtitle A, chapter 1, of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under

subsection [(n).] (b). If inoperative provisions of subtitle A, chapter 1, of the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control.

Retroactive provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in [subsection (a)] section 235-2.3 shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it in effect for the taxable year 1980 shall be operative for the purposes of this chapter.

[(n)] (b) The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle A, chapter 1 or 6, of the Internal Revenue Code operative in this chapter and any administrative provisions of the Internal Revenue Code (subtitle F, sections 6001 to 7852) not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full.

[(o)] (c) The department of taxation shall submit to each regular session of the legislature a bill to amend [subsection (a) of this section] sections 235-2.3 and 235-2.4 and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.”

SECTION 2. Section 235-55.6, Hawaii Revised Statutes, is amended to read as follows:

“§235-55.6 [Credit for child care services.] Expenses for household and dependent care services necessary for gainful employment. (a) Allowance of credit.

- (1) In general. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection [(c)(1)],)

~~(b)(1)~~, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection [(c)(2)]) ~~(b)(2)~~ paid by such individual during the taxable year.

- (2) Applicable percentage defined. For purposes of paragraph (1), the term “applicable percentage” means fifteen per cent reduced (but not below ten per cent) by one percentage point of¹ each \$2,000 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds \$10,000.

[(b) Application with other credits. The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under this chapter.

(c) ~~(b)~~ Definitions of qualifying individual and employment-related expenses. For purposes of this section:

- (1) Qualifying individual. The term “qualifying individual” means:
- (A) A dependent of the taxpayer who is under the age of fifteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),
 - (B) A dependent of the taxpayer who is physically or mentally incapable of caring for himself, or
 - (C) The spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.
- (2) Employment-related expenses.
- (A) In general. The term “employment-related expenses” means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:
 - (i) Expenses for household services, and
 - (ii) Expenses for the care of a qualifying individual.
 - (B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer’s household shall be taken into account only if incurred for the care of:
 - (i) A qualifying individual described in paragraph (1)(A), or
 - (ii) A qualifying individual (not described in paragraph (1)(A)[,]) who regularly spends at least eight hours each day in the taxpayer’s household.
 - (C) Dependent care centers. Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer’s household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if:
 - (i) Such center complies with all applicable laws, rules, and regulations of this State, and
 - (ii) The requirements of subparagraph (B) are met.
 - (D) Dependent care center defined. For purposes of this paragraph, the term “dependent care center” means any facility which:
 - (i) Provides care for more than six individuals (other than individuals who reside at the facility), and

- (ii) Receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

[(d)] (c) Dollar limit on amount creditable. The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

- (1) \$2,400 if there is one qualifying individual with respect to the taxpayer for such taxable year, or
- (2) \$4,800 if there are two or more qualifying individuals with respect to the taxpayer for such taxable year.

[(e)] (d) Earned income limitation.

- (1) In general. Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

- (A) In the case of an individual who is not married at the close of such year, such individual's earned income for such year, or
- (B) In the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

- (2) Special rule for spouse who is a student or incapable of caring for himself. In the case of a spouse who is a student or a qualified individual described in subsection [(c)(1)(C),] (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than:

(A) \$200 if subsection [(d)(1)] (c)(1) applies for the taxable year, or

(B) \$400 if subsection [(d)(2)] (c)(2) applies for the taxable year. In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

[(f)] (e) Special rules. For purposes of this section:

- (1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).
- (2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.
- (3) Marital status. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.
- (4) Certain married individuals living apart. If:
 - (A) An individual who is married and who files a separate return:
 - (i) Maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and
 - (ii) Furnishes over half of the cost of maintaining such household during the taxable year, and

- (B) During the last six months of such taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.
- (5) Special dependency test in case of divorced parents, etc. If:
 - (A) [A child (as defined in section 151(e)(3) of the Internal Revenue Code of 1954, as amended) who is under the age of fifteen or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and] Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of 1954, as amended, applies to any child with respect to any calendar year; and
 - (B) Such child is [in the custody of one or both of his parents for more than one-half of the calendar year,] under age fifteen or is physically or mentally incompetent of caring for the child's self;

in the case of any taxable year beginning in such calendar year, such child shall be treated as [being] a qualifying individual described in subsection [(c)(1)(A)] (b)(1)(A) or (B)], as the case may be, (whichever is appropriate) with respect to [that] the custodial parent [who has custody for a longer period during such calendar year than the other parent,] (within the meaning of section 152(e)(1) of the Internal Revenue Code of 1954, as amended), and shall not be treated as [being] a qualifying individual with respect to [such other] the noncustodial parent.

- (6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:
 - (A) With respect to whom, for the taxable year, a deduction under section 151(e) of the Internal Revenue Code of 1954, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or
 - (B) Who is a child of the taxpayer (within the meaning of section 151(e)(3) of the Internal Revenue Code of 1954, as amended) who has not attained the age of nineteen at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

- (7) Student. The term "student" means an individual who during each of five calendar months during the taxable year is a full-time student at an educational organization.
- (8) Educational organization. The term "educational organization" means a school operated by the department of education or licensed under chapter 298, or a university, college, or community college.

[(g) Regulations.] (f) Rules. The director of taxation shall prescribe such [regulations] rules under chapter 91 as may be necessary to carry out the purposes of this section."

SECTION 3. Section 241-4, Hawaii Revised Statutes, is amended to read as follows:

“§241-4 Measure and rate of tax. (a) The measure of the tax imposed by this chapter is the entire net income from all sources for the calendar year preceding January 1, or in the case of a taxpayer operating on a fiscal year basis, for the fiscal year in which January 1 occurs. The tax imposed by this chapter is hereby fixed at eleven and seven-tenths per cent thereof.

(b) The “entire net income from all sources” shall be determined in the same manner as the “taxable income” of a corporation, as provided by chapter 235, with the following changes and adjustments:

- (1) There is included in gross income interest received upon the obligations of the United States or its possessions, or upon securities issued under the authority of an act of Congress, or upon state, territorial, municipal, county, or other bonds or securities whether or not the income from such obligations, bonds, or securities, is tax free. Section 235-7(a)(1), (6), and (7) does not apply.
- (2) Section 235-3(c), (d), and (e) does not apply.
- (3) In lieu of section 235-4, it is provided that there shall be excluded the gross income from property owned, trade or business carried on, and other sources outside the State.
- (4) Section 235-5 does not apply. The income excluded pursuant to paragraph (3) shall be determined by an allocation and separate accounting. Losses from property owned outside the State and from other sources outside the State shall not be deducted. Reserves shall be allocated to the State by an application of a fraction, the numerator of which consists of the gross income included in determining the “entire net income from all sources” pursuant to this chapter and the denominator of which consists in the gross income similarly ascertained but without regard to whether from sources within or without the State.
- (5) Deductions connected with income which by this chapter is required to be included in the computation of net income shall be allowed, but deductions connected with income which by this chapter is not to be included in the computation of net income shall not be allowed. Section 235-7(e)(1) does not apply.
- (6) One-half of such amount of capital gain as, under the Internal Revenue Code, is entitled to the alternative tax treatment, is deductible in the determination of net income.
- (7) Section 166 of the Internal Revenue Code does not apply, except the provisions as to the basis for determining the amount of the deduction for a bad debt. Section 593 of the Internal Revenue Code does not apply. In lieu of the cited sections of the Internal Revenue Code, debts ascertained to be worthless and charged off on the books of the taxpayer within the income year may be deducted, or in the discretion of the department of taxation a reasonable addition to a reserve for bad debts; provided that when satisfied that a debt is recoverable only in part, the department may allow the debt to be charged off in part.
- (8) Federal income taxes upon income derived or received from sources in the State may be deducted.
- (9) In the case of any life insurance company (as defined by the Internal Revenue Code), which is determined to be a financial corporation as defined by this chapter, sections [802, 804, and 818] 801, 811, and 812 of the Internal Revenue Code do not apply. The total of the deductions allowed by sections [805 and 812] 807 and 810 of the

Internal Revenue Code shall not exceed the amount of the required interest, as defined by section [805, subsections (c) and (d),] 807 of the Internal Revenue Code.

- (10) Section 582(c) (with respect to bonds, etc., losses and gains of financial institutions) of the Internal Revenue Code shall be operative for the purposes of this chapter.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1984.

(Approved April 13, 1985.)

Note

- 1. Prior to amendment, “of” read “for”.

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 356-201, Hawaii Revised Statutes, is amended by amending the definition of “Eligible borrower” to read as follows:

“ “Eligible borrower” means any person or family, irrespective of race, creed, national origin, or sex, who:

- (1) Is a citizen of the United States or a declarant alien;
- (2) Is a bona fide resident of the State;
- (3) Is at least of legal age;
- (4) Does not himself or herself, or whose spouse if the person is married, own any interest in a principal residence within or without the State and who has not owned a principal residence within the three years immediately prior to the application for an eligible loan under this part, except this requirement shall not apply to any eligible loan for a targeted area residence as defined in the Mortgage Subsidy Bond Tax Act of 1980, Public Law 96-499, which residence is to replace a housing unit which has been declared structurally unsalvageable by a governmental board or agency having the power to make such a declaration; and provided further that this requirement shall not apply to up to ten per cent of eligible loans of a bond issue made to single-parent household borrowers. No such loans, however, shall be made if they adversely affect the tax-exempt status of the bonds issued. For the purpose of this section, “single-parent household” means a household headed by a single person who has legal custody of one or more dependent children;
- (5) Has never before obtained a loan under this part; and
- (6) Meets other qualifications as established by rules adopted by the authority.”

SECTION 2. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 13, 1985.)

ACT 21

S.B. NO. 1318

A Bill for an Act Relating to Derelict Vehicle.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 290-8, Hawaii Revised Statutes, is amended to read as follows:

“§290-8 Derelict vehicle. A vehicle shall be deemed a derelict by the administrative head of the agency designated to carry out section 290-1 if major parts have been removed so as to render the vehicle inoperable and one of the following conditions exists:

- (1) The vehicle is registered for the current registration period and the registered and legal owners no longer reside at the addresses on record with the county director of finance;
- (2) The vehicle has been registered for the current or previous registration period and the registered and legal owners disclaim ownership;
- (3) The vehicle identification number and license plates have been removed so as to nullify efforts to locate or identify the current registered and legal owners;
- (4) The vehicle has not been registered for the [past two] current or previous registration periods; [or]
- (5) The vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county[.]; or
- (6) The vehicle is ten model years old or older.

Prior to authorizing the removal of a derelict vehicle, the administrative head of the agency designated to carry out section 290-1 must notify the county chief of police.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1985.)

ACT 22

H.B. NO. 284

A Bill for an Act Relating to Drawbridge Across Second Channel into Honolulu Harbor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 266-5, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5

A Bill for an Act Relating to Motor and Other Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-2, Hawaii Revised Statutes, is amended by amending the definition of "rebuilt vehicle" to read as follows:

"Rebuilt vehicle" [[This definition effective January 1, 1985.]] means any vehicle which has been declared a total loss by a police officer or an insurer and has been rebuilt or repaired to operate on public highways. For the purpose of this definition, a vehicle shall not be deemed to have been declared a total loss by an insurer, despite such a declaration, if there has been no material damage to the vehicle's engine, transmission, frame, unitized structure, or suspension system, and the projected cost of repairing the vehicle exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 1985.)

A Bill for an Act Relating to the Department of Social Services and Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-71, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) A person with dependent children in the home shall be eligible for general assistance if the person:

- (1) Is unemployed for reasons other than voluntary separation without good cause or for misconduct within twelve months prior to application; and
- (2) Is actively and diligently seeking gainful employment; and
- (3) Has not refused to accept employment when offered; and
- (4) Has registered and is available for work as required by section 383-29; and
- (5) Has exhausted all of the person's benefits under chapter 383; provided that if the benefits of any person under chapter 383 be less than those for which the person would be eligible under this section, the person shall be eligible for supplementary general assistance; and provided further that this provision of exhaustion shall not apply to those persons not entitled by law to such benefits; or
- (6) Is employed but without sufficient income or other resources to provide sufficient support to maintain the person or those dependent upon the person consistent with the standards of this chapter.

"Children" as used in this section means [a person] persons who:

- (1) [Is] Are ineligible for and [is] are unable to obtain aid under a federal assistance program; and

- (2) [Is] Are in need, and [has] do not have sufficient income or other resources to provide health care and support to maintain a standard consistent with this chapter; and
- (3) [Has] Have not attained the age of eighteen years; provided that a child between the ages of eighteen and nineteen years shall be eligible for assistance under this section, if the child is a full-time student enrolled in a public or private secondary school, or equivalent level of vocational or technical school; and further provided that the child is expected to complete the program of the secondary school or vocational or technical school before reaching age nineteen; and
- (4) [Is] Are living in a home with [his] their father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, uncle, aunt, first cousin, nephew, niece, or hanai parents in a place of residence maintained by such relative as his or her own home[; or is living in a family home or institution conforming to the standards fixed by the department].

A child for the purposes of this section does not include an unborn child or fetus.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 1985.)

ACT 25

H.B. NO. 421

A Bill for an Act Relating to Medicine.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended to read as follows:

“§453-4 **Qualifications for examination.** Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless the applicant has passed an examination and has been found to be possessed of the necessary qualifications.

Before any applicant shall be eligible for the examination the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge;
- (2) (A) The applicant is a graduate of a medical school or college approved by the Council on Medical Education and Hospitals of the American Medical Association; or
- (B) The applicant is a graduate of a foreign medical school and has had at least two years of residency in a hospital approved by the Council on Medical Education and Hospitals of the American Medical Association for the residency; and [holds]:
 - (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates or its successor; or

- (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association; and
- (3) The applicant has served a residency of at least one year in either a hospital which has been certified or approved for the training of resident physicians by the American Medical Association, Council on Medical Education and Hospitals, or if outside the United States, in a hospital which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such American Medical Association approval, or has completed one year of residency training in a program approved by the American Medical Association, Council of Medical Education and Hospitals.

Diplomates of the national board of medical examiners or those who have passed the federation licensing examination (FLEX) with scores deemed satisfactory by the board and who meet the requirements of paragraphs (1), (2), and (3) [above], shall be licensed without the necessity of any further examination; provided that with respect to any applicant the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant or chief residents on a service who have been associated with an applicant during the applicant's training or practice to be used by the board in assessing the applicant's qualifications to practice medicine."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 1985.)

ACT 26

H.B. NO. 490

A Bill for an Act Relating to Examination of Applicants for Hawaii Driver's License.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-108, Hawaii Revised Statutes is amended to read as follows:

"§286-108 Examination of applicants. The examiner of drivers shall examine every applicant for a driver's license, except as otherwise provided in this part. The examination shall be held in the county where the applicant resides within ten days from the date of the filing of the application. It shall include a test of the applicant's eyesight and such further physical examination as the examiner of drivers finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways; the applicant's ability to understand highway signs regulating, warning, and directing traffic; [his] the applicant's knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where [he] the applicant resides or where [he] the applicant intends to operate a motor vehicle; and actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the state director of transporta-

tion. The examiner of drivers may waive the actual demonstration of ability to operate a motor vehicle for any person who is at least eighteen years of age and who possesses a valid driver's license issued to the applicant in any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, or a province of the Dominion of Canada for the operation of vehicles in categories 1, 2, or 3 of section 286-102. As part of the examination required by this section the applicant for a driver's license shall produce and display a valid no-fault insurance identification card for the motor vehicle required by section 294-8.5, when [he] the applicant demonstrates [his] the ability to operate a motor vehicle to the satisfaction of the examiner of drivers. If no valid no-fault insurance identification card is displayed, the examiner of drivers shall not issue a driver's license to the applicant."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 1985.)

ACT 27

H.B. NO. 838

A Bill for an Act Relating to Trailer Registrations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§286- Certificate of trailer registration. Upon the registration of a trailer, the director of finance shall issue a certificate of registration to the owner, dealer, or manufacturer of the trailer. The certificate shall meet the following requirements:

- (1) It shall contain upon the face thereof, the date it was issued, the license plate number assigned to the vehicle, the vehicle identification number of the vehicle, the name and address of the registered owner of the vehicle, and such description of the registered vehicle as may be required by the director of finance. If any of the information subsequently proves to be incorrect due to a typographical error, the dealer, manufacturer, or owner of the trailer shall notify the director of finance of the error by a written certificate stating the reasons for and nature of the error and the correction that should be made on the certificate of registration. Upon receipt of such notification by the director of finance, the certificate of registration shall be corrected accordingly so long as the correction does not constitute a change of the vehicle originally registered. A fee shall be paid to the director of finance for each instance of correction of the registration records. The fee charged for each instance of correction of the registration records shall be established by the county's legislative body.
- (2) In addition to the requirements provided for in paragraph (1), the face of the certificate of registration shall contain endorsement lines for the transfer of interest of the registered owner of the trailer.
- (3) Every owner of a trailer, except for those trailers owned by a company or person operating under the jurisdiction of the public

utilities commission, shall carry the certificate of registration with the trailer and shall present the certificate at the request of a police officer. This requirement to carry the certificate of registration with the trailer shall not apply when the certificate is removed for the purpose of application for renewal, transfer of registration, or to record a change in the registration.

- (4) The director of finance shall not issue a certificate of ownership for a trailer nor record any liens upon or legal ownership to the trailer.

§286- Procedure when registration of a trailer transferred. (a) Upon transfer of registered ownership in or to a trailer, the person whose interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of registration issued for the trailer, together with the address of the transferee in the appropriate space provided upon the certificate.

(b) Within twenty calendar days of the transfer of registered ownership of a trailer, the transferee shall forward the certificate of registration to the director of finance who shall file the certificate. Whenever a transferee fails to comply with this section, the director of finance shall charge the transferee a fee of \$5, in addition to the fee provided in this section, for the issuance of a new certificate of registration.

(c) If the director of finance has ascertained as of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county, the director may require, as a condition precedent to the transfer, that the registered owner deposit or pay bail with respect to all such summonses or citations.

(d) The director of finance, upon receipt of the certificate of registration properly endorsed, shall register the trailer and shall issue to the owner thereof by reason of the transfer a new certificate of registration in the manner and form provided for original registration.

(e) Until the director of finance has issued the new certificate of registration as provided in subsection (d), delivery of such trailer shall be deemed not to have been made and registration thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose.

(f) In the event of the transfer by operation of law in or to a trailer registered under section 286- , as upon inheritance, devise, or bequest, order in bankruptcy, or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose interest is to be transferred, the certificate of registration shall be signed upon the spaces provided by the personal representative of, or successor in interest of the person whose registered ownership or interest is so transferred in lieu of such person. Every personal representative, receiver, trustee, sheriff, or other personal representative hereinabove referred to shall file with the director of finance a notice of any transfer by sale, lease, or otherwise by the person, of any such trailer, together with evidence satisfactory to the director of finance of all facts entitling such representative to make the transfer.

(g) Any person who refuses or neglects to deliver a certificate of registration to a transferee entitled thereto under this section, shall be punished as provided in section 286-61.

(h) Every dealer or manufacturer, upon transferring a trailer, whether by sale, lease, or otherwise, shall immediately give notice of the transfer to the director of finance upon the official form provided by the director of finance.

Every such notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and such description of the trailer as may be called for in the official form.

(i) Every person, other than a dealer or manufacturer, upon transferring a trailer, whether by sale, lease, or otherwise, shall within ten days give notice of the transfer to the director of finance upon the official form provided by the director of finance. Every notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and such description of the trailer as may be called for in the official form. Any person who violates this subsection shall be fined not more than \$100.

(j) Whenever the registered owner of any trailer or any dealer or manufacturer has given notice to the director of finance of a transfer of the registered ownership to the trailer, as provided in subsections (h) and (i), and has delivered the certificate of registration bearing the transferor's signature to the transferee as required by subsection (a), the transferor shall be relieved from liability, civil or criminal, which the transferor might subsequently incur by reason of being the registered owner of the trailer.

(k) A dealer or manufacturer who has forwarded a properly endorsed certificate of registration to the director of finance shall be relieved of any civil liability, only if, in addition to the requirement of subsection (j), the dealer or manufacturer obtains from the transferee a specific written authorization to forward the certificate.

(l) Any person who falsely or fraudulently gives notice to the director of finance of a transfer of registered ownership to a trailer shall be subject to the penalty provided in section 286-61.

(m) The director of finance may charge a fee which shall be deposited in the general fund for each new certificate of registration issued. The fee charged to issue a new certificate of registration shall be established by the county's legislative body."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 28

S.B. NO. 35

A Bill for an Act Relating to General Obligations Bonds of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Notwithstanding the interest rate limitation contained in section 39-5, Hawaii Revised Statutes, and Act 118, Session Laws of Hawaii 1983, bonds issued after the effective date of this Act but prior to June 30, 1987, under part 1 of chapter 39, Hawaii Revised Statutes, may bear interest, payable annually or semi-annually, at a rate or rates not exceeding fourteen per cent a year.

SECTION 2. This Act shall take effect upon its approval.

(Approved April 22, 1985.)

A Bill for an Act Relating to Collective Bargaining.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 89A-1, Hawaii Revised Statutes, is amended to read as follows:

"§89A-1 Office of collective bargaining in the state government established. There shall be established an office of collective bargaining in the office of the governor to assist the governor in negotiating with and entering into written agreements between the public employers and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. The governor shall appoint and remove the chief negotiator[,] and the deputy negotiators, [and researcher,] who shall not be subject to chapters 76 and 77. [Effective July 1, 1981, the salary of the chief negotiator shall be \$46,750 a year.] Effective July 1, 1982, the salary of the chief negotiator shall be \$47,520 a year. The chief negotiator[,] and the deputy negotiators[, and researcher] shall be included in any benefit program generally applicable to the officers and employees of the State. All other employees shall be appointed in accordance with chapters 76 and 77. The chief negotiator shall serve as one of the governor's designated representatives as set forth in section 89-6(b)."

SECTION 2. The employee who occupies the position of researcher in the office of collective bargaining on the effective date of this Act shall be granted permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws. The employee shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 1985.)

A Bill for an Act Relating to Taxation

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 239-11, Hawaii Revised Statutes, is amended to read as follows:

"§239-11 Exemption of certain contract carriers. There shall be exempted and excluded from the measure of the tax imposed by this chapter on the gross income from any contract carrier by water having a gross weight exceeding ten thousand gross tons which is engaged primarily in the business of transporting persons for tourism or sightseeing purposes within the State;

[provided that this exemption shall apply only to contract carriers by water engaged in business on June 30, 1981; and] provided [further] that such exemption shall be applicable for the period July 1, 1981, to June 30, [1986.] 1991."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1985.)

ACT 31

S.B. NO. 668

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 1 of Act 167, Session Laws of Hawaii 1983, is amended by amending section -162 to read as follows:

"§ -162 **Effect of chapter on existing corporations.** The existence of corporations formed or existing on the date of enactment of this chapter or the voting requirements in the charter of incorporation of any such corporation shall not be affected by the enactment of this chapter nor by any change in the requirement or repeal of the laws under which they were formed or created.

Neither the repeals effected by the enactment of this chapter nor the amendment thereof shall impair or take away any existing liability, cause of action, or right against any corporation, its shareholders, directors, or officers incurred prior to the time of such enactment or amendment.

Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter."

SECTION 2. Section 20 of Act 167, Session Laws of Hawaii 1983, is amended to read as follows:

"SECTION 20. This Act shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any proceedings which were begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date."

SECTION 3. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 1985.)

Note

1. No bracketed material.

ACT 32

S.B. NO. 669

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. (a) The legislature finds that take-overs, particularly hostile take-overs:

- (1) Exaggerate the tendency of many businesses to focus on short-term performance to the detriment of such long-term societal interests as increased research and development, improved productivity, and the modernization of physical plant and employee capabilities;
 - (2) Are often inconsistent with the economic interests of shareholders;
 - (3) In many instances threaten the jobs and careers of Hawaii citizens and undermine the ethical foundations of companies, as when jobs are eliminated and career commitments to employees are breached or ignored;
 - (4) Often result in closing or consolidation of business facilities that damage communities dependent on the jobs and taxes provided by these facilities;
 - (5) Not infrequently wipe out long-standing customer/supplier relationships and the stability and continuity which these relationships provide throughout society;
 - (6) Frequently tie-up scarce capital that could be more effectively applied;
 - (7) Are all too often stifling, and ultimately destroy the entrepreneurial, innovative spirit of creative individuals in independent firms; and
 - (8) Are usually conducted in an atmosphere and pursuant to laws that do not provide a reasonable opportunity for affected parties to make informed decisions.
- (b) The purpose of this Act is to amend chapter 417E, Hawaii Revised Statutes, by adding new sections which are intended to:
- (1) Assure that the impacts of take-overs on all affected constituencies are identified and disclosed prior to the consummation of the transaction;
 - (2) Provide to shareholders both necessary information and the opportunity to cast fully informed votes on any take-over transactions;
 - (3) Encourage reason and decision-making by assuring equal financial treatment of all shareholders similarly situated at the time any take-over attempt is initiated; and
 - (4) Conform to requirements suggested by decisions of the Supreme Court of the United States.

SECTION 2. Chapter 417E, Hawaii Revised Statutes, is repealed and a new chapter is substituted as follows:

**“CHAPTER 417E
CORPORATE TAKE-OVERS**

§417E-1 Definitions. As used in this chapter, unless the context otherwise requires:

“Affiliate” of a person means any person controlling, controlled by, or under common control with such person.

“Associate” of a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of an issuer.

“Commissioner” means the commissioner of securities as provided for in chapter 485.

“Equity security” means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner deems to be of similar nature and considers necessary or appropriate, by such rules as the commissioner may prescribe in the public interest and for the protection of investors, to treat as an equity security.

“Offeror” means a person who makes or in any way participates in making a take-over offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer.

“Offeree” means the beneficial owner, residing in Hawaii, of equity securities which an offeror offers to acquire in connection with a take-over offer.

“Take-over offer” means the offer to acquire any equity securities of a target company from a resident of this State pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either the offeror would be directly or indirectly a beneficial owner of more than ten per cent of any class of the outstanding equity securities of the target company; or the beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five per cent, provided that this does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten per cent of any class of the outstanding equity securities of the target company.

Take-over offer does not include:

- (1) An offer to exchange the securities of one issuer for the securities of another issuer, if the offer is registered or exempt from registration under this chapter;
- (2) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the issuer, would not result in the offeror having acquired more than two per cent of this class during the preceding twelve-month period;
- (3) An offer by the issuer to acquire its own equity securities;
- (4) An offer which is approved in writing by the board of directors of the target company.

“Target company” means an issuer of publicly traded equity securities which is organized under the laws of the State or has at least twenty per cent of its equity securities beneficially held by residents of this State, and has substantial assets in this State. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security at the time the offeror makes a take-over offer for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or the over-the-counter market.

“Beneficial owner” includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security and/or the power to dispose of, or direct the disposition of, the security. Beneficial ownership includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of

options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentages of the class owned by any other person. A person shall be deemed the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which this person owns ten per cent or more of the equity, and any affiliate or associate of this person.

§417E-2 Registration of take-over offers. (a) It is unlawful for any person to make a take-over offer or to acquire any equity securities pursuant to the offer, unless the offer is effective under this chapter. A take-over offer is effective when the offeror files with the commissioner a registration statement containing the information prescribed in subsection (f). The offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal office and publicly disclose the material terms of the proposed offer, not later than the date of filing of the registration statement. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this State currently quoting the security.

(b) The registration shall be filed on forms prescribed by the commissioner, and shall be accompanied by a consent by the offeror to service of process and the filing fee specified in section 417E-7, and shall contain the following information:

- (1) All of the information specified in subsection (f);
- (2) Two copies of all solicitation materials intended to be used in the take-over offer in the form proposed to be published or sent or delivered to offerees;
- (3) If the offeror is other than a natural person, information concerning its organization and operations, including the year, form and jurisdiction of its organization, a description of each class of equity security and long-term debt, a description of the business conducted by the offeror and its subsidiaries and any material changes therein during the past three years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any material pending legal or administrative proceedings in which the offeror or any of its subsidiaries is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three years, and financial statements of the offeror in such form and for such period of time as the commissioner may prescribe by rule;
- (4) If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past three years, and a description of any material pending legal or administrative proceedings in which the offeror is a party.

(c) Registration is not deemed approval by the commissioner and any representation to the contrary is unlawful.

(d) Within three calendar days of the date of filing of the registration statement, the commissioner may by order summarily suspend the effectiveness of the take-over offer if the commissioner determines that the registration

statement does not contain all of the information specified in subsection (f) or that the take-over offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the take-over offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection (e).

(e) A hearing shall be scheduled by the commissioner with respect to each suspension under this section and shall be held within ten calendar days of the date of the suspension. Chapter 91 does not apply to the hearing. The commissioner's finding shall be made within three calendar days after such hearing has been completed but not more than sixteen calendar days after the date of the suspension. The commissioner may prescribe different time limits than those specified in this subsection by rule or order. If, based upon the hearing, the commissioner finds that the take-over offer fails to provide for full and fair disclosure to offerees of all material information concerning the offer, or that the take-over offer is in material violation of any provision of this chapter, the commissioner shall permanently suspend the effectiveness of the take-over offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the commissioner and to reinstitute the take-over offer by filing a new or amended registration statement.

(f) The form required to be filed by this section shall contain the following information:

- (1) The identity and background of all persons on whose behalf the acquisition of any equity security of the issuer has been or is to be affected;
- (2) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the issuer, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were borrowed;
- (3) If the purpose of the acquisition is to gain control of the target company, a statement of any plans or proposals which the person, upon gaining control, has to liquidate the issuer, sell its assets, effect its merger or consolidation, change the location of its principal executive office or of a material portion of its business activities, change its management or policies of employment, materially alter its relationship with suppliers or customers or the communities in which it operates, or make any other major change in its business, corporate structure, management or personnel, and other information which would affect the shareholders' evaluation of the acquisition;
- (4) The number of shares or units of any equity security of the issuer owned beneficially by the person and any affiliate or associate of the person, together with the name and address of each affiliate or associate;
- (5) The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the issuer whereby the person filing the statement has or will acquire any interest in additional equity securities of the issuer, or is or will be obligated to transfer any interest in the equity securities to another.

§417E-3 Filing of solicitation materials. Copies of all advertisements, circulars, letters, or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the take-over offer, shall be filed with the commissioner and sent to the target company or offeror, respectively, not later than the time copies of such solicitation materials are first published or used or sent to offerees. The commissioner may prohibit the use of any solicitation materials deemed false or misleading.

§417E-4 Fraudulent and deceptive practices. It is unlawful for any offeror or target company or any controlling person of an offeror or target company or any broker-dealer acting on behalf of an offeror or target company to engage in any fraudulent, deceptive, or manipulative acts or practices in connection with a take-over offer. Fraudulent, deceptive, and manipulative acts or practices include, without limitation:

- (1) The publication or use in connection with the offer of any false statement of a material fact or the omission to state a material fact necessary to make the statements made not misleading;
- (2) The sale by any controlling shareholders of a target company of any of their equity securities to the offeror for a consideration greater than that to be paid other stockholders pursuant to the offer or the purchase of any of the securities of a controlling shareholder of the target company by the offeror for a consideration greater than that to be paid other shareholders, pursuant to an agreement not disclosed to the other shareholders;
- (3) The refusal by a target company to permit an offeror who is a stockholder of record to examine its list of stockholders, and to make extracts therefrom, pursuant to the applicable corporation statutes, for the purpose of making a take-over offer in compliance with this chapter, or in lieu thereof, to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of such materials together with the reasonable expenses of postage and handling;
- (4) The solicitation of any offeree for acceptance or rejection of a take-over offer or acquisition of any equity security pursuant to a take-over offer before the take-over offer is effective under this chapter or while the offer is suspended under this chapter.

§417E-5 Limitations on offerors. (a) No offeror may make a take-over offer which is not made to stockholders in this State on substantially the same terms as the offer is made to stockholders outside this State.

(b) An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a take-over offer may be withdrawn by or on behalf of any offeree at any time within seven days from the date the offer has become effective under this chapter and after sixty days from the date the offer has become effective under this chapter, except as the commissioner may otherwise prescribe by rule or order for the protection of investors.

(c) If an offeror makes a take-over offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto within ten days after the offer has become effective under this chapter and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to security holders is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

(d) If an offeror varies the terms of a take-over offer before its expiration date by increasing the consideration offered to the security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the variation in the terms of the offer.

(e) No offeror shall make a take-over offer or acquire any equity securities in this State pursuant to the take-over offer, at any time when any proceeding by the commissioner is pending against the offeror alleging a violation of any provision of this chapter or chapter 485.

(f) No offeror shall acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this State pursuant to a take-over offer at any time when any proceeding by the commissioner is pending against the offeror alleging a violation of any provision of this chapter.

(g) No offeror shall acquire from any resident of this State in any manner any equity securities of any class of a target company at any time within two years following the last purchase of securities pursuant to a take-over offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier take-over offer.

§417E-6 Administration, rules and orders. (a) In administering this chapter, the commissioner may exercise all powers granted to the commissioner under chapter 485, which are not inconsistent with this chapter.

(b) The commissioner may make and adopt such rules and forms as are necessary to carry out the purposes of this chapter including, without limitation, rules defining terms used in this chapter.

(c) The commissioner, by rule or order, may exempt from any provisions of this chapter any proposed take-over offer or any category or type of take-over offer which the commissioner determines does not have the purpose or effect of changing or influencing the control of a target company or where the commissioner determines that compliance with this chapter is not necessary for the protection of the offerees, and the commissioner may similarly exempt any persons from the requirement of filing statements under this chapter.

§417E-7 Fees and expenses. The commissioner shall impose a filing fee of \$250 for a registration statement filed by an offeror.

§417E-8 Injunctions. Whenever it appears to the commissioner that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, the commissioner is authorized to:

- (1) Issue and cause to be served upon any person violating any of the provisions of this chapter an order requiring the person guilty thereof to cease and desist therefrom; and
- (2) Bring an action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder, or refer the matter to the attorney general.

Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order and may order rescission of any sales or purchases of securities determined to be unlawful under this chapter or any rule or order hereunder. The court may not require the commissioner to post a bond.

§417E-9 Penalties. (a) Any person, including a controlling person of an offeror or target company, who violates any provision of this chapter or any rule thereunder, or any order of the commissioner of which this person has notice, shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years, or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this chapter more than six years after the alleged violation.

(b) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general who, with or without any reference, may institute the appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute.

(d) All shares acquired from a Hawaii resident in violation of any provision of this chapter or any rule hereunder, or any order of the commissioner of which the person has notice, shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the target company for one year after acquisition and the target company, during this one-year period, shall have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption. Such a redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

§417E-10 Civil liabilities. (a) Any offeror who purchases a security in connection with a take-over offer in violation of this chapter shall be liable to the person selling the security to the offeror who may sue either at law or in equity. In an action for rescission, the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable. Damages are the excess of either the value of the security on the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

(b) Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting violation, and every broker-dealer or agent who materially aids in the act or transaction constituting violation, is also liable jointly or severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that the person did not know and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) No action may be maintained under this section unless commenced before the expiration of three years after the act or transaction constituting the violation or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires.

(d) The rights and remedies under this chapter are in addition to any other rights or remedies that may exist at law or in equity.

§417E-11 Application of securities law. All of the provisions of chapter 485 which are not in conflict with this chapter shall apply to any take-over offer involving a target company in this State.”

SECTION 3. Chapter 416, Hawaii Revised Statutes, is amended by adding a new part, to be appropriately designated and to read as follows:

“PART . CONTROL SHARE ACQUISITIONS

§416- Definitions. As used in this part, unless the context otherwise requires:

“Acquiring person” means a person who is required to deliver an information statement under this part.

“Beneficial ownership” shall be determined pursuant to section 13 of the federal Securities Exchange Act of 1934 and the rules promulgated thereunder, as amended.

“Control share acquisition” means an acquisition of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person of a new range of voting power specified in this part, but does not include an acquisition:

- (1) Before, or pursuant to an agreement entered into before the effective date of this part;
- (2) By a donee pursuant to an inter vivos gift not made to avoid this part or by a distributee as defined in chapter 560;
- (3) Pursuant to a security agreement not created to avoid this part;
- (4) Under chapter 417, if the issuing public corporation is a party to the transaction; or
- (5) From the issuing public corporation.

“Issuing public corporation” means a corporation incorporated in this State with at least one hundred shareholders and having its principal place of business or substantial assets located in this State.

§416- Control share acquisitions. (a) Unless otherwise expressly provided in the articles of incorporation of an issuing public corporation, this section applies to a control share acquisition.

(e) All shares acquired by an acquiring person in violation of subsection (a) shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation, during the one-year period, shall have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption. Such a redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

(c) A person proposing to make a control share acquisition shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

- (1) The identity of the person;
- (2) A reference that the statement is made under this section;
- (3) The number of shares of the issuing public corporation beneficially owned by the person;
- (4) A specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:
 - (A) At least ten per cent but less than twenty per cent;
 - (B) At least twenty per cent but less than thirty per cent;
 - (C) At least thirty per cent but less than forty per cent;

- (D) At least forty per cent but less than a majority; or
- (E) At least a majority; and
- (5) The terms of the proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition; any plans or proposals of the acquiring person to liquidate the issuing public corporation, sell all or substantially all of its assets, or merge it or exchange its shares with any other person, change the location of its principal executive office or of a material portion of its business activities, change materially its management or policies of employment, alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management or personnel, and such other information which would affect the decision of a shareholder with respect to voting on the proposed control share acquisition.

(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 416-73, to vote on the proposed control share acquisition. The meeting shall be held no later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date, and no sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement. The notice of the meeting shall at a minimum be accompanied by a copy of the information statement and a statement disclosing that the issuing public company recommends acceptance of, expresses no opinion and is remaining neutral toward, or is unable to take a position with respect to the proposed control share acquisition. The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection, must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.

(e) The acquiring person may consummate the proposed control share acquisition if and only if both the following occur:

- (1) The proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote which are not beneficially owned by the acquiring person. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and
- (2) The proposed control share acquisition is consummated within one hundred eighty days after shareholder approval."

SECTION 4. This Act shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any proceedings which were begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date of this Act.

SECTION 5. Act 167, Session Laws of Hawaii 1983, is amended by transferring the new part enacted in section 3 of this Act to the Hawaii Business

Corporation Act, such part to be appropriately redesignated by the revisor of statutes.

SECTION 6. Section 1 of Act 167, Session Laws of Hawaii 1983, is amended by repealing sections -150 to -161.

SECTION 7. Section 19 of Act 167, Session Laws of Hawaii 1983, is repealed.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval except that sections 6, 7, and 8 shall take effect on July 1, 1986.

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

(Approved April 23, 1985.)

Note

1. No underscored material. Edited pursuant to HRS §23G-16.5.

ACT 33

S.B. NO. 1196

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are any number of areas in the State where the State owns or controls a large portion of the land within a city or town. In many cases, these lands are vacant, neglected, or minimally used, or are the site of buildings which are in a state of disrepair or are badly in need of repair.

In these situations, the ability of the community to attract the private capital which is necessary to spur redevelopment can be frustrated by the rigid statutory conditions regarding the disposal of public lands. The purpose of this Act is to lessen the rigidity of the requirements thus giving the board of land and natural resources greater flexibility to help communities help themselves.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Public lands for urban historic preservation and restoration. (a) Any law to the contrary notwithstanding, the board may lease public lands in the State for use in urban historic preservation and restoration projects:

- (1) Through negotiations; and
- (2) For a price which shall be determined by the board.

(b) The department shall adopt rules pursuant to chapter 91 to determine what constitutes urban historic preservation and restoration projects for the purposes of this section; provided that no definition or criteria established shall conflict with any federal, state, or county law.

(c) All subleases of land disposed of pursuant to this section shall be subject to the approval of the board.”

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SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 34

S.B. NO. 99

A Bill for an Act Relating to Indigent Burials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-15, Hawaii Revised Statutes, is amended to read as follows:

“§346-15 Burial of [an indigent.] deceased public assistance recipients or unclaimed corpses. (a) The department of social services and housing may bear the cost of the burial of [indigent persons.] deceased public assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.

(b) The department may pay for mortuary and crematory services, to be furnished by [one from a list of certified providers under contract with the department.] any licensed provider of mortuarial and crematory services. Mortuary and crematory payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.

(c) The department may pay for cemetery services, to be furnished by [one from a list of certified providers under contract with the department.] any licensed provider of cemetery services. Cemetery payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.

(d) In cases where the decedent is survived by relatives, such relatives shall be permitted to [choose either mortuary services or cemetery services, or both forms of service.] make their own arrangements for the burial or cremation of their deceased relative.

(e) The department shall adopt rules [and regulations] pursuant to chapter 91 for purposes of administering and implementing this section.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1985.)

ACT 35

S.B. NO. 160

A Bill for an Act Relating to Committee Membership.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 164-1, Hawaii Revised Statutes, is amended to read as follows:

“§164-1 Establishment of the governor’s agriculture coordinating committee. There is established, in the governor’s office for administrative purposes,

the governor's agriculture coordinating committee, whose membership shall include the special assistant for agriculture, office of the governor, who shall be the chairperson, the director of planning and economic development, the chairperson of the board of land and natural resources, the chairperson of the board of agriculture, the director of transportation, the chairperson of the Hawaiian Homes Commission, or their respective deputies, the dean of the college of tropical agriculture and human resources, or at the designation of the dean, the director of the Hawaii institute of tropical agriculture and human resources, and three farmers, one of whom shall be a representative of a recognized nonprofit association of farmers. All members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of the duties and responsibilities of the committee. Effective July 1, 1981, the salary of the special assistant to the governor for agriculture shall be \$26,466. Effective July 1, 1982, the salary of the special assistant to the governor for agriculture shall be \$28,584."

SECTION 2. Section 188E-1, Hawaii Revised Statutes, is amended to read as follows:

"§188E-1 Establishment of the Hawaii fisheries coordinating council; membership. There is established within the department of land and natural resources the Hawaii fisheries coordinating council, hereinafter referred to as the council, for the purpose of advising the board of land and natural resources on matters relating to fisheries and the coordination of fisheries activities among the various federal, state, and county agencies and private industry. The council shall be composed of eleven voting members, and no more than ten nonvoting members, as follows:

- (1) Four shall be voting ex officio members to consist of the chairperson of the board of land and natural resources, the director of planning and economic development, the director of transportation, and the marine affairs advisor. There shall be only one designated representative selected by each of the four ex officio members. The designee shall be a person with knowledge and experience in matters related to fisheries of the State.
- (2) Six shall be voting members representing the fishing industry appointed by the governor pursuant to section 26-34; provided that at least one member shall represent and be selected from each of the several counties of the State.
- (3) One shall be a voting member appointed by the governor pursuant to section 26-34 selected from the State's recreational fishing population.
- (4) There shall be no more than ten nonvoting ex officio members to consist of the respective economic development directors of the city and county of Honolulu, the county of Hawaii, the county of Maui, and the county of Kauai, and may include the director of the University of Hawaii's sea grant program, the chairperson of the Pacific Fisheries Development Foundation, and the chairperson of the Western Pacific Fisheries Management Council, and such other members as deemed appropriate by the chairperson of the Hawaii fisheries coordinating council.

The chairperson of the board of land and natural resources shall serve as the chairperson of the council. All members of the council shall serve without compensation but shall be entitled to reimbursement for necessary expenses

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while attending meetings and while in the discharge of duties and responsibilities of the council.”

SECTION 3. Section 202-6, Hawaii Revised Statutes, is amended to read as follows:

“§202-6 **Interagency committee.** There shall be a state interagency committee consisting of the governor’s administrative director, the heads of the departments of agriculture, education, social services and housing, labor and industrial relations, planning and economic development, health, personnel services, the directors of the Hawaii office of economic opportunity, law enforcement and juvenile delinquency agency, executive office on aging, the executive officer of the state vocational education coordinating committee, the director of the office of children and youth, and the president of the University of Hawaii, or [his designated representative,] their designated representatives, and others as may be indicated. The interagency committee shall advise the advisory commission on manpower and full employment, maintain effective liaison with the resources of such departments and agencies, and coordinate their plans, policies, and actions that bear on comprehensive manpower planning and implementation of programs.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 24, 1985.)

ACT 36

S.B. NO. 663

A Bill for an Act Relating to Design Professional Conciliation Panel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 672, Hawaii Revised Statutes, is amended by adding two new sections to read as follows:

“§672- **Determination of unsuitability.** Any party or any person served with notice of a claim may file a motion with circuit court in the judicial circuit in which the claim arose for a determination that the subject matter of the dispute is unsuitable for review by a panel under this chapter; provided that no such application may be filed within ten days of the date on which the claim is scheduled to be heard by a panel or after such a hearing has taken place.

In determining whether the subject matter of a dispute is unsuitable for disposition pursuant to this chapter, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;
- (4) The fact that the design professional’s involvement in the matter is distinctly secondary in importance to the involvement of parties not covered by this chapter;

- (5) The potential for unreasonable delays in reaching any resolution of the matter by its referral to a panel pursuant to this chapter; or
- (6) The fact that there are too many parties or issues involved to be effectively handled by the informal processes of this chapter.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions.

§672- Certificate of consultation. (a) Any claim filed under this chapter shall be accompanied by a certificate which declares one of the following:

- (1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one design professional who is licensed to practice and practices in this State or any other state, or who teaches at an accredited college or university and is licensed to practice in this State or any other state, in the same discipline as the design professional against whom the claim is made and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable and meritorious cause for the filing of the claim. The persons consulted may not be a party to the case;
- (2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within thirty days after filing the claim; or
- (3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney has made three separate good faith attempts with three separate design professionals to obtain such consultation and none of those contacted would agree to such a consultation.

(b) Where an attorney intends to rely solely on a failure to inform of the consequences of a procedure, this section shall be inapplicable. The attorney shall certify upon filing of the claim that the attorney is relying solely on the failure to inform of the consequences of a procedure and for that reason is not filing a certificate as required by this section.

(c) For the purposes of this section, the attorney shall not be required to disclose the names of design professionals consulted to fulfill the requirements of subsection (a).

(d) Unless a certificate is filed pursuant to subsection (a) or (b), the claim shall not be received for filing by the department.”

SECTION 2. Section 672-1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§672-1 Definitions.[]] For the purposes of this [[chapter], “design] chapter:

“Design professional” means a professional engineer, architect, [or] surveyor[.], or landscape architect.

“Entities employing design professionals” means professional corporations or other business structures under which design professionals may practice and does not include non-design professional entities.”

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SECTION 3. Section 672-2, Hawaii Revised Statutes, is amended to read as follows:

“[]§672-2[]] **Actions against architects, professional engineers, [and] surveyors[.], and landscape architects.** In any action for damages arising out of the alleged professional negligence of actions performed in the professional practice of a person holding a license as a professional engineer, architect, [or] surveyor, or landscape architect under chapter 464, before the time of filing the complaint, the aggrieved person shall file a claim with the design professional conciliation panel.”

SECTION 4. Section 672-3, Hawaii Revised Statutes, is amended to read as follows:

“§672-3 **Design professional conciliation panel; composition, selection, compensation.** (a) There are established conciliation panels which shall review and render findings and advisory opinions on the issues of liability and damages in tort claims against professional architects, engineers [and], surveyors[.], and landscape architects.

(b) A design professional conciliation panel, hereafter called “the panel”, shall be formed for each claim filed pursuant to section 672-4 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each design professional conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the tort claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one architect, engineer [or], surveyor, or landscape architect licensed to practice under chapter 464. The chairperson shall be appointed by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The architect, engineer, [or], surveyor, or landscape architect shall be appointed by the chairperson from a list of not less than thirty-five design professionals submitted annually by the board of registration of professional engineers, architects, [and] surveyors[.], and landscape architects.

The chairperson shall preside at the meetings of the panel. The chairperson and all panel members shall be compensated at the rate of [\$100] \$300 per claim handled which will become payable when the decision of the panel is submitted and shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties and they shall be paid by the department of commerce and consumer affairs from funds collected from the claimant and defendant, to be shared equally. The claimant shall deposit \$450 with the department upon the filing of the claim and the failure to do so shall result in the claim being rejected for filing. The design professional shall deposit \$450 with the department within twenty days of being served with the claim and the failure to do so shall result in termination of proceedings under this chapter allowing the claimant to proceed in accordance with section 672-8. If the claim is withdrawn, determined to be unsuitable for proceedings under this chapter, or otherwise terminated without participation by a panel, the department shall return all moneys collected to the respective parties.

The office and meeting space, secretarial and clerical assistance, office equipment and office supplies for the board shall be furnished by the department of commerce and consumer affairs.

The board of registration shall prepare a list of architects, engineers, [and] surveyors, and landscape architects along with their respective specialties

who shall then be considered consultants to the panel in their respective fields. Panel members may consult with other legal, technical, and insurance specialists. Any consultant called by the panel to appear before the panel shall be paid an allowance for travel and living expenses which may be incurred as a result of such person's appearance before the panel. Such costs shall be paid by the department of commerce and consumer affairs."

SECTION 5. Section 672-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person or his representative claiming that a tort has been committed by the design professional or entities employing such design professionals shall file a claim with the department of commerce and consumer affairs before a suit based on the claim may be commenced in any court of the State. All claims shall be submitted to the department of commerce and consumer affairs in writing on forms provided by the department. If the claim is presented orally, the department of commerce and consumer affairs shall reduce the claim to writing. The claimant shall set forth facts upon which the claim is or may be based and shall include the names of all parties against whom the claim is or may be made who are known to the claimant. Within five business days thereafter, the panel shall give notice of the claim, by certified mail, to all architects, engineers [or], surveyors, or landscape architects and others who are or may be parties to the claim and shall furnish copies of written claims to such persons. Such notice shall set forth a date, not more than twenty days after mailing the notice, within which any design professional against whom a claim is made may file a written response to the claim, and a date and time, not less than five days following the date for filing a response, for a hearing of the panel. Such notice shall describe the nature and purpose of the panel's proceedings and shall designate the place of the hearing. The times originally set forth in the notice may be changed by the chairman, on due notice to all parties, for good cause[.]; provided that a party requesting the rescheduling of the hearing within seven days of the scheduled date shall be required in the sole discretion of the panel chairperson to additionally compensate the panel in an amount equal to the fee panel members receive pursuant to section 672-3."

SECTION 6. Section 672-5, Hawaii Revised Statutes, is amended to read as follows:

"§672-5 Design professional conciliation panel hearing; fact-finding; evidence; voluntary settlement. Every claim of a tort shall be heard by the design professional conciliation panel within thirty days after the date for filing a response. No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 672-6 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness, or consultant without the presence of any or all parties.

The hearing shall be informal. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall not be made available to the parties. The panel may receive any oral or documentary evidence. Questioning of parties, witnesses, and consultants may be conducted by the panel, and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses or consultants. The panel may designate who, among the parties, shall have the burden of going forward with the evidence with respect to such issues as it may consider, and unless otherwise designated by the panel, when the design

professional's records have been provided to the claimant for the claimant's proper review, such burden shall initially rest with the claimant at the commencement of the hearing.

The panel shall have the power to require by subpoena the appearance and testimony of witnesses and the production of documentary evidence. When such subpoena power is utilized, notice shall be given to all parties. The testimony of witnesses may be taken either orally before the panel or by deposition. In cases of refusal to obey a subpoena issued by the panel, the panel may invoke the aid of any circuit court in the State, which may issue an order requiring compliance with the subpoena. Failure to obey such order may be punished by the court as a contempt thereof. Any member of the panel may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. Notwithstanding such powers, the panel shall attempt to secure the voluntary appearance, testimony, and cooperation of parties, witnesses, and consultants without coercion.

At the hearing of the panel and in arriving at its opinion the panel shall consider, but not be limited to, statements or testimony of witnesses, construction documents, inspection reports, calculations, and other records kept in the usual course of the practice of the design professional without the necessity for other identification or authentication, statements of fact or opinion on a subject contained in a published treatise, periodical, book or pamphlet, or statements of experts without the necessity of the experts appearing at the hearing. The panel may upon the application of any party or upon its own decision appoint as a consultant, an impartial and qualified architect, engineer, [or] surveyor, or landscape architect or other professional person or expert to testify before the panel or to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report to or testify as a witness thereto. Such a consultant shall not be compensated or reimbursed except for travel and living expenses which may be incurred as a result of such person's appearance before the panel. Such expenses shall be paid by the department of commerce and consumer affairs to be paid as provided in section 672-3. Discovery by the parties shall not be allowed.

During the hearing and at any time prior to the rendition of an advisory decision pursuant to section 672-7, the panel may encourage the parties to settle or otherwise dispose of the case voluntarily."

SECTION 7. Section 672-10, Hawaii Revised Statutes, is amended to read as follows:

“[[§672-10[]] Statute of limitations tolled. The filing of the claim with the design professional conciliation panel shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until sixty days after the date the decision of the panel is mailed or delivered to the parties[.]; provided that in no case shall the applicable statute of limitations be tolled for more than twelve months. If a decision by the design professional conciliation panel is not reached within twelve months, the statute of limitations shall resume running and the party filing the claim may commence a suit based on the claim in any appropriate court of this State. The panel shall notify in writing all parties of this provision.”

SECTION 8. Section 672-11, Hawaii Revised Statutes, is amended to read as follows:

“§672-11 Duty to cooperate; assessment of costs and fees. It shall be the duty of every person who files a claim with the design professional conciliation

panel, every architect, engineer, [or] surveyor, or landscape architect against whom such claim is made, to cooperate with the design professional conciliation panel for the purpose of achieving a prompt, fair, and just disposition or settlement of such claim, provided that such cooperation shall not prejudice the substantive rights of said persons.

After trial of such claim or after settlement of such claim after suit has been filed, any party may apply to the court in which the suit was brought to have the costs of the action assessed against any party or any insurance carrier or any other person providing professional liability insurance to a party design professional or both, for failure to cooperate with the design professional conciliation panel. The court may award such costs, or a portion thereof, including attorney's fees, witness fees, including those of expert witnesses, costs of discovery and transcribing depositions, and court costs to the party applying therefor.

On application of the director of commerce and consumer affairs, the court may award as a civil penalty against any party or any insurance carrier or other person providing professional liability insurance to a party design professional, or all or any combination of such persons, all or a portion of the costs and expenses of the design professional conciliation panel attributable to a claim involving such persons, if the court finds that such person or persons failed to cooperate with the design professional conciliation panel. Such penalty shall be payable to the general fund.

In determining whether any person has failed to cooperate in good faith, the court shall consider, but is not limited to, the following:

- (1) The attendance of the persons at the hearing of the design professional conciliation panel;
- (2) The extent to which representatives of the parties and counsel representing parties came to panel hearings with knowledge of the claims and defenses and authority to negotiate a settlement or other disposition of the claim;
- (3) The testimony of members of the panel as to the facts of the person's participation in the panel hearing;
- (4) The extent of the person's cooperation in providing the panel with documents and testimony called for by the panel; and
- (5) The reasons advanced by the person so charged for not fully cooperating or negotiating."

SECTION 9. Section 672-14, Hawaii Revised Statutes, is amended to read as follows:

"[[§672-14[]] **Retroactive application.** This chapter shall apply to any claim arising prior to June 22, 1981 if a suit based on the claim has not been filed in a court of competent jurisdiction prior to [the effective date of this Act.] that date."

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval; provided that all claims pending before the panel as of the effective date of this Act shall be deemed to have been filed on that date for the purposes of Section 7 of this Act.

(Approved April 24, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Hawaii Community Development Authority.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206E-20, Hawaii Revised Statutes, is amended to read as follows:

“[[]§206E-20[]] **Court proceedings; preferences; venue.** Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil [causes,] cases, except election cases, in any court of this State and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of this chapter in which the authority may be allowed to intervene. In addition to the preference provided in this section, any such action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, may be filed in the supreme court of the State, which court is hereby vested with original jurisdiction over such action, and notwithstanding any provision of law to contrary, declaratory relief may be obtained for any such action.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1985.)

A Bill for an Act Relating to the Hawaii Community Development Authority.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206E-1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§206E-1[]] **Findings and purpose.** The legislature finds that many urban areas of the State are substantially underdeveloped or blighted, and are or are potentially in need of urban renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.

The legislature further finds that there exists within the State vast, unmet community development needs. These include a lack of suitable housing for persons of low income; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses.

It is further determined that the lack of planning and coordination in such areas has given rise to these community development needs and that existing laws and public and private mechanisms have either proven incapable or inadequate to facilitate timely redevelopment and renewal.

The legislature finds that a new and comprehensive authority for community development must be created to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. The purpose of this chapter is to establish such a mechanism in the Hawaii community development authority, a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition. For such areas designated as community development districts, the legislature believes that the planning and implementation program of the Hawaii community development authority will result in communities which serve the highest needs and aspirations of Hawaii's people.

The legislature finds that the creation of the Hawaii community development authority, the establishment of community development districts, and the issuance of bonds pursuant to this chapter to finance public facilities serve the public interest and are matters of statewide concern."

SECTION 2. Section 206E-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The authority may adopt rules pursuant to chapter 91, and may amend the same from time to time, providing for the method of undertaking and financing public facilities in an assessment area or an entire community development district.

Bonds issued to provide funds to finance public facilities shall be secured solely by the real properties benefited or improved, the assessments thereon, or by the revenues derived from the program for which the bonds are issued, including reserve accounts and earnings thereon, insurance proceeds, and other revenues, or any combination thereof. The bonds may be additionally secured by the pledge or assignment of loans and other agreements or any note or other undertaking, obligation, or property held by the authority. The bonds shall be issued according and subject to the provisions of the rules adopted pursuant to this section. Any other law to the contrary notwithstanding, in assessing real property for public facilities, the authority shall assess the real property within an assessment area according to the special benefits conferred upon the real property by the public facilities. These methods may include assessment on a frontage basis or according to the area of real property within an assessment area or any other assessment method which assesses the real property according to the special benefit conferred, or any combination thereof. No such assessment levied against real property specially benefited as provided by this chapter shall constitute a tax on real property within the meanings of any constitutional or statutory provisions.

The rules adopted pursuant to this section may include, but are not limited to, the following: methods by which the authority shall establish assessment areas; the method of assessment of real properties specially benefited; the costs to be borne by the authority, the county in which the public facilities are situated, and the property owners; the procedures before the authority relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices; provisions relating to assessments; provisions relating to financing, such as bonds, revolving funds, advances from available funds, special funds for payment of bonds, payment of principal and interest, and sale and use of bonds; provisions relating to funds and refunding of outstanding debts; and provisions relating to limitations on time to sue, and other related provisions."

ACT 39

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1985.)

ACT 39

S.B. NO. 1386

A Bill for an Act Relating to the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

“§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its public documents and records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use; or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairman or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Utilize arbitration under chapter 658 to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;

- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall be subject to a fine of not more than \$500 a day for the first offense and shall be liable for administrative costs incurred by the department and for payment of damages[;]. Upon the second offense and thereafter, the violator shall be fined not less than \$500 nor more than \$2,000 per day, shall, if required by the board, restore the land to its original condition if altered and assume the costs thereof, and shall assume such costs as may result from adverse effects from such restoration.
- (13) Set, charge, and collect interest on delinquent leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month; provided that the contract shall state the interest rate and be signed by the party to be charged; and
- (14) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person violating any of the provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be fined not more than \$500 a day and shall be liable for administrative costs incurred by the department and for payments¹ of damages.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1985.)

Note

1. Prior to amendment, “payments” read “payment”.

ACT 40

S.B. NO. 82

A Bill for an Act Relating to the Use of the Special Land and Development Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the department of land and natural resources a special fund to be designated as the “special land and development fund”. Subject to the provisions contained in the Hawaiian Homes Commission Act of 1920, as amended, and in section 5(f) of the Admission Act of 1959, all proceeds of sale of public lands, including interest on deferred payments, and all rents from leases, licenses, and permits derived from public lands shall be set apart in the fund and shall be used only as authorized by the legislature, except that, without such prior legislative authority, the board of land and natural resources may use the fund for the following purposes:

- (1) To reimburse the general fund of the State for advancements heretofore or hereafter made therefrom, which are required to be

reimbursed from the proceeds of sales, leases, licenses, or permits derived from public lands;

- (2) For the incidental maintenance of all lands under the control and management of the board, including the repair of improvements thereon, not to exceed [\$100,00]¹ \$200,000 in any fiscal year;
- (3) To repurchase any land, including improvements thereon, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all such [reimbursable] reimbursable fees collected by the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules [and regulations] adopted by the board;
- (6) For the planning and construction of roads and trails along state rights-of-way not to exceed \$5,000 in any fiscal year; and
- (7) For the payment to private land developer or developers who have contracted with the board for development of public lands under section 171-60.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

Note

- 1. So in original.

ACT 41

S.B. NO. 127

A Bill for an Act Relating to Aeronautics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-4, Hawaii Revised Statutes, is amended to read:

“§261-4 Airports, general. (a) Establishment, operation, maintenance. The department of transportation may, on behalf of and in the name of the State, out of appropriations and other moneys available or made available for such purposes, plan, acquire, [and] establish, construct, enlarge, [and] improve [in the manner herein provided], maintain, equip, install, operate, regulate, and protect, airports [and], air navigation facilities, [including the construction, installation, equipment, maintenance, and operation at airports of] buildings, and other facilities to provide for the servicing of aircraft [or]; to provide for the comfort, accommodation, and convenience of air travelers[,] and [including protection] to protect against airport hazards. [For such purposes the department may, by purchase, gift, devise, lease, condemnation in accordance with chapter 101, or otherwise, acquire property, real or personal, or any interest therein, including the property, rights, estates, and interests mentioned in section 262-11. The department may acquire rights and interests in airports

owned or controlled by others, for the purpose of meeting a civilian need which is within the scope of its functions, even though it does not have the exclusive control and operation of such airports. No officer, board, or department of the State, or municipality, shall perform any function which is within the jurisdiction of the department without its approval, except for military purposes.]

(b) Acquisition of [real] property. [In the acquisition of real property and interests therein, the department of accounting and general services shall assist the department of transportation at its request, and assign thereto state officers and employees under its supervision for the making of surveys, abstracts, and otherwise as may be of assistance, for which services the department of transportation shall pay out of the appropriations available to it, unless the department of accounting and general services has a general fund appropriation for such services.] By purchase, gift, devise, lease, or condemnation in accordance with chapter 101, the department may acquire property, real or personal, or any interest therein, including the property rights, estates, and interests mentioned in section 262-11. The department may acquire rights and interests in airports owned or controlled by others, for the purpose of meeting a civilian need which is within the scope of its functions, even though it does not have the exclusive control and operation of such airports. The department may also acquire excess federal lands as permitted by federal law.

(c) Structures and improvements. All structures and improvements to land [shall be initiated], to be used for airport purposes, may be planned, designed, and constructed by the department [of transportation and shall be constructed or made by or under the comptroller, in conformity with plans and specifications approved by the department of transportation, for which purpose the department of transportation shall make allotments of the funds under its control for expenditure by the comptroller and for services of the department of accounting and general services for which the department has no general fund appropriation].

(d) Use of state and municipal facilities and services. In carrying out this chapter, the department [of transportation] may use the facilities and services of other agencies of the State and of the municipalities of the State [to the utmost extent possible,] and the agencies and municipalities shall make available their facilities and services. [This subsection shall apply to the department of accounting and general services with respect to services and facilities in addition to those specified by subsections (b) and (c).]"

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 42

S.B. NO. 162

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 227-1, Hawaii Revised Statutes, is amended to read:

“§227-1 Establishment of natural energy laboratory of Hawaii; purpose. There is established a body corporate and a public instrumentality of the State of Hawaii to be known as the natural energy laboratory of Hawaii. The natural energy laboratory of Hawaii shall be placed within the department of planning and economic development for administrative purposes.

The natural energy laboratory of Hawaii shall manage and operate [an outdoor] research [facility] facilities [on a parcel of state-owned land at Ke-ahole Point on the island of Hawaii]. The [outdoor research facility] facilities shall provide [a site] sites for research, development, demonstration, and commercialization of natural energy resources and other compatible scientific and technological investigations.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 43

S.B. NO. 165

A Bill for an Act Relating to Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 39A-151, Hawaii Revised Statutes, is amended by amending the definition of “project” to read as follows:

“(2) “Project” means any combination of land, buildings, and other improvements thereon, including without limitation parking facilities, for use as an industrial enterprise, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 44

S.B. NO. 166

A Bill for an Act Relating to the Hawaii State Planning Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the statutory provisions relating to the appointment of State and County officials and public (non-government) members to the State Functional Plan Advisory Committees, in terms of the requirements stipulated by sections 26-34(a) and 78-4(a), Hawaii Revised Statutes.

SECTION 2. Section 226-57, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For each functional plan, the governor shall establish an advisory committee, where an advisory body which meets the criteria set out hereunder is

not already in existence, whose membership shall be composed of at least one public official from each county to be nominated by the mayor of each county; members of the public; experts in the field for which a functional plan is being prepared; and state officials. The governor shall request the nominations from¹ each of the respective mayors and shall appoint the public official nominated by the mayor of the respective county to serve on the advisory committee. If the nominations of county officials by a mayor are not submitted to the governor within sixty days following the date of the governor's request for such nominations, the governor shall appoint at least one public official from that county to serve on the advisory committee without nominations from that mayor. The committee shall advise the state agency in preparing a functional plan to be in conformance with the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter. The functional plan, with any recommendations of the advisory committee including minority reports, if any, shall be submitted to the policy council for review and evaluation. After the functional plan is adopted by the legislature, the committee shall advise the state agency in the implementation, monitoring and future updating of the plan. The advisory committee shall serve as a permanent advisory body to the state agency responsible for preparing each respective functional plan. The terms of members from the public and experts in the field for which a functional plan is prepared shall be for four years. Each term shall commence on July 1 and expire on June 30. No member from the public or expert in the field shall be appointed consecutively to more than two terms. These appointments shall not be subject to senate confirmation, and shall be exempt from the provisions of sections 26-34(a) and 78-4(a) regarding the appointment to boards and commissions."

SECTION 2.² New statutory material is underscored.

SECTION 3.² This Act shall take effect upon its approval.

(Approved April 30, 1985.)

Notes

1. Prior to amendment, "from" read "of".
2. So in original.

ACT 45

S.B. NO. 187

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

"(b) Upon receipt of a written complaint or upon receipt of an investigation report generated by the board on its own motion or upon staff investigation which establishes an alleged violation of any provision of law or rule [that is within its jurisdiction], the board or its authorized representative shall notify the licensee or person regulated of the charge against him and conduct a hearing in conformity with chapter 91 if the matter cannot be settled informally. If the board finds that the charge constitutes a violation, the board may order one or more of the following remedies as appropriate relief:

- (1) Refunding the money paid as fees for services;
- (2) Correcting the work done in providing services;

- (3) Revocation of the licensee's permit or license;
- (4) Suspension of the licensee's permit or license;
- (5) Imposition of a fine; and
- (6) Any other reasonable means to secure relief as determined by the board.

The board may also assess the licensee, as a penalty, any cost incurred in publishing the notice of hearing when service by registered or certified mail to the address listed on the licensee's record is unsuccessful.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to Travel Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 468K-1, Hawaii Revised Statutes, is amended to read as follows:

"§468K-1 Definitions. As used in this chapter:

[(1)] "Department" means the department of commerce and consumer affairs.

[(2)] "Director" means the director of commerce and consumer affairs.

[(3)] "Travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services. Travel agency does not include an air or ocean carrier.

(4) "Sales representative" means any employee or agent of a travel agency who arranges for the purchase or sale of travel services but does not include a salaried employee of a registered travel agency.]

"Sales representative" means any employee or agent of a travel agency who arranges for the purchase or sale of travel services but does not include a salaried employee of a registered travel agency.

"Travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services. Travel agency does not include an air or ocean carrier.

"Trustees" means trustees of the travel agency recovery fund appointed pursuant to the provisions of this chapter."

SECTION 2. Section 468K-3, Hawaii Revised Statutes, is amended to read as follows:

"§468K-3 Travel agency recovery fund; use of fund; fees. [The director shall establish and maintain] There shall be established and maintained a travel agency recovery fund from which any person aggrieved by an act, representa-

tion, transaction, or conduct of a registered travel agency or registered sales representative, that is in violation of this chapter or rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$8,000 for damages sustained as a result of the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

The director shall appoint three trustees, all of whom shall be registered under this chapter, to maintain the travel agency recovery fund. The terms of the trustees shall be four years, provided that the terms of the initial trustees shall be two, three and four years respectively. The director may remove any trustee for good cause.

For the¹ purposes of this chapter, "person aggrieved" means and is limited to individuals who have sustained damages as a result of the act, representation, transaction, or conduct of a duly registered travel agency or registered sales representative.

Every travel agency shall pay at the time of original registration a nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

Every sales representative shall pay at the time of original registration a nonrefundable fee of \$25 for deposit in the travel agency recovery fund."

SECTION 3. Section 468K-4, Hawaii Revised Statutes, is amended to read as follows:

"§468K-4 Additional payments to fund. If, on December 31 of any year, the balance remaining in the travel agency recovery fund is less than \$30,000, the trustees shall order that every travel agency and sales representative [shall] be assessed the appropriate fee for deposit in the travel agency recovery fund."

SECTION 4. Section 468K-5, Hawaii Revised Statutes, is amended to read as follows:

"§468K-5 Statute of limitations; recovery from fund. (a) No action for a judgment which may subsequently result in an order for collection from the travel agency recovery fund shall be commenced no¹ later than six years from the accrual of the cause of action. When any aggrieved person commences action for a judgment which may result in collection from the travel agency recovery fund, the aggrieved person shall notify the [director] trustees in writing to this effect at the time of the commencement of such action. The [director] trustees shall have the right to intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any travel agency or sales representative for such act, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the [director,] trustees, may apply to the court for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing of the application, the aggrieved person shall be required to show:

- (1) He or she is not a spouse of the judgment debtor, or the personal representative of such spouse[.];
- (2) He or she has complied with all the requirements of this section[.];
- (3) He or she has obtained a judgment as set out in subsection (b), stating the amount of the judgment and the amount owing on the judgment at the date of the application[.];
- (4) He or she has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment[.]; and
- (5) That by such search he or she has discovered no personal or real property or other assets liable to be sold or applied, or that he or she has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he or she has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the [director] trustees requiring payment from the travel agency recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the aggrieved person by subsection (c) and that the aggrieved person has fully pursued and exhausted all remedies available to the aggrieved person for recovering the amount awarded by the judgment of the court.

(e) For purposes of this chapter, an order for restitution obtained by the office of consumer protection on behalf of a person aggrieved against a registered travel agency or registered sales representative shall be the judgment obtained by the person aggrieved against the registered travel agency or registered sales representative. For purposes of this chapter, any written notification to the director as required by subsection (a) by the office of consumer protection or any action to recover restitution on behalf of the person aggrieved by the office of consumer protection shall be the actions of the person aggrieved.

(f) Subject to the limitations and requirements of this chapter, the office of consumer protection may apply to the court for an order directing payment out of the travel agency recovery fund on behalf of a person aggrieved; provided that the office of consumer protection obtains a court order directing the payment of restitution to the person aggrieved. The office of consumer protection shall not receive costs or attorney fees from the travel agency recovery fund.

[(e)] (g) Should the [director] trustees pay from the travel agency recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a registered travel agency or sales representative, registration shall be automatically terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. No such travel agency or sales representative shall be eligible to re-register to do business until the fund is repaid in full, plus interest at the rate of ten per cent a year, the amount paid

from the travel agency recovery fund on the account of the travel agency or sales representative. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

[(f) (h) If, at any time, the money deposited in the travel agency recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the [director] trustees shall, when sufficient money has been deposited in the travel agency recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed.”

SECTION 5. Section 468K-6, Hawaii Revised Statutes, is amended to read as follows:

“**§468K-6 Management of fund.** The sums received [by the director] for deposit in the travel agency recovery fund shall be held by the [director] trustees in trust for carrying out the purposes of the travel agency recovery fund. The [director, as trustee of the recovery fund,] trustees may retain private legal counsel to represent the [director] trustees in any action which may result in collection from the travel agency recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees’ retirement system, and the interest from these investments shall be deposited to the credit of the travel agency education fund, which is hereby created, and which shall be available to the [director] trustees for educational purposes.”

SECTION 6. Section 468K-8, Hawaii Revised Statutes, is amended to read as follows:

“**§468K-8 The [director has] trustees have standing in court.** When the [director receives] trustees receive notice, as provided in section 468K-5, the [director] trustees may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action [it] they may deem appropriate. The [director] trustees or the legal representative of the [director] trustees shall be served with all pleadings in an action which may result in a recovery from the travel agency recovery fund.

Settlement of any claim against the travel agency recovery fund shall be made only by agreement of the [director] trustees and attorney general that settlement is in the best interest of the travel agency recovery fund.”

SECTION 7. Section 468K-9, Hawaii Revised Statutes, is amended to read as follows:

“**§468K-9 Subrogation of² rights of creditor.** When, upon the order of the court, the [director has] trustees have paid from the travel agency recovery fund any sum to the judgment creditor, the [director] trustees shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his or her right, title, and interest in the judgment to the [director] trustees and any amount and interest so recovered by the [director] trustees on the judgment shall be deposited to the credit of the travel agency recovery fund.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

Notes

1. Word should be underscored.
2. Prior to amendment, “of” read “to”.

A Bill for an Act Relating to the Motor Vehicle Repair Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437B-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[]§437B-5[]~~ **Executive secretary; other personnel.** (a) Subject to chapters 76 and 77 the director of [the department of] commerce and consumer affairs may employ and remove such administrative, clerical, investigative, and auditing personnel as the board may require and as may be necessary to carry out this chapter. The department may prescribe the powers and duties of such personnel.

- (b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77. [The executive secretary shall be employed with due regard to his fitness, thorough administrative ability and knowledge of and experience in the repair of motor vehicles.]
- (2) The executive secretary shall, under the supervision of the board, administer this chapter and the rules and orders established thereunder and perform such other duties as the board or this chapter may require; [he] shall attend but not vote at all meetings of the board; [he] shall be in charge of the offices of the board and shall be responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to the motor vehicle repair industry.
- (3) The board may, by written order filed in its office, delegate to the executive secretary such of its powers or duties as it deems reasonable and proper for the effective administration of this chapter, except the power to make rules. The delegated powers and duties shall be exercised by the executive secretary in the name of the board.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DEVELOPMENT AGREEMENTS

§46- Findings and purpose. The legislature finds that with land use laws taking on refinements that make the development of land complex, time consuming, and requiring advance financial commitments, the development approval process involves the expenditure of considerable sums of money.

Generally speaking, the larger the project contemplated, the greater the expenses and the more time involved in complying with the conditions precedent to filing for a building permit.

The lack of certainty in the development approval process can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning. Predictability would encourage maximum efficient utilization of resources at the least economic cost to the public.

Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on- and off-site infrastructure and other improvements. Such benefits may be negotiated for in return for the vesting of development rights for a specific period.

Under appropriate circumstances, development agreements could strengthen the public planning process, encourage private and public participation in the comprehensive planning process, reduce the economic cost of development, allow for the orderly planning of public facilities and services and the allocation of cost. As an administrative act, development agreements will provide assurances to the applicant for a particular development project, that upon approval of the project, the applicant may proceed with the project in accordance with all applicable statutes, ordinances, resolutions, rules, and policies in existence at the time the development agreement is executed and that the project will not be restricted or prohibited by the county's subsequent enactment or adoption of laws, ordinances, resolutions, rules, or policies.

Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted county legislation which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements are intended to provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enact and enforce laws which promote the public safety, health, and general welfare of the citizens of our State. The purpose of this part is to provide a means by which an individual may be assured at a specific point in time that having met or having agreed to meet all of the terms and conditions of the development agreement, the individual's rights to develop a property in a certain manner shall be vested.

§46- Definitions. The following terms when used in this chapter shall have the following respective meanings:

"County executive agency" means any department, office, board, or commission of a county.

"County legislative body" means the city council or county council of a county.

"Principal" means a person who has entered into a development agreement pursuant to the procedures specified in this chapter, including a successor in interest.

"Person" means an individual, group, partnership, firm, association, corporation, trust, governmental agency, governmental official, administrative body, or tribunal or any form of business or legal entity.

§46- General authorization. Any county by ordinance may authorize the executive branch of the county to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with this part; provided that such an ordinance shall:

- (1) Establish procedures and requirements for the consideration of development agreements upon application by or on behalf of persons having a legal or equitable interest in the property, in accordance with this part;
- (2) Designate a county executive agency to administer the agreements after such agreements become effective;
- (3) Include provisions to require the designated agency to conduct a review of compliance with the terms and conditions of the development agreement, on a periodic basis as established by the development agreement; and
- (4) Include provisions establishing reasonable time periods for the review and appeal of modifications of the development agreement.

§46- Negotiating development agreements. The mayor or the designated agency appointed to administer development agreements may make such arrangements as may be necessary or proper to enter into development agreements, including negotiating and drafting individual development agreements; provided that the county has adopted an ordinance pursuant to section 46-

The final draft of each individual development agreement shall be presented to the county legislative body for approval or modification prior to execution. To be binding on the county, a development agreement must be approved by the county legislative body and executed by the mayor on behalf of the county. County legislative approval shall be by resolution adopted by a majority of the membership of the county legislative body.

§46- Periodic review; termination of agreement. (a) If, as a result of a periodic review, the designated agency finds and determines that the principal has committed a material breach of the terms or conditions of the agreement, the designated agency shall serve notice in writing, within a reasonable time period after the periodic review, upon the principal setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the principal a reasonable time period in which to cure such material breach.

(b) If the principal fails to cure the material breach within the time period given, then the county unilaterally may terminate or modify the agreement; provided that the designated agency has first given the principal the opportunity, (1) to rebut the finding and determination; or (2) to consent to amend the agreement to meet the concerns of the designated agency with respect to the finding and determination.

§46- Development agreement; provisions. (a) A development agreement shall:

- (1) Describe the land subject to the development agreement;
- (2) Specify the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings;
- (3) Provide, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement; and
- (4) Provide a termination date; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from entering subsequent development agreements.

(b) The development agreement may provide commencement dates and completion dates; provided that such dates as may be set forth in the agreement

may be extended at the discretion of the county at the request of the principal upon good cause shown subject to subsection (a)(4).

(c) The development agreement also may cover any other matter not inconsistent with this chapter, nor prohibited by law.

(d) In addition to the county and principal, any federal, state, or local government agency or body may be included as a party to the development agreement. If more than one government body is made party to an agreement, the agreement shall specify which agency shall be responsible for the overall administration of the agreement.

§46- Enforceability; applicability. (a) Unless terminated pursuant to section 46- or unless canceled pursuant to section 46- , a development agreement, amended development agreement, or modified development agreement once entered into, shall be enforceable by any party thereto, or their successors in interest, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part.

(b) All laws, ordinances, resolutions, rules, and policies governing permitted uses of the land that is the subject of the development agreement, including but not limited to uses, density, design, height, size, and building specification of proposed buildings, construction standards and specifications, and water utilization requirements applicable to the development of the property subject to a development agreement, shall be those laws, ordinances, resolutions, rules, regulations, and policies made applicable and in force at the time of execution of the agreement, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part and such subsequent change shall be void as applied to property subject to such agreement to the extent that it changes any law, ordinance, resolution, rule, or policy which any party to the agreement has agreed to maintain in force as written at the time of execution; provided that a development agreement shall not prevent a government body from requiring the principal from complying with laws, ordinances, resolutions, rules, and policies of general applicability enacted subsequent to the date of the development agreement if they could have been lawfully applied to the property which is the subject of the development agreement at the time of execution of the agreement if the government body finds it necessary to impose the requirements because a failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to the residents' health or safety, or both.

§46- Public hearing. No development agreement shall be entered into unless a public hearing on the application therefor first shall have been held by the county legislative body.

§46- County general plan and development plans. No development agreement shall be entered into unless the county legislative body finds that the provisions of the proposed development agreement are consistent with the county's general plan and any applicable development plan, effective as of the effective date of the development agreement.

§46- Amendment or cancellation. A development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties to the agreement, or their successors in interest; provided that if the county determines that a proposed amendment would substantially alter the original development agreement, a public hearing on the amendment shall be held by the county legislative body before it consents to the proposed amendment.

§46- Administrative act. Each development agreement shall be deemed an administrative act of the government body made party to the agreement.

§46- Filing or recordation. The designated agency shall be responsible to file or record a copy of the development agreement or an amendment to such agreement in the office of the assistant registrar of the land court of the State of Hawaii or in the bureau of conveyances, or both, whichever is appropriate, within twenty days after the county enters into a development agreement or an amendment to such an agreement. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.”

SECTION 2. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206E-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[]§206E-14[]~~ **Sale or lease of redevelopment projects.** (a) The authority may, without recourse to public auction, sell, or lease for a term not exceeding sixty-five years, all or any portion of the real or personal property constituting a redevelopment project to any person, upon such terms and conditions as may be approved by the authority, if the authority finds that the sale or lease is in conformity with the community development plan. [One of] (b) In the case of residential projects or redevelopment projects, the terms of the sale shall provide for the repurchase of the property by the authority at its option, in the event that the purchaser, if other than a [State] state agency, desires to sell the property within ten years[.], provided that this requirement may be waived by the authority if the authority determines that a waiver will not be contrary to the community development plan. [The repurchase price shall be the original price at which the property was sold by the authority increased by any improvement to the property, valued at cost, made by the purchaser, and an amount equivalent to the decline in the purchasing power of the dollar, if any at the time of sale, as measured by the consumer price index or the cost of living index of the United States Bureau of Labor Statistics, as may be applicable, computed from the date of initial purchase or the addition of an improvement by the purchaser less any depreciation measured on a straight line basis.] The authority shall establish at the time of original sale a formula setting forth a basis for a repurchase price based on market considerations including but not being limited to interest rates, land values, construction costs, and federal tax laws.

If the purchaser in a residential project is a state agency, [it] the authority may include as a term of [its] the sale [of the property purchased from the authority,] a provision for the repurchase of the property in conformance with this section.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 50

S.B. NO. 279

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-22, Hawaii Revised Statutes, is amended to read as follows:

“§171-22 Consent to mortgage. Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board of land and natural resources, consent of the State is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term “holder” includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State or elsewhere in the United States; provided[,] that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

Notwithstanding any provision in this chapter to the contrary, in leases or sales for residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided[,] any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the Farmers Home Administration.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 51

S.B. NO. 287

A Bill for an Act Relating to the Hawaii Community Development Authority.

ACT 52

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206E-6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) [In the event] If the public facilities to be financed [from the proceeds of] through bonds [of] issued by the authority [will affect public facilities owned or under the control of] may be dedicated to the county in which [such] the public facilities are to be located, the authority shall [obtain the consent of the governing body of such county prior to undertaking such public facilities.] ensure that the public facilities are designed and constructed to meet county requirements.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 52

S.B. NO. 377

A Bill for an Act Relating to Traffic Violations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 290-12, Hawaii Revised Statutes, is amended to read as follows:

“§290-12 Leaving abandoned or derelict vehicles; petty misdemeanor. Whoever [intentionally and knowingly] leaves an abandoned vehicle, as defined in section 290-1, or a derelict vehicle, as defined in section 290-8, on any roadway, alley, street, way, lane, trail, bridge, or highway, or other public property, or on private property without authorization of the owner or occupant, shall be guilty of a petty misdemeanor.”

SECTION 2. Section 290-45, Hawaii Revised Statutes, is amended to read as follows:

“[[] §290-45 []] Penalties. Whoever violates any of the provisions of this chapter or any lawful rule [promulgated] adopted by the director of finance under authority of this chapter, for the violation of which no penalty is provided by law, shall be fined not less than [\$50] \$150 nor more than \$500.”

SECTION 3. This Act does not affect rights and duties which matured, penalties which were incurred, and proceedings which were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

ACT 53

S.B. NO. 454

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- (1) The real estate commission;
- (2) The mortgagee of a mortgage of record;
- (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also an apartment owner, a director, or managing agent, such person shall, in those capacities, be subject to the provisions of subsection (a);
- (4) Actions seeking equitable relief[;] involving threatened property damage or the health or safety of apartment owners or any other person;
- (5) Actions to collect assessments which are liens or subject to foreclosure;
- (6) Personal injury claims;
- (7) Actions for amounts in excess of \$2,500 against an association of apartment owners, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association of apartment owners or its board of directors would be unavailable because action by arbitration was pursued; or
- (8) Any other cases which are determined, as provided in section 514A-122, to be unsuitable for disposition by arbitration.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that this Act shall not affect any rights or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved April 30, 1985.)

ACT 54

S.B. NO. 662

A Bill for an Act Relating to Medicine and Surgery.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended to read as follows:

“**§453-4 Qualifications for examination.** (a) Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless the applicant has passed an examination and has been found to be possessed of the necessary qualifications.

(b) Before any applicant shall be eligible for the examination, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge;

- (2) (A) The applicant is a graduate of a medical school or college [approved by the Council on Medical Education and Hospitals of the American Medical Association; or] whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education, and has served a residency of at least one year in a program which has been accredited for the training of resident physicians by the Accreditation Council for Graduate Medical Education, or if outside the United States, in a program which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such accreditation by the Accreditation Council for Graduate Medical Education; or
- (B) The applicant is a graduate of a foreign medical school and has had at least two years of residency in a [hospital approved by the Council on Medical Education and Hospitals of the American Medical Association for the residency;] program accredited by the Accreditation Council for Graduate Medical Education, and holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor[.];
- [(3) The applicant has served a residency of at least one year in either a hospital which has been certified or approved for the training of resident physicians by the American Medical Association, Council on Medical Education and Hospitals, or if outside the United States, in a hospital which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such American Medical Association approval, or has completed one year of residency training in a program approved by the American Medical Association, Council of Medical Education and Hospitals.]

(c) Diplomates of the national board of medical examiners or those who have passed the federation licensing examination (FLEX) with scores deemed satisfactory by the board, and who meet the requirements of [paragraphs (1), (2), and (3) above,] subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to Exceptional Children.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend sections 301-27 and 321-174 to clarify the legislature's intent that the services of psychologists, as defined in Chapter 465, Hawaii Revised Statutes, are to be included in the provision of services to and screening of exceptional children in the public schools.

SECTION 2. Section 301-27, Hawaii Revised Statutes, is amended to read as follows:

“§301-27 Occupational therapy services, physical therapy services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes. The department of health shall, within the funds available, be responsible for the related services of occupational therapy, physical therapy, school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and shall, within the funds available provide for those exceptional children needing such services who attend public school in the State. The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the department of health's rules [and regulations].”

SECTION 3. Section 321-174, Hawaii Revised Statutes, is amended to read as follows:

“§321-174 Coordination of services with department of education. The children's mental health services team shall cooperate with the schools located in their particular geographic region in identifying and referring for treatment such children or youths in need of mental health services. In conjunction with the children's mental health services team, the department of education and the department of health shall develop [memoranda] a memorandum of agreement which shall provide for a sharing of responsibilities for the affected agencies and shall include but not be limited to provisions for:

- (1) Accepting referrals from the school counselors and diagnostic teams for evaluation and direct treatment of children and youth suffering from mental and emotional disorders;
- (2) Providing consultation to enable teachers and other school personnel to aid in the identification and screening of children in need of professional mental health services[;] and the services of psychologists, as defined in chapter 465;
- (3) Providing training and education about emotional disturbances of children to teachers, school counselors, and parents;
- (4) Assisting the department of education with mental health services and the services of psychologists, as defined in chapter 465; for handicapped children; and
- (5) Performing other related services for school personnel, children, and parents.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to No-fault Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the intent of the legislature that no-fault wage loss benefits should not be paid in addition to workers' compensation lost earnings benefits if the no-fault wage loss maximum has been paid.

SECTION 2. Section 294-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All no-fault benefits shall be paid secondarily and net of any benefits a person is entitled to receive because of the accidental harm from workers' compensation laws; provided that the total amount a person is entitled to receive for monthly earnings loss under this chapter shall be limited to the amount set out in section 294-2(10)(C) or the amount of any applicable coverage under section 294-11, without any deduction of any amount received as compensation for lost earnings under any workers' compensation law provided; that the aggregate of the payments from both sources shall not exceed eighty per cent of the person's monthly earnings as monthly earnings are defined in section 294-2(7); provided further that this section shall be inapplicable to benefits payable to a surviving spouse and any surviving dependent as provided under section 294-4. If the person does not collect such benefits under the workers' compensation laws by reason of the contest of his right to so collect by the person or organization responsible for payment thereof, the injured person, if otherwise eligible, shall, nevertheless, be entitled to receive no-fault benefits and upon payment thereof the no-fault insurer shall be subrogated to the injured person's rights to collect such benefits.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

A Bill for an Act Relating to Agents of Private Schools and Correspondence Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 302, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 1, 1985.)

A Bill for an Act Relating to the Extension of the Compliance Resolution Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (m) to read as follows:

“(m) Every licensed person under any chapter subject to section 26H-4 and every licensed person subject to chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period, where such renewal is required, a fee which shall be prescribed by rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Any unpaid fee shall accrue and shall be paid by the licensed person upon application for renewal of a license, and by the person responsible for the renewal of any filing upon the application for renewal of the filing. If the accrued fees are not paid, the director may deny renewal of the license or filing. The director may increase or decrease the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be expended by the director’s designated representative for compliance resolution as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this subsection and section 514A-95 and penalties or fines assessed as a result of action brought by the personnel hired under this subsection. The director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel. The moneys in the fund may be used to train such personnel as the director finds necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether (1) any licensee under any chapter subject to section 26H-4, has complied with that chapter, (2) any licensee subject to chapter 485 has complied with that chapter, or (3) any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15).

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. [(This subsection [is] shall be repealed effective July 1, [1987.]) 1991.]”

SECTION 2. For the period ending November 30 of each year, the director shall prepare and submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the use of the compliance resolution fund. The report shall be submitted by December 20 immediately following the period covered by the report. The first annual report under this subsection shall be due on December 20, 1987.

Each report on the use of the compliance resolution fund shall include:

- (1) A general overview of the compliance resolution program, including:
 - (A) A statement of its objectives.
 - (B) A description of its major activities.
 - (C) A discussion of important external developments affecting the compliance resolution program or fund.
- (2) A budgetary overview of the compliance resolution program, including:

- (A) A summary of the balance of the compliance resolution fund, actual for the last completed period and estimated for the period in progress.
- (B) As defined by section 37-62, the full cost implications of the compliance resolution fund, by cost categories and cost elements, actually experienced in the last completed period and estimated for the period in progress. The means of financing shall be specifically identified. The personal services cost element shall be shown separately; the cost elements of other current expenses, equipment, and motor vehicles may be combined. The number of positions included in the program shall be appropriately identified by means of financing.
- (3) Appendices as needed to include appropriate issue papers, special analytic studies, other reports, and crucial source data.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 1, 1985.)

ACT 59

S.B. NO. 230

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-11, Hawaii Revised Statutes, is amended to read as follows:

“§431-11 General casualty insurance defined. General casualty insurance includes vehicle insurance as defined in section 431-10, disability insurance defined in section 431-7 and in addition is insurance:

- (1) Against legal liability for the death, injury, or disability of any human being, or from damage to property.
- (2) Of medical, hospital, surgical, and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings.
- (3) Of the obligation accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury to employees.
- (4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the mail.
- (5) Upon personal effects of individuals, by an all-risk type of policy commonly known as the personal property floater.
- (6) Against loss or damage to glass and its appurtenances resulting from any cause.

- (7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus.
- (8) Against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire.
- (9) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes, and containers, or by water entering through leaks or openings in buildings.
- (10) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance).
- (11) Against loss of or damage to any domesticated or wild animal resulting from any cause (livestock insurance).
- (12) Against loss of or damage to any property of the insured resulting from collision of any other object with such property, but not including collision to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation (collision insurance).
- (13) Against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability, and including any obligation of the insured to pay medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service (malpractice insurance).
- (14) Against any contract of warranty or guaranty which promises service maintenance, parts replacement, repair, money, or any other indemnity in the event of loss of or damage to a motor vehicle or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who or which as such is doing an insurance business.

The making of a contract covering only defects in material and work in exchange for a separately stated charge where it is incidental to the business of selling or leasing motor vehicles, shall not be deemed insurance; provided the maker of the contract has an insurance policy, with an insurer as defined in section 294-2(6), providing coverage for the making of those contracts. The policy shall assume the legal liability created by each contract or, alternatively, the ultimate legal liability of all contracts made by the issuer. If the maker of the contract is unable to perform the duties imposed by the contract, the purchaser of the contract then shall be considered a policyholder of the insurer. The policy shall include a loss payee endorsement that provides coverage to any lending institution as their interest may appear. In addition, the contracts conspicuously shall state the name and address of the licensed underwriting insurer and contain a statement that the policyholder shall be entitled to make a direct claim against the insurer upon the failure of the issuer to pay any claim within sixty days after proof of loss has been filed with the issuer. The requirement that the maker of the contract have an insurance policy with a motor vehicle

insurer shall not apply if the maker is a manufacturer, distributor, or importer of automobiles.

The doing or proposing to do any business in substance equivalent to the business described in this subsection in a manner designed to evade the provisions of this subsection is the doing of an insurance business.

[(14)] (15) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other class or classes of insurance as defined in sections 431-6 to 431-13, if such insurance is not contrary to law or public policy.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 1, 1985.)

ACT 60

S.B. NO. 404

A Bill for an Act Relating to Hawaiian Homes Commission Act, 1920.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 204, Hawaiian Homes Commission Act, 1920 as amended, is amended to read as follows:

“§204. Control by department of “available lands,” return to board of land and natural resources, when. Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

- (1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in [subdivision (d) of] section 73(d) of the Hawaiian Organic Act, the board of land and natural resources shall withdraw such lands from the operation of the lease whenever the department gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in [subdivision (d) of] section 73(d) of the Hawaiian Organic Act[.];
- (2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by [the provisions of] section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department. Any Hawaiian home lands general lease issued by the department

after June 30, 1985 shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of [such] those lands to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands [as provided] in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedure set forth in section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b), Hawaii Revised Statutes.

- (3) The department [may], with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value. All [land] lands so acquired by the department shall assume the status of available lands as though [such] the land were originally designated as available lands under section 203 [hereof,] of this Act, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged. The limitations imposed by section 73(1) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands "publicly owned" means land owned by a county or the State or the United States."

SECTION 2. Section 208, Hawaiian Homes Commission Act, 1920 as amended, is amended to read as follows:

"§208. **Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1) The original lessee shall be a native Hawaiian, not less than [twenty-one] eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, [quit claimed,] quitclaimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years.
- (3) The lessee [shall] may be required to occupy and commence to use or cultivate the tract as [his] the person's home or farm or occupy

and commence to use the tract for aquaculture purposes, as the case may be, within one year after the lease is made.

- (4) The lessee shall thereafter, for at least such part of each year as the department shall [by regulation] prescribe[,] by rules, so occupy and use or cultivate the tract on [his] the person's own behalf.
- (5) The lessee shall not in any manner transfer to, or mortgage, pledge, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, mortgage, pledge, or otherwise hold, [his] the person's interest in the tract. Such interest shall not, except in pursuance of such a transfer, mortgage, or pledge to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet [his] the person's interest in the tract or improvements thereon.
- (6) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may [in its discretion] pay such taxes and have a lien therefor as provided by section 216 of this Act.
- (7) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years from date of lease."

SECTION 3. This Act shall not apply to leases entered into prior to its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1985.

(Approved May 1, 1985.)

A Bill for an Act Relating to the Uniform Trustees' Powers Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM TRUSTEES’ POWERS ACT**

§ -1 **Definitions.** As used in this chapter:

“Prudent person” means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which persons of ordinary

prudence, diligence, discretion, and judgment would act in the management of their own affairs.

“Trust” means an express trust created by a trust instrument including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. “Trust” does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or any other trust the nature of which does not admit of general trust administration.

“Trustee” means an original, added, or successor trustee.

§ -2 Powers of trustee conferred by trust or by law. (a) The trustee has all powers conferred upon the trustee by this chapter unless limited in the trust instrument and except as is otherwise provided by law.

(b) An instrument which is not a trust under this chapter may incorporate any part of this chapter by reference.

§ -3 Powers of trustees conferred by this chapter. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of the trustee’s powers including the powers granted by this chapter, a trustee has a duty to act with due regard to the trustee’s obligation as a fiduciary, including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of a trust asset of a tax exemption, deduction, or credit or operate to impose a tax upon a donor or other person as owner of any portion of the trust. “Tax” includes, but is not limited to, any federal, state, or local income, gift, estate, or inheritance tax.

(c) A trustee has the power, subject to subsections (a) and (b):

- (1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;
- (2) To receive additions to the assets of the trust;
- (3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
- (4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
- (5) To deposit trust funds in a bank;
- (6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
- (7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

- (8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
- (9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
- (10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;
- (12) To vote a security, in person or by general or limited proxy;
- (13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
- (16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
- (17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
- (18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;
- (19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;
- (20) To allocate items of income or expense to either trust income or principal, as provided by chapter 557, The Revised Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;
- (22) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;
- (23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's adminis-

trative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

- (24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; and
- (25) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

§ -4 Trustee's office not transferable. The trustee shall not transfer the trustee's office to another or delegate the entire administration of the trust to a cotrustee or another.

§ -5 Power of court to permit deviation or to approve transactions involving conflict of interest. (a) This chapter does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on the trustee's power that would otherwise be placed upon the trustee by the trust or by this chapter.

(b) If the duty of the trustee and the trustee's individual interest or the trustee's interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in section -3(c)(1), (4), (6), (18), and (24)) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

§ -6 Powers exercisable by joint trustees; liability. (a) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which the trustee joins at the direction of the majority of the trustees, if the trustee expressed a dissent in writing to any of the cotrustees at or before the time of the joinder.

(b) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

§ -7 Third persons protected in dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

§ -8 Application of chapter. Except as specifically provided in the trust, the provisions of this chapter apply to any trust established after the effective date of this chapter.

§ -9 **Uniformity of interpretation.** This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

§ -10 **Short title.** This chapter may be cited as the "Uniform Trustees' Powers Act".

§ -11 **Severability.** If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are severable."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 1, 1985.)

A Bill for an Act Relating to the Council on Revenues.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that cumulative experience and continuity in office are essential to the proper administration of the council on revenues. There is a particular level of expertise required for the analysis and determination of revenue projections, and limiting the term of office of the members of the council on revenues will result in the State losing experienced specialists who will be irreplaceable. Therefore, it is determined to be in the public interest to continue the council members in office for an unlimited number of terms, as long as efficiency is demonstrated.

SECTION 2. Section 37-111, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The council on revenues shall consist of seven members. Three members shall be appointed by the governor to serve for four year terms. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms. Two members each shall be appointed by the president of the senate and the speaker of the house of representatives to serve for an unlimited number of two year terms. The members shall appoint from their own membership the person who shall serve as chairman of the council. Any vacancy shall be filled by the respective appointing authority. Members shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their duties."

SECTION 2.¹ Statutory material to be repealed is bracketed.² New statutory material is underscored.

SECTION 3.¹ This Act shall take effect upon its approval.

(Approved May 1, 1985.)

Notes

1. So in original.
2. No bracketed material.

ACT 63

S.B. NO. 29

A Bill for an Act Relating to the Advisory Council for Children and Youth.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 581-14, Hawaii Revised Statutes, is amended to read as follows:

“§581-14 Ex officio members [and regular members,]; attendance by, substitute for. If for any reason any ex officio member [or regular member] is not able to attend meetings of the council, the ex officio [or regular] member shall designate a substitute authorized to act in his or her place to attend in the stead of the ex officio [or regular] member. [For ex officio members the] The substitute shall be at a deputy director level or an equivalent position [which] who reports directly to the ex officio member cited in section 581-12. The substitute [individual] shall be entitled to participate in all actions and business of the council with all rights, authority, and privileges of the [appointed] ex officio member[, including full voting rights].”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 64

S.B. NO. 190

A Bill for an Act Relating to the Office of Consumer Protection.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 487-5, Hawaii Revised Statutes, is amended to read:

“§487-5 General functions, powers, and duties of the office. The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The office of consumer protection shall have the following functions, powers, and duties:

- (1) Coordinate the consumer protection activities of all departments, divisions, and branches of state government, and of branches of the county government concerned with consumer protection;
- (2) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;
- (3) Conduct investigations, research, studies, and analysis of matters and take appropriate action affecting the interests of consumers;
- (4) Study the operation of laws affecting consumers and recommend to the governor and the legislature, new laws and amendments of laws in the consumers' interest;
- (5) Adopt rules pursuant to chapter 91 interpreting section 480-2; provided that in adopting rules, due consideration shall be given to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting section 5(a)(1) of the

Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended;

- (6) Investigate reported or suspected violations of laws enacted, and rules and regulations promulgated for the purpose of consumer protection and shall enforce such laws, rules and regulations by bringing civil actions or proceedings;
- (7) Organize and hold conferences on problems affecting consumers; and undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services;
- (8) Provide a central clearing house of information by collecting and compiling all consumer complaints and inquiries[;] and making the collections and compilations available to the general public; provided that consumer complaints may not be made available to the general public if the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency;
- (9) Organize, promote, and conduct consumer education programs within the State;
- (10) Appear before governmental commissions, departments and agencies to represent and be heard on behalf of consumers' interest;
- (11) Contract with other county, state, or federal governmental agencies, with nonprofit social services societies, or with private nonprofit trade, professional, or business organizations for the performance of any of the functions of the office not involving the enforcement of rules and regulations for the purpose of consumer protection under this section, or the extension of any power or authority under section 487-11, within the budget limitations for any period not exceeding a budget year, provided that the purposes and policies of this chapter are in no way diluted, abridged, misdirected, or destroyed;
- (12) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section, including but not limited to, compensation of witnesses in such amounts and for such purposes as shall be prescribed by rules."

SECTION 2. Statutory material to be deleted is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 65

S.B. NO. 196

A Bill for an Act Relating to the Motor Vehicle Repair Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437B-7, Hawaii Revised Statutes, is amended to read as follows:

“[[]§437B-7[]] **Registration required.** On or after January 1, 1976, it shall be unlawful for any person to engage in the repair of motor vehicles for compensation without registering as a motor vehicle repair dealer or motor vehicle mechanic in accordance with this chapter. Every motor vehicle repair dealer shall be a motor vehicle mechanic or shall have at least one motor vehicle mechanic in the dealer’s employ. No motor vehicle mechanic shall engage in the repair of motor vehicles unless that person is also registered as a motor vehicle repair dealer or unless that person is in the employ of a motor vehicle repair dealer.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 66

S.B. NO. 198

A Bill for an Act Relating to Naturopathy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 455-3, Hawaii Revised Statutes, is amended to read:

“**§455-3 Qualifications of applicants.** [No application shall be received unless the applicant has resided in the State for not less than one year immediately preceding the date of application. Each applicant shall be a graduate of a high school.] Each applicant shall[, in addition,] have had a [two year] two-year liberal arts and science course from an accredited college or university and be a graduate of a legally chartered school, university, or college of naturopathy which requires a course of resident instruction of at least four years of nine months each of actual attendance, and includes in its course of study the subjects hereinafter listed for the minimum hours hereinafter listed:

Anatomy	650
Histology and embryology	130
Chemistry and toxicology	250
Physiology	300
Bacteriology	130
Hygiene and sanitation	130
Pathology	350
Diagnosis	600
Naturopathic theory and practice	900
Obstetrics and gynecology	260
Jurisprudence	50
Clinical practice	400
Biochemistry and dietetics	240
Therapeutics	130
Total	4520

Each applicant shall have attended such school, university, or college for at least ninety per cent of the hours required. The addition of two years of liberal arts and science course shall not apply to persons who, on May 9, 1949, were lawfully licensed to practice naturopathy in the State or to persons holding

diplomas or attending legally chartered naturopathic schools, universities, or colleges on such date.”

SECTION 2. Section 455-7, Hawaii Revised Statutes, is amended to read as follows:

“§455-7 Examinations. The state board of examiners in naturopathy shall conduct examinations not less than twice in each year in the following subjects: anatomy; histology and embryology; chemistry and toxicology; physiology; bacteriology; hygiene and sanitation; pathology; diagnosis or analysis, including clinical, physical, x-ray, symptomatology, dermatology, and mental diseases; naturopathic theory and practice; obstetrics and gynecology; jurisprudence; clinical practice; biochemistry; therapeutics, including physiotherapy, hydrotherapy, electrotherapy, heliotherapy, phytotherapy, orthopedics; and such other subjects as the board may require. The examination shall be conducted in writing, but it may be supplemented by oral examinations, and by demonstrations or other practical tests as the board may require. If the applicant receives a [general average] minimum score of seventy-five per cent on all parts of the examination, he shall be considered as having passed the examination.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (d) to read as follows:

1985: (b) The following chapters are hereby repealed effective December 31,

- (1) Chapter 460 (Board of Osteopathic Examiners)
- (2) Chapter 461 (Board of Pharmacy)
- [(3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) (3) Chapter 463E (Podiatry)
- [(5) (4) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- [(6) (5) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- [(7) (6) Chapter 448H (Elevator Mechanics Licensing Board)
- [(8) (7) Chapter 462A (Board of Pilot Commissioners)

1987: (d) The following chapters are hereby repealed effective December 31,

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 459 (Board of Examiners in Optometry)
- (3) Chapter 452 (Board of Massage)
- (4) Chapter 471 (Board of Veterinary Examiners)
- (5) Chapter 441 (Cemeteries and Mortuaries)
- (6) Chapter 463 (Board of Detectives and Guards)
- (7) Chapter 455 (Board of Examiners in Naturopathy)”

SECTION 4. Notwithstanding any provision in the Hawaii Revised Statutes, the Board of Examiners of Naturopathy shall not issue any license to any person after the effective date of this Act by the governor, until such time that new rules are adopted by the Board and approved for the following:

- (1) Examination criteria and processes; and
- (2) Licensure.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

A Bill for an Act Relating to Contractors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 444-11, Hawaii Revised Statutes, is amended to read:

“§444-11 No license issued when. No license hereunder shall be issued to:

- (1) Any person unless he has filed an application therefor;
- (2) Any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any individual unless he is of the age of eighteen years or more;
- (4) Any copartnership or joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a partner or employee thereof, [unless such partner has been a resident of the State for at least one year or such employee has been a resident of the State for at least two years,] and unless such partner or employee holds an appropriate license;
- (5) Any individual who is unable to qualify as a contractor or any corporation, unless the contracting business of such individual or corporation is under the direct management of an officer or employee thereof, [unless such officer or employee has been a resident of the State for at least two years,] and unless such officer or employee holds an appropriate license;
- (6) Any person unless he submits satisfactory proof to the contractors license board that he has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386;
- (7) The provisions of this section shall not apply when it is determined by the contractors license board that less than ten persons are qualified to perform the work in question. The provisions also shall not apply with respect to projects which require additional qualifications beyond those established by the licensing law, and which are deemed necessary and in the public interest by the contracting agency.”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

A Bill for an Act Relating to Statutory Revision: Amending Various Provisions of the Hawaii Revised Statutes for the Purpose of Correcting Errors, Clarifying Language, Correcting References, and Deleting Obsolete or Unnecessary Provisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, [factory built housing advisory board,] board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of practicing psychologists, board of detectives and guards, real estate commission, board of veterinary examiners, and speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 91-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than twenty days’ notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing [[]or[]] upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.”

SECTION 3. Section 187-18, Hawaii Revised Statutes, is amended to read as follows:

“§187-18 Informer’s fee. One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of any of the provisions of this chapter and chapters 188, 189 except [parts] part II, [and III,] and 191, shall be paid to the person giving the information leading to the arrest of the person so convicted; provided[,] that this section shall not apply if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden [or], constable, or officer or agent of the department of land and natural resources.”

SECTION 4. Section 226-52, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The statewide planning system shall also consist of several implementation mechanisms:

- (1) The overall review, coordination, and evaluation process. The overall review, coordination, and evaluation shall be conducted by the policy council, with the assistance of the department.
- (2) The state budgetary, land use, and other decision-making processes. The state budgetary, land use, and other decision-making processes shall consist of:
 - (A) Program appropriations process. The appropriation of funds for major programs under the biennial and supplemental budgets, shall be in conformance with the overall theme, goals, objectives, and policies, and shall utilize as guidelines the priority guidelines contained within this chapter, and the state functional plans adopted pursuant to this chapter.
 - (B) Capital improvement project appropriations process. The appropriation of funds for major plans and projects under the

capital improvements program shall be in conformance with the overall theme, goals, objectives, and policies, and shall utilize as guidelines the priority guidelines contained within this chapter, and the state functional plans adopted pursuant to this chapter.

- (C) Budgetary review process of the department of budget and finance. The budgetary review and allocation process of the department of budget and finance shall be in conformance with the overall theme, goals, objectives, and policies, and shall utilize as guidelines the priority guidelines contained within this chapter, and the state functional plans adopted pursuant to this chapter.
 - (D) Land use decision-making processes of state agencies. Land use decisions made by state agencies shall be in conformance with the overall theme, goals, objectives, and policies, and shall utilize as guidelines the priority guidelines contained within this chapter, and the state functional plans adopted pursuant to this chapter. The rules adopted by appropriate state agencies to govern land use decision-making shall be in conformance with the overall theme, goals, objectives, and policies contained within this chapter.
 - (E) All other regulatory and administrative decision-making processes of state agencies shall be in conformance with the overall theme, goals, objectives, and policies, and shall utilize as guidelines the priority guidelines contained within this chapter, and the state functional plans adopted pursuant to this chapter. Rules adopted by state agencies to govern decision-making shall be in conformance with the overall theme, goals, objectives, and policies contained within this chapter.
- (3) Other coordination processes which include the use of the [A-95] state clearinghouse process. The state clearinghouse shall coordinate the review of all [projects requiring federal funding] federally-assisted and direct federal development projects which are covered under the state clearinghouse process and shall notify the policy council of all proposed federally-assisted or direct federal development projects which conflict with this chapter, or any functional plan adopted under this chapter.”

SECTION 5. Section 227-2, Hawaii Revised Statutes, is amended to read as follows:

“[[]§227-2[]] **Managing board; composition.** The natural energy laboratory of Hawaii shall be under the general control and management of a managing board consisting of seven ex officio voting members. The director of planning and economic development, the [chairman] chairperson of the board of land and natural resources, the marine affairs [coordinator,] advisor, two officers or employees of the University of Hawaii as designated by the president of the university, and two officials of the county of Hawaii as designated by the mayor of the county of Hawaii shall be the members of the managing board.”

SECTION 6. Section 334-59, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge [him.] the patient. If the patient is under criminal charges, [he] the patient shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of [his] the patient’s admission, unless the patient voluntarily agrees to further hospitalization, or a proceeding for court-ordered evaluation [and/] or hospitalization, or both, is initiated as provided in section [334-60(b)(2).] 334-60.3. If that time expires on a Saturday, Sunday, or holiday, the time for initiation is extended to the close of the next court day. Upon initiation of the proceedings the facility shall be authorized to detain the patient until further order of the court.”

SECTION 7. Section 334-61, Hawaii Revised Statutes, is amended to read as follows:

“[[]§334-61[]] **Presumption; civil rights.** No presumption of insanity or legal incompetency shall exist with respect to any patient by reason of [his] the patient’s admission to a psychiatric facility under this chapter. The fact of the admission shall not in itself modify or vary any civil right of any such person, including but not limited to civil service statutes or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law, or the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and to vote. If the administrator of a psychiatric facility or [his] the deputy is of the opinion that a patient should not exercise any civil right, application for a show cause order shall be made to the court under the above proceedings after notice pursuant to section [334-60(b)(3).] 334-60.4.”

SECTION 8. Section 334-71, Hawaii Revised Statutes, is amended to read as follows:

“§334-71 **Transfer of patients between facilities.** A patient at a psychiatric facility, including those held on court order, may be transferred to another psychiatric facility when the administrator of the sending facility determines that it would be in the best interest of the patient that the patient be transferred and the administrator of the receiving facility agrees to accept the patient; provided that prior notice of such transfer be given to the subject of such transfer and to those persons specified in a current order of commitment. If there is no current order of commitment, notice shall be given to those persons enumerated in section [334-60(b)(3).] 334-60.4.”

SECTION 9. Section 334-74, Hawaii Revised Statutes, is amended to read as follows:

“§334-74 **Transfer of residents of correctional facilities.** If any resident of a state correctional facility is in need of hospital treatment for mental illness or substance abuse, the director of social services or the officer in charge of the correctional facility may file with the director of health an application for the transfer of the resident to the state hospital, together with the certificate of a psychiatrist employed by the department of health showing the need for such hospital treatment, and, upon approval of the application by the director of health, the official having custody of the resident shall transfer the resident to the state hospital for care and treatment. The official effecting the transfer of the resident shall keep the administrator of the state hospital informed of the maximum period of commitment of the resident to the director of social

services, and, if the continued hospitalization of the resident beyond the expiration of the period is deemed necessary, the administrator of the state hospital shall institute the admission procedures required to detain the resident as a patient notwithstanding the resident's release from the state correctional facility; provided that a judicial hearing pursuant to [section 334-60(b)] sections 334-60.2 to 334-60.7 be held by the same circuit court that sentenced such resident. In the event that discharge from the hospital occurs before the expiration of the maximum period of commitment or confinement, the resident shall be returned to the appropriate state correctional facility. As used in this section, "resident" means any person serving a sentence in a state correctional facility or any child or minor detained in a state correctional facility."

SECTION 10. Section 334-76, Hawaii Revised Statutes, is amended to read as follows:

"**§334-76 [[NEW]] Discharge from custody.** Subject to any special requirements of law as provided in sections 704-406, 704-411, and 706-607 or elsewhere, with respect to patients committed on court order, the administrator of a psychiatric facility, [shall,] pursuant to section [334-60(b)(6),] 334-60.7, shall send a notice of intent to discharge to those persons specified in the order of commitment as entitled to receive notice of intent to discharge and the administrator or [his] the deputy or the physician assuming medical responsibility for the patient shall discharge an involuntary patient when [he] the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization [[in[]] section [334-60(b)(1),] 334-60.2."

SECTION 11. Section 408-18, Hawaii Revised Statutes, is amended to read as follows:

"**§408-18 Discount with recourse.** In the event a licensee acquires a [retail installment] credit sale contract, as defined in section 476-1, from a [retail] credit seller under an agreement the effect of which is that the licensee does not suffer loss if the [retail] credit buyer does not perform the [retail installment] credit sale contract, then at the time the licensee acquires the [retail installment] credit sale contract the licensee is required to:

- (1) Obtain from the [retail] credit seller a statement which contains the information required to be given to the [retail] credit buyer by sections [476-3] 476-4 and [476-29;] 476-24; and
- (2) Either possess a written agreement which fully sets forth the terms under which contracts originated by the [retail] credit seller will be acquired by the licensee, including reference to any retention by the licensee of proceeds of acquisition to be held as a reserve fund by the licensee, or render to the [retail] credit seller, at the time the contract is acquired, a statement of the transaction[,] covering the acquisition of the particular [retail installment] credit sale contract."

SECTION 12. Section 437-1.1, Hawaii Revised Statutes, is amended to read as follows:

"**§437-1.1 Definitions.** As used in this chapter:

[(1)] "Auction" means any person engaged in the business of selling motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in [item (6)(A), (B), (D), or (E)] paragraph (1), (2), (4), or (5) in the definition of dealer when the auctioneer or person acts in [his] the respective capacity described in this section.

[(2)] "Auctioneer" means a person who, for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction.

[(3)] "Board" means the motor vehicle industry licensing board created by this chapter.

[(4)] "Business" includes any activities regularly engaged in by any person or regularly caused to be engaged in by [him] the person for the object of gain, benefit, or advantage, either direct or indirect.

[(5)] "Consumer" means any person who purchases, other than for purposes of resale, a motor vehicle for personal, family, household, or business use, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Credit sale contract" is defined as provided for in section 476-1.

[(6)] "Dealer" includes any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. "New motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. "Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- [(A)] (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court; [or]
- [(B)] (2) A public officer while performing [his] official duties; [or]
- [(C)] (3) A holder of a license issued under this chapter, other than a dealer, when acting within the scope of the license; [or]
- [(D)] (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a [retail installment sales] credit sale contract or security agreement; or
- [(E)] (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for their own personal, family, or business use; provided such vehicles are acquired or disposed of for such use in good faith and not for the purpose of evading any provisions of this chapter.

[(7)] "Distributor" means any person, resident or nonresident, including a manufacturer, who in whole or in part offers for sale, sells, or distributes new motor vehicles to dealers.

[(8)] "Distributor branch" means any office or establishment maintained by a distributor which is not at the same address as the distributor and is used, either directly or indirectly, for the purpose of selling, offering for sale, promoting the sale of, or distributing new motor vehicles to dealers, or for the purpose of directing or supervising, in whole or in part, factory or distributor representatives.

[(9)] "Distributor representative" means any representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by or under a contract with a distributor, directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor vehicles or

for the purpose of supervising or regulating the business affairs of motor vehicle dealers or prospective dealers.

[(10)] "Factory branch" means any office or establishment maintained by a manufacturer, directly or indirectly, for the purpose of selling, offering for sale, or promoting the sale of new motor vehicles to a distributor or dealer, or for directing or supervising, in whole or in part, factory or distributor representatives.

[(11)] "Factory representative" means a representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by a manufacturer or factory branch for the purpose of selling or promoting the sale of new motor vehicles of such manufacturer or for supervising the franchised dealers or prospective dealers of such manufacturer.

[(12)] "Franchise" means any contract or agreement between a dealer and a manufacturer or distributor or branches or representatives thereof, which authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or parts therefor manufactured or distributed by such manufacturer or distributor.

[(13)] "Manufacturer" means any person, resident or nonresident, who is engaged in the business of manufacturing or assembling new motor vehicles.

[(14)] "Motor vehicle" includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.

[(15)] "New motor vehicle" means a motor vehicle which [(A)] (1) has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer's possession after the sale to a consumer [and (B)], (2) has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer's possession after the sale to a consumer, and [(C)] (3) has not been driven more than five hundred miles; provided[,] that where a sale, registration, entitlement, or transfer of title of a motor vehicle, or the accrual of mileage thereon, is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.

[(16)] "Person" is defined as provided for in section 1-19.

[(17)] "Premises" or "licensed premises" means the premises in connection with which a license has been, or is proposed to be, issued, including branch locations. The term "premises" or "licensed premises" is substituted for the term "place of business" wherever found in this chapter.

[(18)] "Retail", "sale at retail", "retail sale", and equivalent expressions, mean the act or attempted act of selling a motor vehicle to a person for use as a consumer.

[(19)] "Retail installment contract" is defined as provided for in section 476-1.

(20) "Sale", "selling", and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of, or interest in, a motor vehicle, including an option to purchase a motor vehicle.

[(21)] "Salesman" "Salesperson" means any person who for gain or compensation of any kind, directly or indirectly, by any form of agreement or arrangement, sells, solicits, offers for sale, exchanges, or otherwise deals in, motor vehicles or any interest therein on behalf of any motor vehicle dealer.

[(22)] "Treasurer" means the director of finance of each county.

[(23)] "Used motor vehicle" means a motor vehicle other than a new motor vehicle.

[(24)] "Wholesale" or "sale at wholesale" or "wholesale sale" and equivalent expressions, mean any sale other than a retail sale."

SECTION 13. Section 442-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The examinations [shall be in the subjects enumerated in section 442-2 and] shall be designed to ascertain the fitness and qualifications of the applicant to practice chiropractic. The examination shall include both practical demonstration and a written examination. The board may accept an applicant who presents bona fide evidence as having passed the national board of chiropractic examiners' examination in lieu of the written portion of the state board of chiropractic examiners' examination. A license shall be granted to any applicant who attains a score of seventy-five per cent[,] or higher in all subjects and sections of the examination. Any applicant failing to make the required grade[,] may be reexamined at the next regular examination [on all of the subjects mentioned in section 442-2,] upon payment of a reexamination fee."

SECTION 14. Section 453-2, Hawaii Revised Statutes, is amended to read as follows:

"§453-2 License required; exceptions. Except as otherwise provided by law, no person shall practice medicine or surgery in the State either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce one's self, either publicly or privately, as prepared or qualified to so practice, or shall append the letters "DR." or "M.D." to one's name, with the intent thereby to imply that the individual is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license, obtained from the board of medical examiners, in form and manner substantially as hereinafter set forth.

Nothing herein shall:

- (1) Apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States army, navy, marine corps, or public health service, engaged in the discharge of one's official duty, nor to any practitioner of medicine and surgery from another state [[]when in actual consultation with a licensed practitioner of this State if the practitioner from another state[]], at the time of such consultation, is licensed to practice in the state in which [he] such practitioner resides; provided that the practitioner from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State; and provided further that the laws and regulations relating to contagious diseases are not violated; or
- (4) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services or any physician assistant when such services are rendered under the direction and control of a physician licensed in this State, except for those specific functions and duties delegated by law to those persons licensed as optometrists under chapter 459. Such direction and control shall

not be construed in every case to require the personal presence of the supervising and controlling physician. Any physician who employs or directs a person certified under part II of this chapter to provide emergency medical services or physician assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such person or physician assistant."

SECTION 15. Section 465-7, Hawaii Revised Statutes, is amended to read as follows:

"§465-7 Requirements for licensing. Every applicant for a license as a psychologist shall submit evidence satisfactory to the board that the applicant meets the requirements set forth in paragraphs (1) and (2), or (3), and (4):

- (1) Is professionally competent and has demonstrated knowledge in the practice of psychology.
- (2) Holds a doctoral degree from an accredited institution of higher education with training and education in the field of psychology adequate to the satisfaction of the board.
- (3) Holds a diplomate certificate in good standing granted by the American Board of Examiners in Professional Psychology.
- (4) Has passed an examination as may be prescribed by the board."

SECTION 16. Section 481C-6, Hawaii Revised Statutes, is amended to read as follows:

"§481C-6 Compliance with [retail installment] credit sale contract law. If the contract referred to in section 481C-1 is a [retail installment] credit sale contract, the seller must also comply with the requirements of chapter 476."

SECTION 17. Section 486K-3, Hawaii Revised Statutes, is amended to read as follows:

"[[§486K-3[]] Sale of detained baggage; notice; disposition of proceeds. All baggage and property so held by the keeper of the hotel [shall], after the expiration of three months from the date of the detention, shall be sold at public auction, after notice thereof published three times in a newspaper of general circulation in the county where the hotel is kept. The proceeds thereof shall be applied to the payment of the amount due and the expenses of the notice and sale. The balance, if any remaining, shall be paid over to the owner of the property or [his] the owner's representative. If the balance is not claimed by the owner within sixty days after sale, then the balance shall be paid over to the director of finance of the State and shall be kept by [him] the director in a special deposit for payment to the owner and shall be disposed of as provided in chapter [523.] 523A."

SECTION 18. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A transaction, although subject to this article, is also subject to chapter 408 (industrial loan act), chapter 409 (small loan act), and chapter 476 [(retail installment sales act),] (credit sales act), and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

SECTION 19. Section 502-52, Hawaii Revised Statutes, is amended to read as follows:

“§502-52 Signatures of certain state officers, acknowledgments not required. In the case of an official signature entitled to be judicially noticed pursuant to section [622-23,] 626-1, rule 901 or 902, the signature shall suffice to show due execution by the officer signing the instrument and the officer is not required to acknowledge the instrument in order to entitle it to be recorded.”

SECTION 20. Section 507-15, Hawaii Revised Statutes, is amended to read as follows:

“§507-15 Application of proceeds of sale. Out of the proceeds of sale pursuant to section 507-14, the holder of the lien may retain the amount of the lien, plus twenty-five per cent thereof to cover expenses incurred in connection with the storage, handling, and sale of the article or lot of articles sold. Any balance remaining of the sale price of each article or lot of articles sold which is not claimed by the owner thereof within thirty days from the date of sale shall be deposited with the director of finance of the State for payment to the owner and shall be disposed of as provided in chapter [523.] 523A.”

SECTION 21. Section 507-65, Hawaii Revised Statutes, is amended to read as follows:

“[]§507-65[] Final demand and notice of sale. If both notices have been sent, as required by sections 507-63 and 507-64, and the total sum due has not been paid as specified in the two prior notices, the owner may prepare for the sale of the occupant’s property. The owner shall then send to the occupant, addressed to the occupant’s last known address, postage prepaid:

- (1) A notice of final demand and sale which shall state all of the following:
 - (A) That the sums due for rent and charges demanded have not been paid.
 - (B) That the occupant’s right to use the designated storage space has been terminated.
 - (C) That the occupant no longer has access to the stored property.
 - (D) That the stored property is subject to a lien and the amount of the lien.
 - (E) That the property will be sold to satisfy the lien after a specified date which is not less than thirty days from the date of mailing the notice unless prior to the specified date, the lien is paid in full.
 - (F) That any excess proceeds of the sale over the lien amount of costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of one year from the sale and that thereafter the proceeds will go to the State under chapter [523.] 523A.
 - (G) That if the proceeds of sale do not fully cover the amount of lien and costs, the occupant will be held liable for any deficiency.
- (2) An itemized statement of the owner’s claim showing all sums due at the time of the notice and the date when sums became due.”

SECTION 22. Section 507-66, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The sale shall be conducted in a commercially reasonable manner; and, after deducting the amount of the lien and costs, the owner shall retain any

excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at anytime within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the State as provided in chapter [523.] 523A."

SECTION 23. Section 531-33, Hawaii Revised Statutes, is amended to read as follows:

"§531-33 Procedure to dispose of unclaimed personalty. Whenever the personal representative of an estate is unable to discover any living heirs or legatees of [his] the decedent, [he] the personal representative shall give notice to all heirs or legatees by publication in such newspaper or newspapers and for such time as the court or registrar may direct, but not less than once a week for three successive weeks, of the date of the hearing upon [his] the personal representative's final accounts or the date on which [his] the personal representative's closing statement will be approved if no objection is filed, which notice shall direct all claimants of a distributive share in the estate of [his] the decedent to appear and present their claims at the hearing or in writing prior to the date on which the closing statement will be approved if no objection is filed; provided that the time allowed for presentation of claims shall be not less than ninety days after the first publication of the notice.

If no claims are presented within the prescribed time, or if such claims as may be allowed do not exhaust the personalty of the estate, any personal estate remaining after the settlement and approval of the final accounts of the personal representative, and the payment of such distributive shares as may be allowed by the court or registrar shall upon order of the court be transferred to the state director of finance by the personal representative.

The director shall cause to be sold at public auction all such personalty as is so transferred [to him], except cash or bonds of the State.

The personal estate shall be disposed of as provided in chapter [523.] 523A."

SECTION 24. Section 531-34, Hawaii Revised Statutes, is amended to read as follows:

"§531-34 Payments into court. When property is distributed to a distributee, legatee, heir, or beneficiary who cannot be found, or who refuses to accept the same, or to give a proper voucher therefor, and the same consists of money, or corporate stocks, or bonds, the personal representative or trustee may deposit the property, in the name of the person entitled thereto, with the clerk of the circuit court in which the estate is pending in probate, or, in the case of a trust, with the clerk of the circuit court having jurisdiction over the subject matter of the trust, who shall give a receipt therefor and be liable upon [his] official bond therefor and be subject to chapter [523.] 523A. The receipt shall be deemed and received with the same force and effect as if executed by the distributee, legatee, heir, or beneficiary. Any personal representative or trustee under this section shall submit to the clerk of court, at the time of making the deposit, an affidavit setting forth the period of time the money, or corporate stocks, or bonds have been in affiant's possession."

SECTION 25. Section 532-14, Hawaii Revised Statutes, is amended to read as follows:

“§532-14 Disposition by State. If the intestate leaves no kindred, [his] the intestate’s estate shall be disposed of as provided in chapter [523.] 523A.”

SECTION 26. Section 560:3-1210, Hawaii Revised Statutes, is amended to read as follows:

“§560:3-1210 Undistributed proceeds or balances, disposition. When any balance remains in the hands of the clerk, after payment in the order specified in section 560:3-805, and no heirs or devisees of the decedent, entitled to the balance, can be located after reasonable search and inquiry, the clerk, after the expiration of one year after the first publication, shall report the fact to the court, which shall forthwith enter an order forwarding such property to the state director of finance, and the clerk thereupon shall immediately deposit the money or funds, or any balance, with the director for disposition as provided in chapter [523.] 523A. The director at any time may authorize the payment out of the general funds of the State of any amount so forwarded to any person who establishes to the satisfaction of the director that [he] the person is legally entitled thereto as an heir or devisee of the decedent, and the person shall be entitled to receive the amount thereof out of any moneys in the treasury not otherwise appropriated, upon warrant drawn by the state comptroller.”

SECTION 27. Section 560:3-1212, Hawaii Revised Statutes, is amended to read as follows:

“§560:3-1212 Estates of persons, leaving no known relatives. Every coroner, or medical examiner, who is called to investigate the death of any person leaving no known spouse, issue, parent, grandparent, or issue of grandparents over the age of majority in the State, shall take immediate charge of such decedent’s personal effects and if in the discretion of the coroner the value of such personal effect is in excess of \$100, forthwith deliver them to the clerk of the court of the judicial circuit in which such decedent died.

If after ten days no person appears, competent to initiate appropriate probate proceedings, the clerk shall administer the estate pursuant to the provisions of this part 12; provided[,] that, if such decedent’s estate be of a value exceeding \$20,000, the clerk shall notify the judge of such circuit having charge of the probate calendar, and shall petition for the appointment of a personal representative of such estate other than the clerk. In the meantime the clerk may take such steps as may be appropriate to preserve and conserve the real and personal property of the decedent. All expenses in connection with the taking possession, care, and conservation of the property and with such proceedings shall be proper charges against the estate of the decedent. The corporation counsel or county attorney of each county shall advise, assist, and represent as far as necessary any of such officers in the performance of any act or the institution or prosecution of any proceeding required by this section.

If such decedent’s estate be of a value not exceeding \$100 and such decedent has no known relatives or whose relatives have failed to indicate any means of disposition of such estate, then the coroner, or medical examiner, having custody of such property shall dispose of such property in an appropriate manner, which may be any one of the following or a combination thereof:

- (1) Where the estate consists only of money and is not in excess of \$100 and expenditures have been made in connection with such death, to reimburse the appropriate city and/or county office which made the disbursement to defray said expenses;
- (2) Where the estate consists of cash [and/or] or personal belongings of monetary value, or both, not exceeding \$100, to liquidate [said] the

- personal belongings and apply the proceeds, together with the cash, if the total does not exceed \$100, in accordance with paragraph [1 hereinabove set forth;] (1);
- (3) Where the assets in the estate are of no monetary value (unsaleable) and in [his] the best judgment and discretion of the coroner or medical examiner can be used by some charitable institution, to donate [said] the assets to whatever charitable institution is willing and able to pick up the assets in question;
 - (4) Where the assets have no value whatsoever or are in such condition that, in [his] the best judgment and discretion[,] of the coroner or medical examiner, a charitable institution cannot use [said] the properties, or will not receive [said] the properties, to destroy the same in any manner [he] the coroner or medical examiner sees fit; and
 - (5) If under paragraphs (1) and (2), there are assets remaining, then [he] the coroner or medical examiner shall forthwith forward the same to the state director of finance for disposition as provided in chapter [523.] 523A.”

SECTION 28. Section 560:3-1213, Hawaii Revised Statutes, is amended to read as follows:

“**§560:3-1213 Estates not in excess of \$2,000.** Upon the death of any person dying intestate and leaving only personal property in the State not exceeding \$2,000 and where a personal representative has not been appointed in the State, a clerk of the court of the judicial circuit wherein the person was domiciled or if not domiciled in the State, the judicial circuit wherein [he] the person was residing or had personal property at the time of [his] death, [may,] upon the filing with the clerk by any interested person of a death certificate issued by a government agency and of an affidavit setting forth the above facts, the names of the heirs if known, and other pertinent facts as required by the clerk, may collect or otherwise reduce to possession or turn into cash all assets of the estate. If after payment of funeral expenses as a preferred claim against the estate there are assets remaining, the clerk shall give notice to creditors and heirs as provided by section 560:3-1206 by posting, or if there are sufficient funds, by posting and advertising, and if after the period and distribution of assets to creditors of deceased persons who have filed proper claims there are assets remaining, then the clerk upon the facts contained in the affidavit as to heirship, shall deliver the assets to the personal representative, if any, or if no personal representative has been appointed, then to the heirs in accordance with the statutes of descent of the State. If no creditors, personal representative, or heirs appear or are found within sixty days of the notice, the clerk shall convert all personal property into cash and forthwith deposit the same with the state director of finance for disposition as provided in chapter [523.] 523A.”

SECTION 29. Section 634-36, Hawaii Revised Statutes, is amended to read as follows:

“**§634-36 Manner of service under sections 634-33 to 35.** When service of summons is provided for by section 634-33, 634-34, or 634-35, service shall be made by service upon the defendant personally by any person authorized to serve process in the place in which [he] the person may be found or appointed by the court for the purpose, or sent by certified or registered mail, postage prepaid, with return receipt requested, by the plaintiff or [his] the plaintiff's attorney to the defendant. The plaintiff or [his] the plaintiff's attorney shall file the return of

the serving officer or an affidavit showing that [the notice and] the copy of summons and complaint were served as aforesaid or sent by certified or registered mail as aforesaid, and in the latter case the return receipt signed by the defendant shall be filed with the affidavit. The service shall be deemed complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided.

If the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court."

SECTION 30. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1985, whether enacted before or after the effective date of this Act, unless such other acts specifically provided otherwise.

SECTION 31. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 32. This Act shall take effect on July 1, 1985.

(Approved May 4, 1985.)

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 207, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) [not less than one nor] not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) [not less than one hundred nor] not more than [five] one hundred acres of irrigated pastoral lands and not more than one thousand acres of [first-class] other pastoral lands; or [(3) not less than two hundred fifty nor more than one thousand acres of second-class pastoral lands; or (4) not less than forty nor more than one hundred acres of irrigated pastoral lands; or (5)] (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalaniana'ole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as [his] the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquaculture lot, as the case may be, as provided in this section. The department is authorized

to develop and construct multifamily units for housing native Hawaiians. The method of disposition, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 70

S.B. NO. 1114

A Bill for an Act Relating to Dentists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448-2, Hawaii Revised Statutes, is amended to read as follows:

"§448-2 Practice without license prohibited. No person shall practice dentistry or dental surgery in the State, either gratuitously or for pay, or shall offer to so practice or shall advertise or announce himself, either publicly or privately, as prepared or qualified to so practice, or append the letters "D.D.S.", "D.M.D.", "Dr.", "L.D.S.", or any other dental degree to his name with intent thereby to imply that he is a practitioner of dentistry or a dental surgeon, without having a valid, unrevoked license from the board of dental examiners."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 71

S.B. NO. 1179

A Bill for an Act Relating to Annual Reports.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature recognizes that there is a proliferation of annual reports published by departments and agencies in the executive branch of the state government. Some of these reports are required by statute while others are published at the initiative of individual departments, agencies, or programs.

The original purpose of these annual reports was to provide information on programs of the executive branch to the legislature, governor, general public, and other governmental agencies.

However, with the enactment of Act 185, SLH 1970, the majority of the information provided in annual reports is available for all 300 programs administered by the departments and agencies in the executive branch in the form of program and financial plans, program memoranda, and variance reports, etc. This detailed information is provided to every legislator and is readily available to interested members of the general public at public libraries within the State.

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The purpose of this Act is to better utilize the manpower and financial resources of the state government by amending the Hawaii Revised Statutes to eliminate duplication of information in annual reports wherever such duplication exists.

In order to accomplish the purpose of this Act, the responsibility and authority for reporting on the achievement of executive branch programs should be assigned to the governor. In addition, the governor should be authorized to:

1. Determine all annual report requirements of the executive branch; and
2. Ascertain which annual report requirements will be continued or eliminated.

SECTION 2. Section 93-12, Hawaii Revised Statutes, is amended to read as follows:

“§93-12 Annual reports[; due date]. All annual reports that are or shall be required to be submitted by a state agency to the governor or another state agency, shall be submitted on a fiscal year basis; provided, that the governor may prescribe other due dates for annual reports when the fiscal year basis would not be feasible. Further, any law to the contrary notwithstanding, in order to make optimal use of available state government resources, the governor may waive annual report requirements if information included in such reports is available in other reports and is acceptable for the purpose required or is deemed to be no longer pertinent for program reporting purposes. If there is duplication of information in annual reports within an agency, these annual reports shall be consolidated. In lieu of the submittal of individual annual reports by state departments, agencies, boards, or commissions, the governor may submit a consolidated annual report for the executive branch or direct the consolidation of one or more reports. These provisions shall not preclude the legislature from requesting specific reports through concurrent resolution.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 72

S.B. NO. 1487

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 87, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§87- State and county contributions to the fund for employees specified in section 87-1(5)(A)(ix) who retire after June 30, 1984, with less than ten years of credited service, excluding sick leave. (a) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$22.78 for each of their respective employee-beneficiaries and \$70.04 for each respective employee-beneficiary with a dependent-beneficiary enrolled under this section. These contributions shall be used for the payment of costs of hospital, medical, and surgical benefits of a health benefits plan; provided that the monthly

contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall not exceed the monthly contribution of a family plan for both of them.

(b) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$5.72 for the period July 1, 1985 to June 30, 1986, and \$5.96 for the period July 1, 1986 to June 30, 1987, for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled for dental benefits under this section. The contributions shall be used for the payment of costs of dental benefits of a health benefits plan. Notwithstanding any provisions to the contrary, no part of the fund shall be used to finance the contributions except a rate credit or reimbursement or earnings or interest therefrom received by the fund or general revenues appropriated for that purpose.

(c) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$2.25 for each of their respective employees to be used towards the payment of group life insurance benefits for each employee enrolled under this section.

(d) The State through the department of budget and finance and the several counties through their respective departments of finance shall advance the amount of their respective employee-beneficiaries contributions to the fund on or before the first day of each month.

(e) Contributions made by the State or the several counties shall not be considered as wages or salary of an employee-beneficiary, and no employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1985.

(Approved May 4, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 73

H.B. NO. 110

A Bill for an Act Relating to Expenditure of Public Money and Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-55, Hawaii Revised Statutes, is amended to read as follows:

"§103-55 Wages, hours, and working conditions of employees of contractors supplying services. (a) Before any prospective bidder is entitled to submit any bid for the performance of any contract to supply services in excess of \$5,000 to any governmental agency, the bidder shall certify that the services to be performed will be performed under the following conditions:

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Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of \$5,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract[.], unless such noncompliance is corrected within a reasonable period as determined by the contracting officer. Payment in the final settlement of a contract or release of bonds or both shall not be made unless the contracting officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of \$5,000, including contracts to supply ambulance service and janitorial service. This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16.
- (5) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (6) Contracts with nonprofit institutions."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

ACT 74

H.B. NO. 191

A Bill for an Act Relating to Aquatic Resources and Wildlife.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Title 12, subtitle 6, Hawaii Revised Statutes, is amended by adding a new chapter to be designated as chapter 197 and to read:

"CHAPTER 197 GENERAL PROVISIONS RELATING TO AQUATIC RESOURCES AND WILDLIFE

§197-1 Definitions. As used in this chapter, unless the context indicates otherwise:

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral or other animal that inhabits the freshwater and marine environment and includes any part, product, egg or offspring thereof; or freshwater and marine plants, including seeds, roots, and other parts thereof.

"Board" means the board of land and natural resources.

“Commission” means the animal species advisory commission.

“Committee” means the aquatic life and wildlife advisory committee established in each of the counties of the State.

“Conservation” means to use and the use of all methods and procedures for the purpose of managing populations of aquatic life and wildlife and their habitats.

“Department” means the department of land and natural resources.

“Habitat” means a locality or environment in which aquatic life, wildlife or land plants (as defined in chapter 195D) grow or live.

“Indigenous species” means any aquatic life, wildlife, or land plant (as defined in chapter 195D) growing or living naturally in Hawaii without having been brought directly or indirectly to Hawaii.

“Introduction” means an act of establishing aquatic life or wildlife into a habitat to which it is not indigenous.

“Take” means to fish, trap, hook, net, spear, harvest, pick or withdraw aquatic life from the water, or to injure, hunt, shoot, wound, kill, trap, net, capture, or possess wildlife.

“Wildlife” means any non-domesticated member of the animal kingdom, including game birds and mammals designated by law or rules for hunting, whether reared in captivity or not, and includes any part, product, egg or offspring thereof, except aquatic life as defined in this section.

§197-2 Animal species advisory commission. (a) There is established within the department an animal species advisory commission which may serve in an advisory capacity to the board. The commission shall consist of thirteen members to be appointed by the governor in the manner provided in section 26-34. The chairperson of each aquatic life and wildlife advisory committee established pursuant to this chapter and three members of the department designated by the chairperson of the department, one each from the professional fields of aquatic life, wildlife, and conservation and resources enforcement shall serve as members of the commission. Six of the members shall be scientists in the fields of botany, mammalogy, ichthyology, entomology, ornithology, and invertebrate zoology. The commission shall select its own chairperson.

(b) The commission may advise the board on every proposal for the deliberate introduction of aquatic life and wildlife by the department into any habitat within the State, whether the introduction proposed is from without the State into the State, or from one area in the State into another area in the State.

(c) The commission may also advise the board on any matter affecting the taking and conservation of aquatic life and wildlife including proposed rules. The commission may hear such persons and acquire such information as it desires and shall communicate its findings and recommendations to the board.

§197-3 Introduction of aquatic life and wildlife. (a) No species of aquatic life and wildlife shall be deliberately introduced by the department under this chapter into any habitat within the State, whether the introduction is from without the State into the State or from one area in the State into another area in the State unless the introduction is recommended by the department and authorized by rules of the department pursuant to chapter 91.

(b) The department, in determining whether to recommend the deliberate introduction of aquatic life and wildlife, shall make the following findings:

- (1) The factors which limit the distribution and abundance of the species in its native habitat have been studied and its probable dispersal pattern appraised;
- (2) Whether in the area where the species is proposed to be introduced there is or had been stock of a desirable, ecologically comparable

indigenous species which can be increased or rehabilitated by reintroduction or by encouraging extension of its range;

- (3) Whether the species proposed to be introduced would threaten the existence and stability of any indigenous species as predator; competitor for food, cover, or breeding sites; or in any other way arising from its characteristics and ecological requirements;
- (4) The availability of socially acceptable methods of eliminating the species or keeping it under control in the area where it is proposed to be introduced and in adjoining areas;
- (5) The extent to which the species will enhance the economic and aesthetic values of the area where it is proposed to be introduced;
- (6) That the individuals to be introduced are free of communicable diseases and parasites and that there is no reason to believe that any communicable disease or parasite constitutes an important factor in the control of population; and
- (7) That there is no foreseeable risk of conflict on account of the introduction with land use policies in the area where a species is proposed to be introduced or in adjoining areas to which the species might spread.

(c) Before any species of aquatic life or wildlife is introduced, under this chapter, into a habitat, the suitability of the introduction shall be tested, if there is available an experimental area which can be fully controlled with a habitat typical of the area where the species is proposed to be introduced.

(d) When a species of aquatic life or wildlife is deliberately introduced into a habitat under this section, and until the species becomes established there on a stable basis, the department shall conduct studies of the introduced species in its new habitat, including studies of its rate of spread and impact on the habitat.

(e) Any person who violates this section or any rule adopted pursuant to this section shall be subject to the penalties provided in section 197-5.

§197-4 Aquatic life and wildlife advisory committees. (a) There is established in each of the counties of the State an aquatic life and wildlife advisory committee. Each committee shall be composed of members of the board representing the county, who shall serve ex officio and shall be nonvoting members, and five members appointed by the governor in accordance with section 26-34, who shall be knowledgeable in the taking and conservation of aquatic life and wildlife. The members shall serve for four-year terms. Each committee shall select its own chairperson from its voting members, and three voting members shall constitute a quorum. Members of the committees shall receive no compensation but shall be reimbursed by the board for all necessary expenses, including stenographic services.

(b) A committee shall meet at the call of its chairperson or of any three of its members for the consideration of any matter affecting the taking and conservation of aquatic life and wildlife within the county, including proposed rules and the enforcement thereof. Each committee may hear such persons and acquire such information as it desires and shall communicate its findings and recommendations to the department.

§197-5 General penalty. Any person violating any of the provisions of this chapter, or any rule adopted pursuant to this chapter, shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by law."

SECTION 2. Section 187-1.2, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 187-1.3, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 187-1.4, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 4, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5

ACT 75

S.B. NO. 73

A Bill for an Act Relating to Admission to a Psychiatric Facility.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Gravely disabled” means a condition in which a person, as a result of a mental disorder, (1) is unable to provide for that individual’s basic personal needs for food, clothing, or shelter; (2) is unable to make or communicate rational or responsible decisions concerning the individual’s personal welfare; and (3) lacks the capacity to understand that this is so.”

SECTION 2. Section 334-60.2, Hawaii Revised Statutes, is amended to read as follows:

“[[]§334-60.2[]] Involuntary hospitalization criteria. A person may be committed to a psychiatric facility for involuntary hospitalization, if the court finds:

- (1) That the person is mentally ill or suffering from substance abuse[, and];
- (2) That [he] the person is imminently dangerous to [himself] self or others, or is gravely disabled; and
- (3) That [he] the person is in need of care or treatment, or both, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

ACT 76

S.B. NO. 86

A Bill for an Act Relating to State Environmental Policy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 344-4, Hawaii Revised Statutes, is amended to read as follows:

“§344-4 Guidelines. In pursuance of the state policy to conserve the natural resources and enhance the quality of life, all agencies, in the development of programs, shall, insofar as practicable, consider the following guidelines:

- (1) Population.
 - (A) Recognize population impact as a major factor in environmental degradation and adopt guidelines to alleviate this impact and minimize future degradation;
 - (B) Recognize optimum population levels for counties and districts within the State, keeping in mind that these will change with technology and circumstance, and adopt guidelines to limit population to the levels determined.
- (2) Land, water, mineral, visual, air, and other natural resources.
 - (A) Encourage management practices which conserve and fully utilize all natural resources;
 - (B) Promote irrigation and waste water management practices which conserve and fully utilize vital water resources;
 - (C) Promote the recycling of waste water;
 - (D) Encourage management practices which conserve and protect watersheds and water sources, forest, and open space areas;
 - (E) Establish and maintain natural area preserves, wildlife preserves, forest reserves, marine preserves, and unique ecological preserves;
 - (F) Maintain an integrated system of state land use planning which coordinates the state and county general plans.
 - (G) Promote the optimal use of solid wastes through programs of waste prevention, energy resource recovery, and recycling so that all our wastes become utilized.
- (3) Flora and fauna.
 - (A) Protect endangered species of indigenous plants and animals and introduce new plants or animals only upon assurance of negligible ecological hazard;
 - (B) Foster [and] the planting of native as well as other trees, shrubs, and flowering plants compatible to the enhancement of our environment.
- (4) Parks, recreation, and open space.
 - (A) Establish, preserve and maintain scenic, historic, cultural, park and recreation areas, including the shorelines, for public recreational, educational, and scientific uses;
 - (B) Protect the shorelines of the State from encroachment of manmade improvements, structures, and activities;
 - (C) Promote open space in view of its natural beauty not only as a natural resource but as an ennobling, living environment for its people.
- (5) Economic development.
 - (A) Encourage industries in Hawaii which would be in harmony with our environment;
 - (B) Promote and foster the agricultural industry of the State; and preserve and conserve productive agricultural lands;
 - (C) Encourage federal activities in Hawaii to protect the environment;

- (D) Encourage all industries including the fishing, aquaculture, oceanography, recreation, and forest products industries to protect the environment;
 - (E) Establish visitor destination areas with planning controls which shall include but not be limited to the number of rooms.
 - (F) Promote and foster the aquaculture industry of the state; and preserve and conserve productive aquacultural lands.
- (6) Transportation.
- (A) Encourage transportation systems in harmony with the life-style of the people and environment of the State;
 - (B) Adopt guidelines to alleviate environmental degradation caused by motor vehicles;
 - (C) Encourage public and private vehicles and transportation systems to conserve energy, reduce pollution emission, including noise, and provide safe and convenient accommodations for their users.
- (7) Energy.
- (A) Encourage the efficient use of energy resources.
- (8) Community life and housing.
- (A) Foster life-styles compatible with the environment; preserve the variety of life-styles traditional to Hawaii through the design and maintenance of neighborhoods which reflect the culture and mores of the community;
 - (B) Develop communities which provide a sense of identity and social satisfaction in harmony with the environment and provide internal opportunities for shopping, employment, education, and recreation;
 - (C) Encourage the reduction of environmental pollution which may degrade a community;
 - (D) Foster safe, sanitary, and decent homes;
 - (E) Recognize community appearances as major economic and aesthetic assets of the counties and the State; encourage green belts, plantings, and landscape plans and designs in urban areas; and preserve and promote mountain-to-ocean vistas.
- (9) Education and culture.
- (A) Foster culture and the arts and promote their linkage to the enhancement of the environment;
 - (B) Encourage both formal and informal environmental education to all age groups.
- (10) Citizen participation.
- (A) Encourage all individuals in the State to adopt a moral ethic to respect the natural environment; to reduce waste and excessive consumption; and to fulfill the responsibility as trustees of the environment for the present and succeeding generations; and
 - (B) Provide for expanding citizen participation in the decision-making process so it continually embraces more citizens and more issues.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

A Bill for an Act Relating to General Excise Tax Exemptions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-29, Hawaii Revised Statutes, is amended to read as follows:

“§237-29 Exemptions for certified low and moderate income housing. (a) All gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease, or rental management] in the State of a housing project which has been certified under section 359G-15 shall be exempt from general excise taxes.

(b) All gross income received [from or on behalf of a tenant or lessee as rent for a dwelling unit in] by a nonprofit [corporation] or a limited distribution [corporation] mortgagor for a low and moderate income housing project certified under section 359G-15 shall be exempt from general excise taxes.

(c) All claims for exemption under this section shall be certified first by the Hawaii housing authority and forwarded to the director of taxation[.], except that any project previously granted an exemption need not reapply for an exemption until there is a change in use or ownership of the project.

(d) The director of taxation and the [director of the] Hawaii housing authority shall adopt rules pursuant to chapter 91 [necessary] for the purpose¹ of this section[.], including any time limitation for such exemptions.”

SECTION 2. Section 359G-15, Hawaii Revised Statutes, is amended to read as follows:

“§359G-15 Exemption from general excise taxes. (a) The authority may certify [a housing project receiving government assistance for exemption from general excise taxes. At the request of the authority, the department of taxation shall exempt such gross income from general excise taxes.] for exemption from general excise taxes any qualified person or firm involved with a newly constructed or rehabilitated project developed under this chapter, chapter 356, or section 46-15.1.

(b) In accordance with rules established by the authority, existing low and moderate income housing projects receiving government assistance under an agreement with a governmental body that regulates rents and operations of the projects may receive an exemption annually upon review and certification by the authority for any qualified period. The authority shall notify the department of taxation of any such certification provided to existing projects.

[(b) (c) [A claim] All claims for [such] exemption under this section shall be filed with [the director of taxation pursuant to rules adopted by the director] and certified by the authority and forwarded to the department of taxation. Such exemption as filed and approved, shall not be considered a subsidy for the purpose of this chapter.

[(c) (d) For the purpose of this section, “government assistance” means assistance under a low or moderate income housing program from the State or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise[.] which is approved by the authority.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

Note

1. Prior to amendment, "purpose" read "purposes".

ACT 78

S.B. NO. 237

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code and multiply that number by the amount as shown below for the corresponding taxable years as follows:

- [(1) Effective with respect to taxable years beginning after December 31, 1972, the amount shall be \$750;
- (2)] (1) Effective with respect to taxable years beginning after December 31, 1979, the amount shall be \$1,000.
- (2) Effective with respect to taxable years beginning after December 31, 1984, the amount shall be \$1,040.

A nonresident shall be entitled to the same personal exemptions as a resident, without proration of the personal exemptions on account of income from sources outside the State.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply with respect to taxable years beginning after December 31, 1984.

(Approved May 9, 1985.)

ACT 79

S.B. NO. 463

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and others for overpayment of taxes, or on account of other claims for refunds, reimbursements, or other payments, against the State in the amount set opposite their names:

ACT 79

REFUND OF TAXES:	<u>Amount</u>
ROYAL HAWAIIAN AIR SERVICE	\$198,038.43
PRINCEVILLE AIRWAYS, INC.	12,322.03
JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	
TROPICAL RENT-A-CAR SYSTEMS, INC.	
Civil No. 84-233, District Court of Third Circuit	
Amount of Settlement:	\$ 3,304.30
No interest.	\$ 3,304.30
HAYES, Elizabeth H.	
Civil No. 54079, First Circuit	
Amount of Settlement:	\$ 15,000.00
No interest.	\$ 15,000.00
ABRAMSON, Joan	
Civil No. 75-0083, U.S.D.C.	
Amount of Settlement:	\$125,000.00
No interest.	\$125,000.00
HO, Ikuko Y.	
Civil No. 67369, First Circuit	
Amount of Settlement:	\$ 30,000.00
No interest.	\$ 30,000.00
KAWAHARA, Hatsuko	
Civil No. 67355, First Circuit	
Amount of Settlement:	\$ 6,100.00
No interest.	\$ 6,100.00
DUBROFF, Diana D.	
Civil No. 72143, First Circuit	
Date of Judgment	7/19/84
Amount of Judgment:	\$ 32,527.68
Interest at 4%:	\$ 1,342.77
	\$ 33,870.45
KAIAMA, Rose A.	
Civil No. 5673(2), Second Circuit	
Amount of Settlement:	\$325,000.00
No interest.	\$325,000.00
VISAYA, Leticia	
Civil No. 74464, First Circuit	
Date of Judgment:	6/1/84
Amount of Judgment:	\$307,327.68
Amount of Costs:	\$ 8,607.25
No interest.	\$315,934.93
BRITTIN, Jennifer	
Civil No. 73393, First Circuit	
Amount of Settlement:	\$ 10,000.00
No interest.	\$ 10,000.00
AKAMINE, Ernest	
Civil No. 73530, First Circuit	
Amount of Settlement:	\$325,000.00
No interest.	\$325,000.00
KAGEYAMA, Candice Taylor	
Civil No. 76447, First Circuit	
Date of Settlement:	7/23/85
Amount of Settlement:	\$ 3,000.00
Interest at 4%:	\$ 84.45
	\$ 3,084.45
CRISTELLI, Patrick	
Civil No. 60444, First Circuit	
Amount of Settlement:	\$825,000.00
No interest.	\$825,000.00
PIERCE, Thomas	
Civil No. 72831, First Circuit	
Amount of Settlement:	\$550,000.00
No interest.	\$550,000.00
MALONE, Shirley A. Bethel	
Civil No. 61681, First Circuit	
Amount of Settlement:	\$600,000.00
No interest.	\$600,000.00

FREITAS, Clarence Civil No. 64810, First Circuit Amount of Settlement: No interest.	\$ 7,500.00	\$ 7,500.00
WILLIS, Debra J. Civil No. 62320, First Circuit Amount of Settlement: No interest.	\$ 2,000.00	\$ 2,000.00
ELLIS, Louis Civil No. 4205(1), Second Circuit Amount of Settlement: No interest.	\$ 5,000.00	\$ 5,000.00
MOE, Pulusila Civil No. 73772, First Circuit Amount of Settlement: No interest.	\$ 7,500.00	\$ 7,500.00
DELA CRUZ, Derek, DELA CRUZ, Manuel and DELA CRUZ, Genevieve Civil No. 64547, First Circuit Amount of Settlement: No interest.	\$ 3,000.00	\$ 3,000.00
LEVI, Werner Civil No. 50238, First Circuit Date of Settlement: Amount of Settlement: Interest at 10%:	7/15/84 \$ 60,000.00 \$ 6,255.42	\$ 66,255.42
WILLISTON, James S. Civil No. 77499, First Circuit Amount of Settlement: No interest.	\$ 13,000.00	\$ 13,000.00
DeMERCER, Jean Marie Civil No. 6809, Third Circuit Amount of Settlement: No interest.	\$ 10,000.00	\$ 10,000.00
BOTELLO, Michael Cameron Civil No. 73401, First Circuit Amount of Settlement: No interest.	\$ 7,500.00	\$ 7,500.00
MONYHUN, Barbara Civil No. 78762, First Circuit Amount of Settlement: No interest.	\$ 5,000.00	\$ 5,000.00
FIRST INSURANCE COMPANY OF HAWAII Civil No. 6303, Third Circuit 10% interest 8/3/81-7/31/85: Less interest paid- Act 134, S.L.H. 1984:	\$ 14,959.23 \$ 1,364.75	\$ 13,594.48
HAMPTON, Lulave and Carl Civil No. 59165, First Circuit Amount of Settlement: No interest.	\$240,000.00	\$240,000.00
FUJIWARA, Elizabeth Civil No. 78-0062, U.S.D.C. Amount of Settlement: No interest.	\$ 31,988.00	\$ 31,988.00

ACT 80

SWIFT, Randi
Civil No. 74048, First Circuit
Amount of Settlement:
No interest.

\$ 22,500.00

\$ 22,500.00

MISCELLANEOUS CLAIMS:
CITY AND COUNTY OF HONOLULU
Reimbursement pursuant to section
70-111, Hawaii Revised Statutes
DIANA CHERIE STEPHENS

\$2,024,952.99
\$ 17.00

SECTION 2. The sums hereinabove appropriated shall be paid to the respective persons and in the several amounts hereinabove set out upon warrants issued by the comptroller of the State: (1) upon vouchers approved by the director of taxation as to claims for overpayment of taxes and (2) upon vouchers approved by the attorney general as to all other claims.

SECTION 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State and settlements of claims, payment of interest, at the rate stated above, shall be limited to the period from the date of judgment or settlement to thirty days after the effective date of this Act, as provided in Section 662-8, Hawaii Revised Statutes, and all unexpended balances thereof after payment shall lapse into the general fund of the State as of the close of business on June 30, 1986.

SECTION 4. If any portion of this Act or its application to any circumstances or person is held invalid for any reason, the remainder thereof shall not be affected thereby.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

ACT 80

S.B. NO. 730

A Bill for an Act Relating to Service Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 407-92.5, Hawaii Revised Statutes, is amended to read as follows:

“§407-92.5 Charges. Any savings and loan association and any approved service corporation of a savings and loan association may charge, contract for, receive, collect in advance, or recover interest, discount, and other charges at the same rates and in the same amounts as permitted by law in the case of loans made by industrial loan companies licensed under chapter 408, subject to the penalties imposed by that chapter if a greater rate of interest than that permitted by chapter 408 is contracted for or there is any other violation of sections 408-15 and 408-17 applicable to licensees under chapter 408.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

ACT 81

S.B. NO. 1075

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Article VII, section 6, of the Constitution of the State of Hawaii requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met for the fourth year in a row and that the legislature is constitutionally required to give a tax credit or refund.

The purpose of this Act is to provide for such an income tax credit to satisfy constitutionally mandated requirements.

SECTION 2. (a) In addition to the excise tax credit allowed under section 235-55.5, Hawaii Revised Statutes, and in addition to any other credit allowed under chapter 235, Hawaii Revised Statutes, there shall be allowed each resident individual taxpayer who qualifies under section 235-55.5(a), Hawaii Revised Statutes, a general income tax credit of \$1 which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes. The general income tax credit of \$1 shall be multiplied by the number of qualified exemptions as defined in section 235-55.5(c), Hawaii Revised Statutes, to which the taxpayer is entitled, regardless of adjusted gross income. Section 235-55.5(c), Hawaii Revised Statutes, to the contrary notwithstanding, such qualified exemption shall have been a resident of the State as defined in section 235-1, Hawaii Revised Statutes, for at least nine months whether or not such qualified resident was physically in the State for nine months. For the purposes of this section, multiple exemptions shall not be granted for this credit because of age, or deficiencies in vision, hearing, or other disability. The general income tax credit allowed under this section shall be deducted from income tax liability for the taxable year 1985. Section 235-55.5(d) and (e), Hawaii Revised Statutes, is applicable to this section and incorporated herein to the extent not in conflict with this section.

(b) The credit under this section shall not be available to (1) any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year; (2) any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or (3) any misdemeanant who has been committed to jail and has been physically confined for the full taxable year.

(c) This section implements the provisions of Article VII, section 6, of the State of Hawaii Constitution enacted by the 1978 Constitutional Convention, which states as follows:

“DISPOSITION OF EXCESS REVENUES

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.”

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

A Bill for an Act Relating Making an Appropriations for Payment of Settlement Between the State of Hawaii and Goodfellow Bros., Inc.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide for the payment of a settlement agreement negotiated by the State of Hawaii and Goodfellow Bros., Inc., involving a suit (Civil No. 6635(2), Hawaii Second Circuit Court) filed by Goodfellow Bros., Inc., against the State of Hawaii. This suit seeks damages of more than \$12,000,000. The claims are grounded on a contract awarded to Goodfellow Bros., Inc., by the state department of transportation for a federal-aid highway construction project on Maui.

The departments of the attorney general and of transportation have evaluated the claims and consider the settlement to be in the best interest of the State. The evaluation included considerations of the projected cost of defending the claims and the potential exposure to liability.

SECTION 2. There is appropriated the sum of \$2,750,000 out of general obligation bond funds of the State of Hawaii for fiscal year 1985-1986, with debt service costs to be paid out of the state highway fund. This appropriation shall be used for settlement of the pending claims involving the highway construction project, Piilani Highway, vicinity of Mokulele Highway to the vicinity of Kilohana Street, Island of Maui, Project No. TQF-RF-031-1(6).

SECTION 3. The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

A Bill for an Act Relating to Housing Loan and Mortgage Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 356-206, Hawaii Revised Statutes, is amended to read as follows:

“§356-206 Rules; eligible borrower. (a) The authority shall establish the qualifications of an eligible borrower, and may consider, but not be limited to, the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The adjusted household income of an eligible borrower shall not exceed the amount established by the authority pursuant to this section. For an eligible borrower with a family of four persons, the amount shall be equal to one hundred [fifty] seventy-two and one-half per cent of the median annual income

for households of four persons in the State as published by the United States Department of Health and Human Services in November 1980; provided that the amount may be increased by four per cent for each one-half per cent that the annual interest rate on the eligible loan exceeds ten per cent. For an eligible borrower with a family of other than four persons, the amount computed above for a family of four persons shall be adjusted in accordance with rules adopted by the authority. As used in this subsection, "adjusted household income" means the total income, before taxes and personal deductions, received by all members of the eligible borrower's household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments, and such other income as provided by rules adopted by the authority under chapter 91, but not including business deductions[.] and income received by dependent members of an eligible borrower's household.

(c) The assets of an eligible borrower shall not exceed an annual amount equal to the adjusted household income for an eligible borrower as set forth in subsection (b). As used herein, assets include, but are not limited to, all cash, securities, and real and personal property, less any outstanding liabilities secured by such assets and less twenty-five per cent of a downpayment required for the purchase of property financed by an eligible loan. For purposes of this section, the value of a vacant lot owned by an eligible borrower shall not be included as an asset when a dwelling unit is or shall be constructed on the property and financed by an eligible loan.

(d) For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower's liabilities.

(e) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:

- (1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities."

SECTION 2. Section 356-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The authority shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible [loans; provided that no initial payment or down payment on property securing an eligible loan shall exceed twenty per cent of the fair market value of the property.] loans."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 9, 1985.)

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Remedies. Notwithstanding other penalties, the director may enforce this chapter in either administrative or judicial proceedings:

- (1) Administrative. If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the director may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease and desist from the violation, pay an administrative penalty not to exceed \$1,000 for each day of violation, correct the violation at the alleged violator's own expense, or appear before the director at a time and place specified in the order and answer the charges complained of. The order shall become final twenty days after service unless within those twenty days the alleged violator requests in writing a hearing before the director. Upon such request the director shall specify a time and place for the alleged violator to appear. When the director issues an order for immediate action to protect the public health from an imminent and substantial danger, the department shall provide an opportunity for a hearing within twenty-four hours after service of the order. After a hearing pursuant to this subsection, the director may affirm, modify, or rescind the order as appropriate. The director may institute a civil action in any court of appropriate jurisdiction for the enforcement of any order issued pursuant to this subsection.

Factors to be considered in imposing the administrative penalty include the nature and history of the violation and any prior violation and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator. In any judicial proceeding to enforce the administrative penalty imposed pursuant to this chapter, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing had expired without such a request, the administrative penalty imposed, and that the penalty imposed remains unsatisfied.

This section does not supersede specific administrative penalties provided elsewhere.

- (2) Judicial. The director may institute a civil action in any court of appropriate jurisdiction for injunctive relief to prevent violation of any order issued or rule adopted pursuant to this chapter, in addition to any other remedy or penalty provided for under this chapter.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5

ACT 85

S.B. NO. 112

A Bill for an Act Relating to Housing

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 359G-9.4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority, any other department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule or regulation, shall notify [all] purchasers of any substantial change in restrictions made by law, ordinance, rule or regulation not more than one hundred eighty (180) days after [[June 20, 1977] or of] a change in restriction, [as the case may be,] and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of dwelling units constructed and sold prior to such effective date[,] an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the State for state agencies and at least three times in a county newspaper for county agencies.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

ACT 86

S.B. NO. 125

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:
 - (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and
 - (B) [Thirty-day] Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license [and a sixty-day restricted, provisional or conditional license to be ordered by the court;], or the court may impose, in lieu of the ninety-day prompt suspension of

license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcoholism treatment programs; and

- (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work; or
 - (ii) Not less than forty-eight hours of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.
- (2) For an offense which occurs within five years of a prior conviction under this section:
 - (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
 - (B) Either one of the following:
 - (i) Not less than eighty hours of community service work; or
 - (ii) Not less than forty-eight consecutive hours of imprisonment; and
 - (C) A fine of not less than \$500 but not more than \$1,000.
- (3) For an offense which occurs within five years of two prior convictions under this section, by:
 - (A) A fine of not less than \$500 but not more than \$1,000;
 - (B) Revocation of license for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than one hundred eighty days imprisonment.
- (4) Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor, shall be considered a prior conviction."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

A Bill for an Act Relating to the Board of Medical Examiners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-6, Hawaii Revised Statutes, is amended to read as follows:

"§453-6 Fees; expenses. No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners [a fee of \$125.] application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. [As a prerequisite to the issuance of a limited and temporary license under this chapter, the applicant shall pay to the board a fee of \$75; provided that the fee to be paid by an applicant qualifying under section 453-3(4) shall be

\$37.50.] Every person holding a license under this chapter shall re-register with the board biennially in each even-numbered year, not later than January 31 and for such registration shall pay a [fee of \$150.] renewal fee. At the time of re-registration, the physician or surgeon shall present to the board evidence of compliance with a program of continuing medical education adopted by the board. Failure to re-register and present such evidence shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a [fee of \$200.] restoration fee. All such fees shall be [deposited] as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

ACT 88

S.B. NO. 558

A Bill for an Act Relating to the General Excise Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

“§237-24 **Amounts not taxable.** This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;

- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter [244] 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale, and the amounts of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected from him and collects the same from those purchasing from him as provided by chapter 245;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;
- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
- (14) Amounts received by an organization enumerated under section 237-23(a)(5) to (8) from the sale of brooms which are manufactured by blind persons working at the adult blind broom shop;
- (15) Amounts received by a producer of sugarcane from the manufacturer to whom he sells the sugarcane, where (A) the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and (B) the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and (C) the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and (D) the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
- (16) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;
- (17) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative corporation is a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation, to occupy for

- dwelling purposes a house, or an apartment in a building owned or leased by the corporation;
- (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation;
- (18) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1;
- (19) Amounts received from sales of (A) intoxicating liquor as defined in chapter [244,] 244D, (B) tobacco products as defined in chapter 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;
- (20) Amounts received by the manager or board of directors of an association of apartment owners of a horizontal property regime established in accordance with chapter 514A in reimbursement of sums paid for common expenses;
- (21) Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978 for amounts received by any person or common carrier engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter to the extent and under the conditions such exemptions or exclusions have theretofore been previously allowed in the State under the provisions of the Constitution of the United States or an act of the Congress of the United States[.]; and
- (22) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

ACT 89

S.B. NO. 644

A Bill for an Act Relating to Traffic Violations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§291- Exceptions; consumption or possession of intoxicating liquor while a passenger in a motor vehicle, storage of opened container containing intoxicating liquor. Sections 291-3.2 and 291-3.3 shall not apply to a motor vehicle for hire which has been issued a certificate of public convenience or necessity, 1-7 passenger classification by the public utilities commission so long as the motor vehicle has a barrier between the driver and the passengers sufficient to prevent intoxicating liquor from being passed between them and only the passengers behind the barrier consume the intoxicating liquor.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Refusal to Submit to a Breath or Blood Test.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-155, Hawaii Revised Statutes, is amended to read as follows:

“§286-155 Revocation of privilege to drive motor vehicle upon refusal to submit to testing. (a) If a person under arrest refuses to submit to a breath or blood test, none shall be given, except as provided in section 286-163, but the arresting officer shall, as soon as practicable, submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had reasonable grounds to believe the arrested person had either been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing as provided in section 286-156, and shall determine whether the statements contained in the affidavit are true and correct. If the district judge finds the statements contained in the affidavit are true, the judge shall revoke the arrested person’s license, permit, or any nonresident operating privilege [for a period of twelve months.] as follows:

- (1) For a first revocation, or any revocation not preceded within a five-year period by a revocation under this section, for a period of twelve months; and
- (2) For any subsequent revocation under this section, for a period not less than two years and not more than five years.

(c) If the arrested person is a resident without a license or permit to operate a motor vehicle in the State, the district judge shall send notice of the

results of the hearing to the examiners of drivers of all counties. The examiners of drivers shall deny the person the issuance of a license or permit for the period of [twelve months.] revocation imposed by the district judge under subsection (b).

(d) Whenever a court penalizes a person under this section, it shall also require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the person to obtain appropriate treatment. All costs for such assessment or treatment or both shall be borne by the penalized person.

(e) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

ACT 91

S.B. NO. 1158

A Bill for an Act Relating to Transfers to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER UNIFORM TRANSFERS TO MINORS ACT

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

"Adult" means an individual who has attained the age of twenty-one years.

"Benefit plan" means an employer's plan for the benefit of an employee or partner.

"Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

"Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

"Court" means the circuit court of the State.

"Custodial property" means (1) any interest in property transferred to a custodian under this chapter and (2) the income from and proceeds of that interest in property.

"Custodian" means a person so designated under section -9 or a successor or substitute custodian designated under section -18.

"Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

"Legal representative" means an individual's personal representative or conservator.

“Member of the minor’s family” means the minor’s parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

“Minor” means an individual who has not attained the age of twenty-one years.

“Person” means an individual, corporation, organization, or other legal entity.

“Personal representative” means an executor, administrator, successor personal representative, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions.

“State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

“Transfer” means a transaction that creates custodial property under section -9.

“Transferor” means a person who makes a transfer under this chapter.

“Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

§ -2 **Scope and jurisdiction.** (a) This chapter applies to a transfer that refers to this chapter in the designation under section -9(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

§ -3 **Nomination of custodian.** (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: “as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act.” The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section -9(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section -9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future

event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section -9.

§ -4 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section -9.

§ -5 Transfer authorized by will or trust. (a) A personal representative or trustee may make an irrevocable transfer pursuant to section -9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section -3 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under section -3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section -9(a).

§ -6 Other transfer by fiduciary. (a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section -9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section -9.

(c) A transfer under subsection (a) or (b) may be made only if:

- (1) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;
- (2) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
- (3) The transfer is authorized by the court if it exceeds \$10,000 in value.

§ -7 Transfer by obligor. (a) Subject to subsections (b) and (c), a person not subject to section -5 or -6 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section -9.

(b) If a person having the right to do so under section -3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under section -3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

§ -8 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

§ -9 Manner of creating custodial property and effecting transfer; designation of initial custodian; control. (a) Custodial property is created and a transfer is made whenever:

- (1) An uncertificated security or a certificated security in registered form is either:

- (A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act"; or
- (B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);
- (2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act";
- (3) The ownership of a life or endowment insurance policy or annuity contract is either:
 - (A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act"; or
 - (B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act";
- (4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act";
- (5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act";
- (6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:
 - (A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act"; or
 - (B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____

(name of minor) under the Hawaii Uniform Transfers to Minors Act"; or

- (7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(B) and (7) of subsection (a):

**“TRANSFER UNDER THE HAWAII
UNIFORM TRANSFERS TO MINORS ACT**

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Hawaii Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).
Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Hawaii Uniform Transfers to Minors Act.
Dated: _____

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

§ -10 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

§ -11 Validity and effect of transfer. (a) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

- (1) Failure of the transferor to comply with section -9(c) concerning possession and control;
- (2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section -9(a); or
- (3) Death or incapacity of a person nominated under section -3 or designated under section -9 as custodian or the renunciation of the office by that person.

(b) A transfer made pursuant to section -9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor’s legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

§ -12 Care of custodial property. (a) A custodian shall:

- (1) Take control of custodial property;

(2) Register or record title to custodial property if appropriate; and

(3) Collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(1) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(2) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _____ (name of minor) under the Hawaii

Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

§ -13 Powers of custodian. (a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of section -12.

§ -14 Use of custodial property. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(1) The duty or ability of the custodian personally or of any other person to support the minor; or

(2) Any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ -15 Custodian's expenses, compensation, and bond. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section -4, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in section -18(f), a custodian need not give a bond.

§ -16 Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) The validity of the purported custodian's designation;
- (2) The propriety of, or the authority under this chapter for, any act of the purported custodian;
- (3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) The propriety of the application of any property of the minor delivered to the purported custodian.

§ -17 Liability to third persons. (a) A claim based on:

- (1) A contract entered into by a custodian acting in a custodial capacity;
- (2) An obligation arising from the ownership or control of custodial property; or
- (3) A tort committed during the custodianship;

may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

- (1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
- (2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ -18 Renunciation, resignation, death, or removal of custodian; designation of successor custodian. (a) A person nominated under section -3 or designated under section -9 as custodian may decline to serve by delivering a valid renunciation pursuant to section 560:2-801 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section -3, the person who made the nomination may nominate a substitute custodian under section -3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section -9(a). The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section -4 as successor custodian by executing and

dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section -4 or to require the custodian to give appropriate bond.

§ -19 Accounting by and determination of liability of custodian. (a) A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

- (1) For an accounting by the custodian or the custodian's legal representative; or
- (2) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section -17 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under section -18(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

§ -20 Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under section -4 or -5;
- (2) The minor's attainment of age eighteen with respect to custodial property transferred under section -6 or -7; or
- (3) The minor's death.

§ -21 Applicability. This chapter applies to a transfer within the scope of section -2 made after its effective date if:

- (1) The transfer purports to have been made under the Hawaii Uniform Gifts to Minors Act; or
- (2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

§ -22 Effect on existing custodianships. (a) Any transfer of custodial property as now defined in this chapter made before July 1, 1985, is validated notwithstanding that there was no specific authority in the Hawaii Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before the effective date of this chapter in a manner and form prescribed in the Hawaii Uniform Gifts to Minors Act except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1985.

(c) Sections -1 and -20 with respect to the age of a minor for whom custodial property is held under this chapter do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen after March 27, 1972, and before July 1, 1985.

§ -23 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -24 Short title. This chapter may be cited as the "Hawaii Uniform Transfers to Minors Act."

SECTION 2. Chapter 553, Hawaii Revised Statutes, is repealed.

SECTION 3. To the extent that this Act, by virtue of the new section -22(b), Hawaii Revised Statutes, in section 1 of this Act, does not apply to transfers made in a manner prescribed in the Hawaii Uniform Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of chapter 553, Hawaii Revised Statutes, does not affect those transfers or those powers, duties, and immunities.

SECTION 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end provisions of this Act are severable.

SECTION 5. This Act shall take effect on July 1, 1985.

(Approved May 10, 1985.)

A Bill for an Act Relating to the Authorization and Refunding of Special Purpose Revenue Bonds to Assist Utilities Serving the General Public.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. Citizens Utilities Company (Kauai Electric Division) is an electric utility serving the general public that qualifies for special purpose revenue bonds pursuant to chapter 39A, part VI, Hawaii Revised Statutes.

SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in one or more series for multi-project capital improvement programs, including the acquisition of land, generating facilities, power plant additions, and/or other qualifying electric system projects for the local furnishing of electric energy by Citizens Utilities Company (Kauai Electric Division) in a total amount not to exceed \$9,400,000, for the financing of which special revenue bonds will be issued during the period from March 1, 1985, through February 28, 1990; provided that public utilities commission approval shall be required for any project financed by the issuance of special purpose revenue bonds under this Act; and provided further that of the amount authorized none shall be used for new fossil fuel generating units and none shall be used for nuclear fuel generating units.

SECTION 3. The public utilities commission shall annually report to the legislature as to the progress under this Act in reducing financing costs of electric utilities, including the cost of such bonds at the time of issue as compared to the cost to the utility if the issue was made under other than the revenue bond provision, the estimated benefits derived from the use of the special purpose revenue bonds, and a listing of the projects to be funded by the special purpose revenue bonds.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A, part VI, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist utilities serving the general public in providing electric energy.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

A Bill for an Act Relating to Pupil Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-181, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section “school vehicle” means any publicly or privately owned motor vehicle used to transport pupils to and from a school as defined in section 298-41 or school functions or school related events, except:

- (1) A motor vehicle used for transportation of pupils attending schools above the twelfth grade or pupils over eighteen years of age;
- (2) A privately owned passenger vehicle when such transportation is provided without compensation of any kind; [or]
- (3) A motor vehicle used for transportation of pupils together with other passengers as a part of the regularly scheduled operation of a mass transit system[.]; or
- (4) A privately owned passenger van when such transportation is provided by a community association duly incorporated with the department of commerce and consumer affairs which operates for the purpose of promoting recreation, health, safety, or social group functions."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

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H.B. NO. 192

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Title 12, Subtitle 5, Hawaii Revised Statutes, is amended by adding a new chapter to be designated as chapter 187A and to read:

**"CHAPTER 187A
AQUATIC RESOURCES
PART I. GENERAL PROVISIONS**

§187A-1 Definitions. As used in this subtitle, unless the context indicates otherwise:

"Aquaculture" means the farming or ranching of aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Board" means the board of land and natural resources.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means a license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2.

“Department” means the department of land and natural resources.

“Marine life” means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

“Qualified aquaculturist” means a person, or association of persons, actively engaged in aquaculture farming, aquaculture produce processing, or aquaculture product development activities.

“Take” means to fish, trap, hook, net, spear, harvest, pick, or withdraw aquatic life from the water.

§187A-2 Powers and duties of department. The department shall:

- (1) Manage and administer the aquatic life, aquatic resources, and aquaculture programs of the State;
- (2) Establish and maintain aquatic life propagating station or stations;
- (3) Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas, refuges, and other areas pursuant to title 12;
- (4) Subject to this title, import aquatic life for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, aquatic life, for the purpose of increasing the food supply of the State; provided that when, in the discretion of the department, the public interest shall not be materially interfered with by so doing, the department may propagate and furnish aquatic life to private parties, upon such reasonable terms, conditions, and prices determined by the department;
- (6) Gather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information, which the department deems proper;
- (7) Enforce all laws relating to the protecting, taking, killing, propagating, or increasing of aquatic life within the State and the waters subject to its jurisdiction;
- (8) Formulate and from time to time recommend to the governor and legislature such additional legislation necessary or desirable to implement the objectives of title 12.

§187A-3 Aquaculture program. (a) There is established, within the department, an aquaculture program which shall:

- (1) Maintain cognizance of actions taken by industry and by federal, state, county, and private agencies in activities relating to aquaculture, and promote and support worthwhile aquaculture activities;
- (2) Serve as an information clearinghouse for aquaculture activities in Hawaii;
- (3) Coordinate development projects to investigate and solve biological and technical problems involved in raising selected species with commercial potential;
- (4) Actively seek federal funding for aquaculture activities in Hawaii;
- (5) Undertake activities required to develop and expand the aquaculture industry in Hawaii; and

(6) Perform such other functions and activities as may be assigned by law.

(b) The chairperson of the board may employ temporary staff exempt from chapters 76 and 77.

§187A-4 Administrator. The board shall appoint an administrator of aquatic resources who shall have charge, direction, and control of all matters relating to aquatic resources management, conservation, and development activities under this title, and such other matters as the board may direct. The administrator shall be trained and educated in natural resource management.

§187A-5 Rules. Subject to chapter 91, the department shall adopt, amend, and repeal rules for and concerning the protection and propagation of introduced and transplanted aquatic life, or the conservation and allocation of the natural supply of aquatic life in any area. The rules may include the following:

- (1) Size limits;
- (2) Bag limits;
- (3) Open and closed fishing seasons;
- (4) Specifications and numbers of fishing or taking gear which may be used or possessed; and
- (5) Prescribe and limit the kind and amount of bait that may be used in taking aquatic life, and the conditions for entry into areas for taking aquatic life.

The rules may vary from one county to another and may specify certain days of the week or certain hours of the day in designating open seasons. All rules shall have the force and effect of law. Any person who violates any of the rules adopted pursuant to this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70.

§187A-6 Permits for taking aquatic life for scientific, educational, or propagation purposes. (a) Notwithstanding the provisions of any other law, the department may take aquatic life for scientific, educational, or propagation purposes, except as prohibited by chapter 195D.

(b) Notwithstanding the provisions of any other law, the department may issue permits to any person to take aquatic life in any part of the State, for scientific, educational, or propagation purposes, except as prohibited by chapter 195D, and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) Any aquatic life taken under the authority of the permit shall be accompanied by the permit while being taken or transported and shall be exempt from seizure while being transported or while in possession, in accordance with the permit.

§187A-7 Expenditures. (a) The department may expend all appropriations made for the purpose of effectuating the objects of title 12.

(b) To further the purposes of title 12, the department may:

- (1) Use lands set apart for the department's use by the governor; and
- (2) Accept gifts and contributions or enter into contracts. Gifts and contributions may be accepted from, or contracts entered into with, public or private agencies or individuals.

(c) All expenditures by the department shall be approved and certified by the board.

§187A-8 Cooperation with other governmental authorities. The department shall endeavor to secure the cooperation and assistance of and shall cooperate with the appropriate agency of the United States or other governmental authorities having an interest in the subject matter of title 12, in every way possible, for the promotion of the purposes of title 12. More specifically, the department may permit the appropriate agency of the United States or other governmental authorities to occupy any land or building and use any appliance, apparatus, or property held or controlled by the department, either independently or in conjunction with the department, upon such terms and conditions as the department and the agency may mutually agree.

§187A-9 Federal aid in fish restoration. The State hereby assents to the provisions of the Dingell-Johnson Federal Aid in Fish Restoration Act (64 Stat. 430, 16 U.S.C. §777), as amended. The department shall perform those acts as may be necessary to the conduct and establishment of cooperative aquatic life restoration and management projects, as defined in the Act of Congress and in compliance with the Act and rules and regulations adopted by the Secretary of the Interior thereunder; provided that federal aid funds granted under the Act shall be used for the purposes of approved projects, and no funds accruing to the State from license fees paid by sport fishers shall be diverted for any purpose other than as provided for in the Act and rules and regulations adopted pursuant thereto.

§187A-10 Agents to sell licenses. (a) The department may designate agents to sell fishing licenses in accordance with this section. Each agent shall be bonded by the department in a sum which shall cover the value of the licenses delivered to the agent. The bond shall secure the faithful accounting and payment to the department of the funds collected from the sale of the licenses. Agents shall report all sales of licenses to the department monthly and not later than the fifteenth day of the month following the month covered by the report. Wilful failure to make a report shall be cause for cancellation of the agency and upon the cancellation a full accounting and settlement for all licenses shall be made forthwith. All fees collected shall be remitted to the department at the same time as the report of license sales is made.

(b) Agents shall receive five per cent of the value of licenses sold and the sum shall be deducted from the total value of fees collected before remittance is made. All reports on license sales shall be made on forms supplied by the department. The duly authorized agents of the department may administer oaths as required in license applications. Chapter 40 shall not apply to the agents.

§187A-11 Disposition of revenues. All moneys collected each month as fees for fishing permits or licenses, and all fees for commercial marine activities, including commercial marine licenses, marine product licenses, and all other moneys collected under the provisions of any law relating to the importation, taking, catching, or killing of aquatic life, and products thereof shall be deposited with the director of finance to the credit of the general fund. The moneys collected shall be available for expenditure only for the department in accordance with appropriations authorized by the legislature and shall be expended by the department for the importation, management, preservation, propagation, and protection of aquatic life into or in the State, and for the payment of expenses incurred in the prosecution of offenders against the aquatic resource laws of the State, and for the conservation of commercial fisheries and all phases of the work pertaining thereto and all expenses connected therewith, which the department deems expedient.

§187A-12 University of Hawaii may use land, etc. The University of Hawaii shall have the privilege, free of charge, of using the land, buildings, apparatus, and appliances of the department for the purposes of a biological laboratory and for research and investigation in connection therewith, so far as the same can be done without material interference with the use of the same as an aquatic life propagation station or for other aquatic-resources activities. The university shall render to the department, in return therefor, such assistance as is reasonably practicable, in connection with the aquatic life propagation station or for other aquatic-resources activities, and as may be mutually agreed upon.

§187A-13 General penalty. (a) Any person violating any of the provisions of this chapter or any rule of the department adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70.

§187A-14 Informer's fee. One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of any of the provisions of this chapter shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply, if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department.

PART II. FISHING RIGHTS

§187A-21 Public fishing grounds. Except as otherwise provided by law, all fishing grounds appertaining to any government land or otherwise belonging to the government, except ponds, shall be and are forever granted to the people, for the free and equal use by all persons; provided that, for the protection of these fishing grounds, the department may manage and regulate the taking of aquatic life.

§187A-22 Use of adjoining lands. No person who has bought any government land, or obtains the land by lease or other title, has or shall have greater right than any other person over any fishing ground not included in the title, although adjacent to the land.

§187A-23 Konohiki rights. (a) The fishing grounds from the reefs, and where there happens to be no reefs, from the distance of one geographical mile seaward of the beach at low watermark, in law, shall be considered the private fishery of the konohiki, whose lands by ancient regulations, belong to the same. These vested fishing rights for the private fishery must be established by proceedings in conformity with section 96 of the Organic Act, and for which judgment has been entered in any circuit court. The established private fishery shall not be disturbed, except to the extent of the reservations and prohibitions set forth in this section, or by law or rule.

(b) The konohiki shall be considered in law to hold the private fishery for the equal use by the konohiki and the tenants on their respective lands, and the tenants shall be allowed to take for home consumption or commercial purposes, any aquatic life of the fisheries, subject to the restrictions imposed by the konohiki as provided in this section, or by law or rule.

(c) A konohiki each year may set apart one given species or variety of aquatic life natural to the private fishery, by giving public notice by posting at least three written or printed notices in conspicuous places on the land or fishery, to the tenants and others residing on the land, signifying by name, the kind of aquatic life which has been set apart for exclusive use by the konohiki; provided that the konohiki may not reserve more than one kind of aquatic life, if the konohiki possesses other private fisheries which are immediately adjacent to each other. The notice shall be substantially in the following form:

NOTICE
Fishing for (name of aquatic life) in
private fishery is hereby prohibited
between (specific period).

Konohiki.

The specific aquatic life set apart shall be exclusively for the use of the konohiki within the specified period, and neither the tenants nor others shall take the reserved aquatic life within the private fishery. The konohiki may bring legal action against any person to recover the value of the reserved aquatic life which has been taken within the private fishery.

(d) The konohiki, upon consultation with the tenants of their lands and in lieu of setting apart one given species or variety of aquatic life for exclusive use as allowed in this section, may prohibit during certain months of the year, all taking of aquatic life within the private fishery; provided that during the fishing season within the private fishery, the konohiki may exact up to one-third of the aquatic life taken within the private fishery from each fisher among the tenants. In such case, the konohiki shall give notice as prescribed in this section.

(e) If the specific aquatic life which has been reserved within the private fishery for exclusive use by the konohiki goes onto the public fishing grounds, such aquatic life may be taken by any person.

(f) The konohiki shall not have any power to impose any tax or restriction upon the tenants regarding the private fisheries, except as provided by this section, or by law or rule.

(g) The vested fishing rights for a private fishery when established may be condemned for use as a public ground; provided that the private fishery shall continue until judgment is entered upon the condemnation proceedings and the compensation named therein has been paid or tendered to the konohiki, or others interested therein, or until an order of possession has been issued as provided in sections 101-28 to 101-32.

(h) Any person who takes any aquatic life which has been set apart for the konohiki's exclusive use or to which the konohiki is otherwise entitled as provided in this section or who aids and abets the taking or who without lawful authority fishes in or upon the private fishery shall be punished as provided in section 187A-13."

SECTION 2. Section 187-1, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 187-1.1, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 187-2, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 187-17.5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 187-19, Hawaii Revised Statutes, is repealed.

SECTION 7. Part I, Chapter 188, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 188-52.5, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

Note

1. No underscored material. Edited pursuant to HRS §23G-16.5.

ACT 95

H.B. NO. 232

A Bill for an Act Relating to Board of Massage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 452-2, Hawaii Revised Statutes, is amended to read as follows:

“**§452-2 License required.** It is unlawful for any person in the State to engage in or attempt to engage in the occupation or practice of massage for compensation without a current massage therapist license or massage therapist apprentice permit issued pursuant to this chapter. [It is also unlawful for any person to advertise massage services without a current massage therapist license issued pursuant to this chapter.]”

SECTION 2. Section 452-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing.

- (1) [An applicant for examination shall have good moral character, and a medical report which shall include an X-ray examination of the chest made, or a tuberculin clearance report dated, not more than six months prior to the date of application and a statement by a licensed physician that the applicant has been examined and is free of all other communicable and contagious diseases.] A nonrefundable application fee and an examination fee, which shall be refunded only if the board finds that the applicant is not qualified to take the license examination, shall be paid to the board at the time of the application.
- (2) The board shall satisfy itself as to the good moral character of the applicant, may require the submission of certification as to good moral character by reputable citizens, and, in its discretion, may independently investigate the applicant’s moral character.
- (3) An applicant for examination shall have spent at least six months as a massage therapist apprentice and have met all other requirements set for apprentices by the board pursuant to section 452-6(d).
- (4) The board may waive the examination of an applicant upon the payment of the application fee and [the submittal of a medical report as required in paragraph (1)] if the applicant is licensed in another state, territory, or the District of Columbia, wherein the license requirements are found by the board to be comparable or more stringent than the requirements in force in this State.”

SECTION 3. Section 452-16, Hawaii Revised Statutes, is amended to read as follows:

“**§452-16 Renewal of license; fees.** Massage therapist, massage establishment, and out-call massage service licenses shall expire on June 30 of each even-numbered year following the date of issuance unless renewed for the next biennium. [A license] These licenses may be renewed by filing an application

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therefor, accompanied], in the case of a massage therapist,] by a renewal fee [and a medical report similar to that required on initial application and, in the case of an establishment or out-call massage service, by a renewal fee]. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as provided in this section shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after expiration upon the filing of an application in the same manner and payment, in addition to all delinquent fees, of a penalty fee. Thereafter, the license shall not be restored unless the regular examination for applicants is again taken and passed."

SECTION 4. Section 452-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any owner, operator, manager, or licensee in charge of or in control of a massage establishment or out-call massage service who knowingly employs a person who is not licensed as a massage therapist or who has not received a permit as a massage therapist apprentice as provided in this chapter, or who allows [such] an unlicensed person to perform, operate, or practice massage is guilty of a misdemeanor, and upon conviction [such] the person shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

SECTION 5. Chapter 452, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§452- Advertising. (a) It is a misdemeanor for any person to advertise as a massage therapist, a massage establishment, or an out-call massage service unless the person holds a valid license under this chapter in the classification so advertised. "Advertise" as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building, vehicle, or structure, or advertising in any newspaper or magazine, or advertising other than in-column listings in any directory, or commercials broadcast by airwave transmission, with or without any limiting qualifications.

(b) A licensee may advertise in print or broadcast media as defined in subsection (a) only if the licensee includes in the advertisement the licensee's applicable and current license number and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement for a licensee who does not provide proof of current license registration and who does not include a currently valid license number in the advertisement.

(c) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b)."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on November 1, 1985.

(Approved May 10, 1985)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. The legislature finds that the economy of the State is still suffering from the effects of recent high unemployment and recessionary trends of the national economy. Persistent high interest rates for industrial enterprise borrowers together with the prevailing symptoms of recession have combined to create special and substantial obstacles to the raising of new capital and the resulting lack of introduction of new industry into the State. It is recognized that the establishment of new industry to diversify the economic base of the State, create new employment opportunities, increase tax revenues, and stimulate the inflow of new capital into the State, is desirable. The legislature therefore finds that the establishment of new industry should be one of the priority considerations in the issuance of special purpose revenue bonds.

The legislature finds that a project with significant potential to stimulate new industry, support additional economic activity, and provide increased employment opportunities has been undertaken to develop that part of the Ewa plain known as James Campbell Industrial Park, West Beach, Ewa Plantation, Ewa Marina, and Makakilo. A growing number of industrial enterprises have already located in Campbell Industrial Park, an area designated to be a major center of economic activity which will be integrated with residential and other activities as an example of planned community development.

Recognizing that the State functional plan for housing has established a policy to increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style and size of housing, as well as having adopted a subsequent implementing action to encourage tax exempt financing for public facility development and infrastructure in new housing and existing residential areas, the legislature finds that the construction and installation of new water wells and the major expansion of existing water storage and conveyance facilities for the Ewa plain will implement the State housing functional plan while stimulating the growth of a multi-project program of industrial enterprises consisting of the tenant industry, construction industry, housing industry and light and heavy industrial facilities.

The construction and installation of these projects are necessary and desirable for the continued growth of industrial and economic activities and the provision of housing in the Ewa plain. The construction and installation of water wells, and water storage and conveyance facilities will support the previously cited multi-project program of industrial enterprises and the legislature finds that the facilities constitute a project as defined in chapter 39A, part V, Hawaii Revised Statutes. The issuance of special purpose revenue bonds authorized by this Act, to construct the water-related facilities on the Ewa plain, is in the public interest and for the public health, safety and general welfare.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed \$25,000,000 for the purpose of assisting the Ewa Plain

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Water Development Corp. (Corp.), or a corporation, partnership or other association consisting of the Corp. and other parties, to finance the previously cited water-related projects in the Ewa plain, provided that the facilities to be financed shall meet with the approval of the Board of Water Supply, City and County of Honolulu.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

ACT 97

S.B. NO. 775

A Bill for an Act Relating to Litter Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-829, Hawaii Revised Statutes, is amended to read as follows:

“§708-829 Criminal littering. (1) A person commits the offense of criminal littering if he knowingly places, throws, or drops litter on any public or private property or in any public or private waters [without the consent of the owner whose interest is affected thereby]. except:

(a) In a place which is designated by the department of health or the county for the disposal of garbage and refuse.

(b) Into a litter receptacle.

(c) Into a litter bag, provided that the bag is disposed of properly into a litter receptacle or in a place which is designated by the department of health or the county for the disposal of garbage and refuse.

(2) “Litter” means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or¹ description, and whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(3) Criminal littering is a petty misdemeanor.

(4) The court may sentence any person convicted of committing the offense of criminal littering as follows:

(a) For the first offense defendant shall spend up to four hours picking up litter on public property; and

(b) For any subsequent offense defendant shall spend up to eight hours picking up litter on public property.

(5) It shall be an affirmative defense that the defendant had consent of the owner in control of the property.”

SECTION 2. Section 339-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall discard or otherwise dispose of litter in a public place, or on private property, [without the consent of the owner, whose interest is affected thereby,] or in the waters of the State except:

(1) In a place which is designated by the department or the county for the disposal of garbage and refuse.

(2) Into a litter receptacle.

- (3) Into a litter bag, provided that the bag is disposed of properly into a litter receptacle or in a place which is designated by the department or the county for the disposal of garbage and refuse.

It shall be an affirmative defense that the defendant had consent of the owner in control of the property."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Note

1. Prior to amendment, "or" read "of".

ACT 98

H.B. NO. 96

A Bill for an Act Establishing an Advisory Committee to Study Overlapping State and County Functions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and Purpose. The legislature finds that, although the State is responsible for statewide concerns and the county governments are responsible for local concerns, the state and county governments have concurrent jurisdiction over functions or programs that frequently overlap. For example, each jurisdiction exercises responsibility for parks, public highways, land use planning, housing programs, water systems, protection of witnesses, and compensation for victims of crime.

Most recently, the Commission on Organization of Government has studied the feasibility of consolidating overlapping functions performed by both the state and county governments. The fiscal constraints of the state and county governments make it imperative that governmental services be delivered in the most efficient and cost-effective manner. Consolidation of some of the functions at one level of government, when appropriate, may promote the desired efficiency and effectiveness.

The purpose of this Act is to establish an advisory committee to study overlapping state and county functions, and to make appropriate recommendations.

SECTION 2. There is established an advisory committee which shall consist of five members of the house of representatives appointed by the speaker of the house of representatives, five members of the senate appointed by the president of the senate, and one member from each county council appointed by the respective county council chairman. A vacancy on the advisory committee shall be filled by the initial appointing authority. The advisory committee shall establish its own procedures. The committee shall convene at regular monthly meetings to study overlapping state and county functions and recommend consolidation of those functions which, by such consolidation, would be delivered in the most efficient and cost-effective manner at one level of government.

SECTION 3. The advisory committee shall solicit information and viewpoints from the governor, the mayors of each of the county governments,

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the affected state and county departments, and the public. The advisory committee shall also review and update the study relating to the consolidation of overlapping state and county functions compiled by the Commission on Organization of Government.

SECTION 4. The advisory committee shall prepare and submit an interim report to the legislature prior to the convening of the regular session of 1986. The advisory committee shall prepare and submit a final report containing its findings and recommendations to the legislature prior to the convening of the regular session of 1987. Upon the filing of the final report, the advisory committee shall be dissolved.

SECTION 5. This act shall take effect upon its approval.

(Approved May 14, 1985.)

ACT 99

H.B. NO. 115

A Bill for an Act Relating to the Department of Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 148-3, Hawaii Revised Statutes, is amended to read as follows:

“§148-3 Duties of chairman; violations; proceedings; penalties. The chairman [of the board of agriculture] shall enforce this part and any [rules or regulations] rule made by the department [of agriculture].

The following penalties and remedies shall apply in instances of violations of this part or the rules [and regulations] issued by the department:

- (1) Violation of this part or of any [rules or regulations] rule issued thereunder is declared a public nuisance and may be enjoined or abated[.]; and
- (2) Every person who violates this part or any rule [or regulation] issued thereunder shall, [upon conviction thereof, be punished by a fine of] after notice and opportunity for hearing, be fined not less than \$50 nor more than \$500. Each day a violation continues shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

The penalties and remedies prescribed in this part shall be concurrent and alternative with any and all other civil, criminal, or alternative rights, remedies or penalties provided by law.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

ACT 100

H.B. NO. 223

A Bill for an Act Relating to the Uniform Securities Act (Modified).

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“§485- Violation of chapter; cease and desist order. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued or promulgated hereunder, the commissioner may in his discretion issue a cease and desist order to enforce compliance with this chapter or any rule or order issued or promulgated hereunder. The commissioner shall have the discretion to determine the disposition of any executory contracts entered into by the respondent and shall specify in the order whether existing executory contracts shall be suspended or completed.

(b) Upon the issuance of an order by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that it has been issued and the reasons therefor and that upon the receipt of a written request made within thirty days the matter will be set for a hearing to commence within fifteen business days after receipt of the request unless extended by the commissioner for good cause. During the pendency of any hearing requested under this subsection, the cease and desist order shall remain in effect unless vacated or modified by the commissioner.

(c) After the hearing, the commissioner shall issue a final order that shall affirm, vacate or modify the order in effect during the pendency of the hearing. If no hearing is requested and none is ordered by the commissioner, the order shall remain in effect until it is modified or vacated by the commissioner.

(d) All hearings and rehearings shall be public.

(e) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the respondent or the respondent's assets. The court shall not require the commissioner to post a bond.”

SECTION 2. Section 485-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Sales voidable when and by whom. Every sale made in violation of this chapter shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action at law in any court of competent jurisdiction upon tender of the securities sold or of the contract made for the full amount paid by the purchaser, with interest, together with all taxable court costs (and reasonable attorney's fees); provided[,] that notwithstanding any law to the contrary, no action shall be brought for the recovery of the purchase price after [two] five years from the date of¹ sale or after two years from the discovery of facts constituting the violations, but in any event after seven years from the date of the sale; and provided further[,] that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed within thirty days from the date thereof to accept an offer in writing of the seller to take back the security in question and to refund the full amount paid by the purchaser, together with interest on the amount for the period from the date of payment by the purchaser down to the date of repayment, such interest to be computed:

- (1) In case the securities consist of interest-bearing obligations, at the same rate as provided in the obligations; and
- (2) In case the securities consist of other than interest-bearing obligations, at the rate of six per cent a year; less, in every case, the

amount of any income from the securities that may have been received by the purchaser.”

SECTION 3. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§485- Civil Penalty. (a) The commissioner may bring an action to recover a civil penalty against any person who violates this chapter or who has knowingly violated a rule or order of the commissioner made pursuant to this chapter. A civil penalty of not more than \$100,000 may be assessed.

(b) No civil action shall be brought under this chapter after the expiration of five years from the date of the violation or after expiration of two years from the discovery of facts constituting the violation, but in no event after the expiration of seven years from the date of the violation.”

SECTION 4. Section 485-21, Hawaii Revised Statutes, is amended to read as follows:

“§485-21 [Penalty.] Criminal Penalties. (a) Whoever violates this chapter shall be punished [by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both.] as follows:

- (1) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan or representations, or to the same entity, amounts to under \$5,000 shall be a class C felony as defined by the Hawaii Penal Code;
- (2) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$5,000 but less than \$100,000 shall be a class B felony as defined by the Hawaii Penal Code;
- (3) An offense in which the total value of all money and anything else of value paid or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$100,000 or more shall be a class A felony as defined by the Hawaii Penal Code.

In addition to the above, whoever violates this chapter shall forfeit to the State (1) any interest or property he has acquired or maintained in violation of this chapter, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of this chapter.

(b) The value of all money and anything else of value paid or lost by various victims pursuant to the same scheme, plan, or representations or to the same entity may be aggregated in determining the class or grade of the offense.

(c) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, to seize all property or other interest declared forfeited under this chapter upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this chapter as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall not revert to the convicted person and the commissioner shall dispose of said property as deemed proper by the commissioner.

(d) Notwithstanding any other law to the contrary, a person convicted of a felony under this chapter who has a prior conviction for felony under this chapter or a prior conviction for a crime which would constitute a felony under this chapter shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to in any way limit the maximum term of imprisonment imposed pursuant to chapter 706.

(e) Notwithstanding any other laws to the contrary, the following period of limitations will apply to prosecutions for felony violations of this chapter:

- (1) Prosecution for a felony under this chapter shall be commenced within five years after the offense is committed.
- (2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved party and who is himself not a party to the offense, but in no event more than seven years after the offense is committed."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Notes

1. Prior to amendment, the word "the" appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 101

H.B. NO. 227

A Bill for an Act Relating to Cemeteries and Mortuaries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 441-1, Hawaii Revised Statutes, is amended to read as follows:

"§441-1 Definitions. As used in this chapter:

["Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park, for earth interment; a mausoleum for vault or crypt interments; a structure or place used or intended to be used for the interment of cremated remains; or any combination of one or more thereof.

"Cemetery authority" means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery; the interring of human remains, or the care, preservation, and embellishment of cemetery property, or to sell pre-need interment service, whether or not the person undertakes such activity for profit.

"Mausoleum crypt" means a chamber or space in a structure or building of sufficient size, used or intended to be used, to entomb human remains.

"Niche" means recess of space in a structure or plot of each used or intended to be used for the permanent inurnment therein of the cremated remains of one or more deceased persons.

"Perpetual care" by whatever term denominated by a cemetery authority, including, but not limited to endowment care, endowment fund care, and free maintenance, means keeping the sod in repair, keeping all places wherein

interments have been made in proper order, caring for the trees and shrubs, and the general maintenance, care, and embellishment of a cemetery, regularly and continually without limitation as to time.

“Perpetual care cemetery” means any cemetery or section of a cemetery, the plots, crypts, or niches of which are sold or disposed of, or are offered for sale or disposition, upon the representation that the plots, crypts, or niches will receive perpetual care.

“Perpetual care fund” means a fund separately maintained to provide for the perpetual care of a cemetery in conformity with this chapter.

“Plot” or “interment space” means a grave or space in a cemetery sold or otherwise disposed of to one or more persons, used or intended to be used, for the permanent interment therein of the remains of one or more deceased persons.

“Cemetery property” means any property, or part or interest therein, dedicated to, used or intended to be used for, the permanent interment of human remains. It may be a plot or plots in a burial park for earth interment; a place or places in a mausoleum for vault or crypt interment; one or more niches, recesses, or other receptacles for the interment of cremated remains; or any combination of one or more thereof.

“Person” means an individual, partnership, corporation, county, association, or any other group however organized.

“Pre-need funeral authority” means any person engaged in the solicitation of the public in the business of selling pre-need funeral services.

“Pre-need interment services” means the furnishing of opening and closing services and related commodities, including but not limited to vaults, markers and vases, which services are to be rendered more than ninety days after the sale or offer to sell, whichever occurs first.

“Pre-need funeral services” means the furnishing of funeral services and related commodities, including but not limited to caskets and urns, which services are to be rendered more than ninety days after the sale or offer to sell, whichever occurs first.

“Funeral services” means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“Mortuary authority” means any person who undertakes to furnish funeral services and related commodities.

“Director” means the director of the department of commerce and consumer affairs.

“Department” means the department of commerce and consumer affairs.]

“Cemetery” means any property, or part interest therein, dedicated to and used or intended to be used for the permanent interment of human remains. It may be a burial park with one or more plots, for earth interment; a mausoleum with one or more vaults or crypt interments; a structure or place with one or more niches, recesses, or other receptacles for the interment of cremated remains, or any combination of one or more thereof.

“Cemetery authority” means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery to inter human remains; or offers perpetual care of the cemetery; or sells or holds money in trust for pre-need interment services, whether or not the person undertakes such activity for profit; provided that this shall not apply to the designated trustee of the funds.

“Cemetery property” means any property, or part or interest therein, dedicated to, used or intended to be used for, the permanent interment of human remains. It may be a plot or plots in a burial park for earth interment; a place or places in a mausoleum for vault or crypt interment; one or more niches, recesses, or other receptacles for the interment of cremated remains; or any combination of one or more thereof.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of the department of commerce and consumer affairs.

“Funeral services” means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“Interment” means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated for cemetery purposes.

“Mausoleum crypt” means a chamber or space in a structure or building of sufficient size, used or intended to be used, to entomb human remains.

“Mortuary authority” means any person who undertakes to furnish funeral services and related commodities.

“Niche” means a recess of space in a structure or plot of earth used or intended to be used for the permanent inurnment therein of the cremated remains of one or more deceased persons.

“Perpetual care” by whatever term denominated by a cemetery authority, including but not limited to endowment care, endowment fund care, and free maintenance, means keeping the sod in repair, keeping all places wherein interments have been made in proper order, caring for the trees and shrubs, and the general maintenance, care, preservation and embellishment of a cemetery, regularly and continually without limitation as to time.

“Perpetual care cemetery” means any cemetery or section of a cemetery, the plots, crypts, or niches of which are sold or disposed of, or are offered for sale or disposition, upon the representation that the plots, crypts, or niches will receive perpetual care.

“Perpetual care fund” means a fund separately maintained to provide for the perpetual care of a cemetery in conformity with this chapter.

“Person” means an individual, partnership, corporation, county, association, or any other group however organized.

“Plot” means a grave or space in a cemetery sold or otherwise disposed of to one or more persons, used or intended to be used, for the permanent interment therein of the remains of one or more deceased persons.

“Pre-need funeral authority” means any person who is engaged in the business of selling pre-need funeral services, or holds money in trust to provide for future funeral services; provided that this shall not apply to the designated trustee of the funds.

“Pre-need funeral service” means arranging for the pick up of human remains, embalming, placing the same on display, furnishing of funeral services and related commodities, including but not limited to caskets and urns, or otherwise providing for the final disposition of human remains, which services are to be rendered at some future date.

“Pre-need interment services” means the furnishing of opening and closing services and related commodities, including but not limited to vaults, markers, and vases, which services are to be rendered at some future date.

“Pre-need trust” means a fund separately maintained to provide for the future services agreed to or contracted for by the pre-need funeral service plan participant or the pre-need interment service plan participant.

“Trustee” means a bank or a trust company, authorized to transact such business in the state, or a board of trustees appointed by the governing body of the cemetery and pre-need funeral authority, designated as trustee pursuant to a written trust agreement under the terms of this chapter for the funds deposited by an authority. The board of trustees may consist of three or more members; provided that no member of the board shall be affiliated with the authority which appointed the board.”

SECTION 2. Section 441-19, Hawaii Revised Statutes, is amended to read as follows:

“§441-19 Powers and duties of director. In addition to any other duties and powers granted by this chapter the director shall, pursuant to chapter 91:

- (1) Grant licenses to [mortuary,] cemetery[,] and pre-need funeral authorities pursuant to this chapter;
- (2) Make, amend, or repeal such rules [and regulations] as the director deems proper to fully effectuate this chapter and carry out the purpose thereof, which purpose is the protection of the general public in its acquisitions of cemetery property, pre-need interment services, at-need funeral services, and pre-need funeral services. The rules [and regulations] may forbid acts or practices deemed by the director to be detrimental to the accomplishment of the purpose of this chapter, and the rules [and regulations] may require mortuary, cemetery, and pre-need funeral authorities to make reports to the director containing such information as will better enable the director to enforce this chapter and the rules [and regulations], or as will better enable the director from time to time to amend the rules [and regulations] to more fully effectuate the purpose of this chapter, and further, the rules [and regulations] may require mortuary, cemetery, and pre-need funeral authorities to furnish reports to their clients containing such matters of information as the director deems necessary to promote the purpose of this chapter; provided that this enumeration of specific matters which may properly be made the subject of rules [and regulations] shall not be construed to limit the director’s broad general power to make all rules [and regulations] necessary to fully effectuate the purpose of this chapter;
- (3) Enforce this chapter and rules [and regulations] adopted pursuant thereto;
- (4) [Suspend] Fine, suspend, or revoke any license for any cause prescribed by this chapter, or for any violation of the rules [and regulations], and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (5) Report to the governor annually and at such other times and in such other manner as he may require concerning the director’s activities;
- (6) Publish and distribute pamphlets and circulars containing such information as the director deems proper to further the accomplishments of the purpose of this chapter;
- (7) Investigate the actions of any person acting in the capacity of a licensee under this chapter if there is reason to believe that there

may be a violation of this chapter[.] or the rules adopted pursuant thereto.”

SECTION 3. Section 441-21, Hawaii Revised Statutes, is amended to read as follows:

“§441-21 No cemetery or pre-need funeral authority license issued when. No cemetery or pre-need funeral authority license shall be issued:

- (1) To any person unless [he] the person has filed an application therefor;
- (2) To any person who does not possess financial integrity;
- (3) To any person unless it is a religious institution, corporation, county, or any association which has a perpetual existence;
- (4) To any person unless [he] the person files with the director a bond as required by section 441-22;
- (5) To any person failing to establish and maintain pre-need trusts and perpetual care funds as required by this chapter[.];
- (6) To any person failing to file with the director a copy of the documentation as required by either section 441-37(a) and (b) or section 441-37(a) and (c);
- (7) To any person failing to file with the director a copy of contract form as required by section 441-32.5.”

SECTION 4. Section 441-22, Hawaii Revised Statutes, is amended to read as follows:

“§441-22 Bond. (a) [Except as provided in section 441.22.1, mortuary, cemetery, and pre-need funeral authorities shall file and maintain with the director a bond in the following amount:

- (1) Each mortuary holding more than \$5,000 in pre-need funeral funds shall post a bond in the penal sum of \$50,000; and
- (2) Each pre-need funeral authority or cemetery authority which engages in pre-need sales shall post a bond in the penal sum of \$50,000 for each new license and for the renewal of a license; provided that a cemetery authority whose gross income for the taxable year preceding the year of renewal totaled less than \$50,000 shall only be required to post a bond in the penal sum of \$5,000.]

Each cemetery or pre-need funeral authority shall file and maintain with the director a bond in the penal sum of \$50,000 for each new license and for the renewal of a license. The bond shall continue in full force and effect, and shall run concurrently:

- (1) With the period of the license and for any renewal thereof; or
- (2) With the period established by the director pursuant to the rules as the case may be, unless terminated or canceled by the surety.

The form of the bond shall be approved by the director.

(b) All bonds required by this section shall be issued by a surety company authorized to do business in the State, and shall run to the State. The bond shall be conditioned that the [mortuary, cemetery, or funeral authority] cemetery or pre-need funeral authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property, pre-need interment, [at-need funeral services,] or pre-need funeral services all sums of money that may properly be due them.

(c) In addition to any other remedy, the director or any person [sustaining any] claiming to have sustained damage [resulting from] by reason of any breach of the conditions of the bond may [sue the surety] bring action on the

bond for the recovery of any damages sustained [by the person.] therefrom. The liability of the surety shall not exceed the amount of the bond issued to the establishment for which the bond was issued. [The bond shall be continuous in full force and effect, and shall run concurrently:

- (1) With the license period and for any renewals thereof; or
- (2) With the period established by the director pursuant to rules; as the case may be, unless terminated or canceled by the surety.]

(d) Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the director at least sixty days prior to the date of termination or cancellation. The director shall forthwith give notice thereof to the [mortuary,] cemetery[,] or pre-need funeral authority affected by the termination or cancellation[. The notice shall be by registered or certified mail, with request for return receipt, and shall be addressed to the establishment at the addresses shown on the records of the department. The] that the license of [any] the licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the director. [The form of the bond shall be approved by the director.]

(e) Failure, refusal or neglect of a licensed cemetery and pre-need funeral authority to maintain in full force and effect a bond as required by this section shall cause the automatic suspension of the license of the cemetery or pre-need funeral authority effective as of the date of expiration or cancellation of its bond. The director shall not reinstate the affected license until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to effect a reinstatement of a suspended license within sixty days of the expiration of the requirements of licensing shall cause it to be terminated, thereby forfeiting all license and biennial renewal fees. A licensee may, within fifteen days after receipt of the notification of the license termination, request an administrative hearing to review the termination pursuant to chapter 91."

SECTION 5. Section 441-22.1, Hawaii Revised Statutes, is amended to read as follows:

"§441-22.1 Exemption. The director shall exempt any cemetery authority from the bonding requirement and the fee requirements for license, renewal and reinstatement upon proof satisfactory to the director that it does not [actively engage in pre-need sales, or] sell for financial profit."

SECTION 6. Section 441-22.2, Hawaii Revised Statutes, is amended to read as follows:

"§441-22.2 Pre-need trusts required. [(a) Every cemetery or pre-need funeral authority shall maintain one or more trusts. All payments received after the recovery of acquisition costs, which shall be the lesser of thirty per cent of the contract price or the difference between the contract price and the cost of the pre-need interment or pre-need funeral services contracted to be provided, shall be deposited in such trusts within thirty days of receipt.

The administration of the trusts provided for in this section shall be as provided for perpetual care funds under sections 441-37, 441-40, 441-41, 441-42, 441-43, and 441-44.

The principal amount deposited shall not be diminished or withdrawn except in payment of the pre-need interment or pre-need funeral services contracted for and provided to the deceased purchaser or his designee or for the contractual refund to the purchaser.

(b) Based on the findings of the annual audit and the annual actuarial study, the trust administrator shall determine whether the income from the trusts should be added to the corpus.

(c) In addition to the audited financial statements required by section 441-24.5, every cemetery authority operating a perpetual care cemetery and any pre-need funeral authority or mortuary authority which engages in pre-need sales or holds moneys in trust for future funeral services shall conduct an annual independent actuarial study of the pre-need trust funds. The findings of the study conducted during each calendar year shall be submitted to the director during the month of December. The findings of the study shall include a statement by the actuary conducting the study as to whether or not, in the actuary's professional opinion, the pre-need funding requirements imposed by this section are adequate for the protection of the consuming public. The director may take such appropriate action as may be indicated by the actuarial reports submitted.] Every cemetery and pre-need funeral authority shall maintain one or more trusts for deposit of payments received from purchasers of pre-need services."

SECTION 7. Section 441-22.5, Hawaii Revised Statutes, is amended to read as follows:

"[]§441-22.5[] Mortuary [authority; disclosure of price.], cemetery, or pre-need funeral authority; disclosure requirements, [(a) No funeral services and related commodities shall be furnished unless a mortuary authority provides to a prospective purchaser a written estimated price for the funeral services and related commodities which the prospective purchaser desires to purchase, and the purchaser approves of the funeral services and related commodities and the estimated price, and the prospective purchaser signs the estimate.

(b) No mortuary authority shall charge a price for funeral services and related commodities which is greater than the price on the estimate which the purchaser has signed, unless the purchaser requests an additional item and approves the higher price.] (a) No cemetery property, interment services, funeral services, and related commodities shall be sold unless the mortuary, cemetery, or pre-need funeral authority first satisfies the requirements stated in section 441-22.6.

(b) Every cemetery or pre-need funeral authority shall be required to provide to the purchaser of cemetery property, pre-need interment, or pre-need funeral services and related commodities a written contract which shall contain the following disclosure requirements:

- (1) The names and addresses of the authority and purchaser;
- (2) A clear and concise statement of the property, services, and related commodities to be supplied or not supplied and by whom, particularly if the authority is not to be the provider under the terms of the contract;
- (3) The purchase price of each item of property, services, and related commodities to be supplied and how the purchase price is payable;
- (4) Related costs covered under the contract;
- (5) The basis on which funds are to be deposited in trust;
- (6) Refund provisions of the contract;
- (7) The date and place of execution of the contract;
- (8) The authority's or its duly authorized agent's signature on the contract and the identification of this person by name and title; and
- (9) A statement that the written contract, when signed, shall constitute the entire agreement between the parties relative to its subject

matter and that all obligations of both parties shall be fixed and enforceable by the other parties of the contract.

(c) No mortuary, cemetery, or pre-need funeral authority shall charge a price for the cemetery property, interment, or funeral services, whether it be at-need or pre-need, which is greater than the price on the itemized price list or contract which the purchaser had signed, unless the purchaser or the purchaser's authorized representative requests an additional item, the authority discloses the price for the additional item, and the purchaser or its authorized representative approves the price for the additional item. The mortuary, cemetery, or pre-need funeral authority may charge the higher price for the additional item but shall collect in payment only that sum which is the difference between the higher price and the price listed on the itemized price list or contract which the purchaser had previously signed."

SECTION 8. Section 441-22.6, Hawaii Revised Statutes, is amended to read as follows:

"[] §441-22.6[] Mortuary [authority;], cemetery, or pre-need funeral authority; price list to be furnished. [(a)] Each mortuary, cemetery, or pre-need funeral authority shall provide to every prospective purchaser, for written approval, a current price list, which shall contain separately stated prices for each type of property, service, or item which is a part of the cemetery property, interment, or funeral services and related commodities which the mortuary, cemetery, or pre-need funeral authority offers.

[Any] The mortuary, cemetery, or pre-need funeral authority may use the format for a price list as established by the rules adopted by the [board.] director.

[(b)] The price list specified in subsection (a) shall be provided to each prospective customer before that prospective customer approves the written estimated price, as required by section 441-22.5.]"

SECTION 9. Section 441-23, Hawaii Revised Statutes, is amended to read as follows:

"§441-23 [Revocation,] Fine, revocation, suspension, and renewal of authority licenses. The director may fine an authority, revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any such license for any of the following causes:

- (1) Any dishonest or fraudulent act as a cemetery or pre-need funeral authority which causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) [Wilful violation] Violation of this chapter or the rules adopted pursuant thereto;
- (4) Commingling the money or other property of others with [his own;] that of the licensee;
- (5) Adjudicated insane or incompetent;
- (6) Selling or offering to sell any cemetery property, pre-need interment, funeral services, or pre-need funeral services based on speculation or promises of profit from resale[.];
- (7) Failing to file the actuarial study or an audited financial statement or to maintain in effect the bond as required by section 441-22; or
- (8) Failing to maintain pre-need trusts or perpetual care funds as required by this chapter.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.”

SECTION 10. Section 441-24.5, Hawaii Revised Statutes, is amended to read as follows:

“[[]§441-24.5[] Pre-need trusts and perpetual care funds; [audits;] audited financial statements. Every cemetery authority operating a perpetual care cemetery[,] or which engages in pre-need sales or holds money in trust for pre-need interment services, and every pre-need funeral authority[, and mortuary authority] which engages in pre-need sales or holds money in trust for [future] pre-need funeral services shall [annually] submit an audited financial statement of its pre-need trusts and perpetual care funds to the [bank examiner.] director within ninety days after the close of the authority’s books on a fiscal or calendar year basis.”

SECTION 11. Section 441-29, Hawaii Revised Statutes, is amended to read as follows:

“§441-29 Application [fees.] for license; fees. Every applicant for [any] a license under this chapter shall file an application with the director in such form and setting forth such information as may be prescribed or required by the director and shall furnish such additional information bearing upon the issuance of the license as the director requires. Every application shall be sworn to before an officer authorized to administer oaths. [Every application shall be accompanied by an application fee of \$10.] In the case of a copartnership or corporation any officer may sign the application and verify the same on behalf of the applicant. The application shall be accompanied by an application fee, none of which is refundable, as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 12. Section 441-31, Hawaii Revised Statutes, is amended to read as follows:

“§441-31 Fees[, original license and biennial renewals, refunds.]; biennial renewals. (a) The fee for a cemetery or pre-need funeral authority original license [and], for reinstatement of a suspended license [shall be \$200 and], for biennial renewal [fee] of a license, and for the reissuance of a license when there has been a change in the licensee’s name, shall be [\$400 except as otherwise provided in section 441-22.1.] as provided in rules adopted by the director pursuant to chapter 91. All fees and other moneys collected or received under this chapter shall be paid to the director and deposited with the director of finance to the credit of the general fund.

(b) The biennial renewal fee shall be paid to the [department] director on or before December 31 of each odd-numbered year. Failure, neglect, or refusal of any duly licensed cemetery or pre-need funeral authority to pay the biennial renewal fee shall constitute a forfeiture of [his] its license. Any such license may be restored upon written application therefor within one year of such date and the payment of the delinquent fees plus an amount equal to ten per cent thereof.

[b) A fee of \$5 shall be charged for the reissuance of any lost license or for the reissuance of license when there has been a change in the licensee’s name.

(c) All fees and other moneys collected or received under this chapter shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.]”

SECTION 13. Section 441-32, Hawaii Revised Statutes, is amended to read as follows:

“§441-32 Delivery of agreement. [When a salesman secures the signature of any party or parties to any contract pertaining to cemetery property, pre-need interment or pre-need funeral services, he shall deliver a copy of such agreement or contract to the party or parties signing it, at the time the signature is obtained; provided that only one copy need be delivered to the parties signing as co-tenants. The agreement or contract shall reasonably describe in detail the property or services to be provided.] The cemetery or pre-need funeral authority shall deliver a copy of any contract pertaining to cemetery property, pre-need interment or pre-need funeral services to the person or persons signing it at the time the signature is obtained; provided that only one copy need be delivered to the parties signing as co-tenants.”

SECTION 14. Section 441-32.5, Hawaii Revised Statutes, is amended to read as follows:

“[] §441-32.5[] Sales contracts[.]; filing with the director. [Any sales contracts shall, at a minimum, explain the trust, pre-need fund, and refund provisions of the contract and the salesman shall explain what related purchases, if any, will be necessary.] Every cemetery or pre-need funeral authority shall file with the director a copy of all existing contract forms, and any new contract form prior to its use, relating to the selling of cemetery property or pre-need services and related commodities. The content of the contract shall be in conformance with section 441-22.5(b).”

SECTION 15. Section 441-34, Hawaii Revised Statutes, is amended to read as follows:

“§441-34 Hearings. In every case where it is proposed to refuse to grant a license or to fine, revoke, suspend, or refuse to renew any license for any of the causes hereinabove enumerated, the applicant or licensee shall be entitled to notice and hearing in conformity with chapter 91.”

SECTION 16. Section 441-36, Hawaii Revised Statutes, is amended to read as follows:

“§441-36 Perpetual care required. Any cemetery hereafter established shall be a perpetual care cemetery. No existing cemetery shall be operated as, or advertised or represented to be, a perpetual care cemetery except in compliance with this chapter. Every cemetery authority operating a perpetual care cemetery shall establish a perpetual care fund.”

SECTION 17. Section 441-37, Hawaii Revised Statutes, is amended to read as follows:

“§441-37 [Fund required; who may act as administrator.] Trustee of perpetual care fund and pre-need trust. [Every cemetery authority operating a perpetual care cemetery shall establish a perpetual care fund, which shall be administered by a nonprofit corporation or by a perpetual care trust.

(1) If the administrator shall be a nonprofit corporation, the majority of the members of its board of directors shall not be affiliated with the cemetery authority which created the perpetual care fund.

(2) If the administrator shall be a perpetual care trust, the trustee thereof shall be either (A) a trust company authorized to do business in the State, or (B) a board of trustees appointed by the governing body of the cemetery authority consisting of three or more members, who shall be residents of the State, and the

majority of which shall not be affiliated with the cemetery authority which created the perpetual care fund.

An executed copy of the declaration of trust, any amendments thereto, and notice of the appointment of any successor trustee thereunder shall be filed with the director.] (a) Every perpetual care fund and pre-need trust shall be administered by a bank or a trust company authorized to do business in the State; or a board of trustees as defined in section 441-1. Each authority covered under this chapter shall file with the director a copy of an executed copy of the declaration of the fund or trust and any amendment thereto.

(b) The bank or trust company appointed as trustee shall file a notice with the director disclosing the name of the bank or trust company, business address, and such additional information as the director requires. A successor trustee shall be subject to the requirements stated in this section.

(c) The board of trustees appointed as trustee shall file the following:

- (1) A notice with the director disclosing the names of its members;
- (2) A sworn affidavit stating that its members are not affiliated with the authority which appointed it;
- (3) A bond in the penal sum of \$100,000 issued by a surety company authorized to do business in the State; and
- (4) Evidence of the insurance required by section 441-41(b).

The bond required in this subsection may be filed either as a board or an individual board member for \$100,000 and shall run to the State. The bond shall be conditioned that the board of trustees will faithfully, promptly, and truly account and pay over to all persons to or for whom it may hold money in trust all sums of money that may properly be due them. The director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the board of trustees. The bond shall continue in full force and effect."

SECTION 18. Section 441-38, Hawaii Revised Statutes, is amended to read as follows:

"§441-38 Contribution¹ and payments to [administrator.] the trustee. (a) A cemetery authority may take, receive, and transfer to the [administrator] trustee as a part of or incident to the perpetual care fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for perpetual care purposes and shall transfer to the [administrator] trustee the amount stipulated in the contract or deed as being for perpetual care purposes for each plot, niche, or mausoleum crypt sold or disposed of, but not less than:

- (1) \$1 per square foot of interment space;
- (2) \$50 for each mausoleum crypt;
- (3) \$15 for each niche.

Such transfer shall be made not later than thirty days after the receipt of the final payment of the purchase price of each plot, niche, or crypt sold as property entitled to perpetual care.

(b) A cemetery or pre-need funeral authority may take and receive, but shall transfer to the trustee as part of or incident to the pre-need trust, all payments received after the recovery of acquisition costs, which shall be the lesser of thirty per cent of the contract price or the difference between the contract price and the cost of the pre-need interment or pre-need funeral services contracted to be provided. The transfer shall be made not later than thirty days

after receipt of payment from the purchaser and shall be immediately deposited in the trust.”

SECTION 19. Section 441-39, Hawaii Revised Statutes, is amended to read as follows:

“§441-39 Principal of fund[;] or trusts; use of income, reserves. (a) The principal of the perpetual care fund shall be invested and in no event reduced. Only so much of the income of the fund shall be paid to the cemetery authority as it, by submission of vouchers, can reasonably show to be necessary to cover the cost of perpetual care of the cemetery, including reasonable administrative expenses incurred in connection therewith; provided that a reserve may be created from which principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from investments, and a reserve may also be set aside out of surplus income or net capital gains for future maintenance, repair, or restoration of property or embellishments in the cemetery, which may be necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. “Net capital gains” means the amount by which the cumulative capital gains since the establishment of the perpetual care fund [exceed] exceeds the sum of cumulative capital losses since the establishment of the fund. Any surplus income or net capital gains not so set aside in reserve shall become a part of the principal of the fund.

(b) The principal of the pre-need trust shall be invested and shall not be diminished or withdrawn except in payment of the pre-need interment or pre-need funeral services contracted for and provided to the deceased purchaser or designee or for the contractual refund to the purchaser. The cemetery or pre-need funeral authority shall submit to the trustee a certified statement that the purchaser or an assignee of the purchaser has received the pre-need services under contract with the authority in order for the principal to be withdrawn. In the case of refund to the purchaser, the authority shall submit to the trustee a certified statement that the purchaser desires a refund. A reserve may be created from which principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from investments.”

SECTION 20. Section 441-40, Hawaii Revised Statutes, is amended to read as follows:

“§441-40 Application of [income; administrator not responsible for.] principal and income; responsibility of trustee. [The administrator shall not be required to inquire into the propriety of the expenditures made by the cemetery authority in connection with perpetual care of the cemetery, and it shall not be held responsible in any manner whatsoever for and on account of payments of the income from the perpetual care fund made to the cemetery authority upon vouchers.] **(a)** The trustee shall be held responsible for all payments received for deposit in the perpetual care fund and pre-need trust. The trustee shall not withdraw money from the income of the perpetual care fund unless the cemetery authority submits a certified statement that withdrawals shall be used for the perpetual care of the cemetery, including reasonable administrative expenses incurred in connection with operating a perpetual care cemetery. Further, the trustee shall not withdraw money from the principal of the pre-need trust unless the cemetery or pre-need funeral authority submits a certified statement that the person entitled to the pre-need services or the assignee has received the services or that the purchaser has requested a refund of moneys.

(b) For the purposes of asset management and safekeeping of the funds, the trustee shall have the authority to inquire into the propriety of expenditures

made by a cemetery and pre-need funeral authority in connection with the operation of the authority's business.

(c) The cemetery and pre-need funeral authority shall provide the trustee with the findings of the annual audit and actuarial study, which shall serve as guidelines in the management and safekeeping of the funds."

SECTION 21. Section 441-41, Hawaii Revised Statutes, is amended to read as follows:

"§441-41 Investment of perpetual care funds[,] and pre-need trusts. (a) The investment of perpetual care funds and pre-need trusts by a bank or trust company appointed as trustee shall be governed by the standards prescribed in section 406-22 for trust companies acting as fiduciaries. [The administrator may, from time to time, reserve from investment and keep in the form of cash balances (which cash may be held on deposit with any institutional depository, without interest) such portion of the fund, whether principal or income, as the administrator deems advisable.]

(b) The investment of perpetual care funds and pre-need trusts by a board of trustees shall be governed by the following standards:

(1) Funds may be invested in either:

(A) An institution listed with the New York Stock Exchange, that is a member of the Securities Investor Protection Corporation (SIPC), and provides additional insurance coverage of \$1,000,000 per account above and beyond the minimum cash and securities protected by SIPC; or

(B) An institution whose deposits are federally insured.

(2) Funds invested with an institution as provided in section 441-41(b)(1) shall be insured on a cash basis by the institution for the full amount of those funds. If the institution insures a portion of the fund, the perpetual care and pre-need funeral authority shall acquire additional insurance in the amount equal to or in excess of the funds held by the institution. The insurance shall be in full force and effect and shall not lapse or be reduced below the full amount of the funds. The perpetual care and pre-need funeral authority shall immediately notify the director when the insurance is not in conformity with the requirements stated herein. Failure, refusal, or neglect of a licensed cemetery and pre-need funeral authority to maintain in full force and effect the insurance as required by this section shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the insurance. The authority's license shall not be reinstated until evidence of insurance as required in this section is received by the director. The director may assess a fee on the licensee not to exceed \$500 as a condition for the reinstatement of a suspended license, pursuant to this section. Failure to effect a reinstatement of a suspended license within sixty days of the expiration of the requirement of licensing shall cause it to be terminated, thereby forfeiting all license and biennial renewal fees. A licensee may, within fifteen days after receipt of the notification of the license termination, request an administrative hearing pursuant to chapter 91.

(3) Investment by the board of trustees in an institution described in section 441-41(b)(1)(a) shall be limited to stocks which are either listed on a national securities exchange or traded over-the-counter on the national market of the national association of securities

dealers, inc., automated quotation system. Only the board of trustees shall have the authority to make investment decisions. No securities salesperson shall be granted or allowed to have discretionary authority over the account.

- (4) Investment of monies designated for perpetual care and pre-need services shall be held intact.”

SECTION 22. Section 441-42, Hawaii Revised Statutes, is amended to read as follows:

“§441-42 [Administrator’s] Trustee’s compensation. The [administrator] trustee shall be entitled to the same compensation as provided by law for trust companies in the management of fiduciary accounts, but in no event shall any sum in excess of five per cent of the income derived from the fund or pre-need trust in any year be paid as compensation to the [administrator] trustee for its services in the administration of the fund[,] or trust.”

SECTION 23. Section 441-44, Hawaii Revised Statutes, is amended to read as follows:

“§441-44 [Administrator’s] Trustee’s account; enforcement by attorney general. The [administrator] trustee shall annually file with the director an account which shall be made in such form as shall be prescribed by the director. The director shall notify the attorney general of any failure on the part of the [administrator] trustee to comply with sections [441-39] 441-37 to 441-44, or of the instrument creating the fund[,] or trust, and the attorney general may take such action as [he deems] deemed appropriate.”

SECTION 24. Section 441-45, Hawaii Revised Statutes, is amended to read as follows:

“§441-45 Penalty. [Any person] In addition to the penalties otherwise provided by law, any licensee who violates[,] or omits to comply with any of the provisions of this chapter shall be fined not more than \$1,000[, unless the violation relates to pre-need trusts or perpetual care funds in which case the penalties prescribed by sections 401-20 or 401-21 shall apply.] for each violation.”

SECTION 25. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§441- Pre-need trusts and perpetual care funds; actuarial studies. (a) Every cemetery authority operating a perpetual care cemetery and every cemetery or pre-need funeral authority offering pre-need services shall contract with an independent actuary to conduct an annual study of its level of funding. In the case of a perpetual care cemetery, the study shall be to determine whether the authority’s perpetual care fund will provide sufficient income to cover the costs of the perpetual care of the cemetery. In the case of a cemetery or pre-need funeral authority, the study shall be to determine whether the authority’s pre-need trust will be sufficient to cover the claims of pre-need plan participants.

(b) The actuarial study shall be submitted to the director within one hundred twenty days after the close of the authority’s books for the fiscal or calendar year. At a minimum, such study shall detail the assets and liabilities of the fund or trust, the actuarial assumptions used in preparing the report and the actuary’s conclusions as to whether the levels of funding are adequate. If the actuary concludes that the funding is not adequate, the actuary shall recom-

mend what actions are necessary to protect the perpetual care fund or pre-need trust participants.

(c) If the study concludes that the levels of funding are not adequate or that the interests of the participants in the perpetual care fund or pre-need trusts are in any other respect not adequately protected, the director may require that a greater portion of the income be transferred to the fund or trust or may take such other action as is necessary to correct any inadequacies or may suspend the authority's right to accept further participants in the fund or trust. If requested by the authority, a hearing on the action taken by the director shall be conducted pursuant to chapter 91."

SECTION 26. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§441- Actuarial study, audited financial statement, trust agreement; available for review. (a) The actuarial study, audited financial statement, and trust agreement filed by a cemetery or pre-need funeral authority, as required by this chapter, shall be available for review by any member of the general public upon request. The review of these documents shall be done during the department's normal business hours. The director shall have the right to deny review for reasons specified in rules adopted by the director pursuant to chapter 91.

(b) Upon delivery of an itemized price list to a prospective purchaser and upon execution of a contract for perpetual care and pre-need services, the cemetery or pre-need funeral authority shall notify the person of the availability for review of the actuarial study, audited financial statement, and trust agreement on file with the department as provided in this section."

SECTION 27. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§441- Surrender of license. A licensee covered under this chapter may terminate all further responsibilities for compliance with the requirements of this chapter by voluntarily surrendering its license to the director with a sworn statement to that effect. Such statement must be accompanied by an affidavit that said licensee has lawfully expended or refunded all pre-need trust funds accepted by the person or made provisions to transfer said funds subject to the obligation related thereto to another licensee subject to approval of the director, and that the authority surrendering the license will accept no additional pre-need payments. The director shall immediately cancel or revoke such license."

SECTION 28. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§441- Audit of records of cemetery or pre-need funeral authority. The department may audit the records of any cemetery or pre-need funeral authority with respect to its funds and pre-need trusts as they pertain to the deposits and withdrawals to the fund and trust. For that purpose, the department shall have free access to the office and places of business of all cemetery and pre-need funeral authorities and the trustee. The department may contract with a private consultant to audit the records of any cemetery or pre-need funeral authority, the cost of which shall be borne by the authority."

SECTION 29. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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SECTION 30. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Notes

1. Prior to amendment, "contribution" read "contributions".
2. Edited pursuant to HRS §23G-16.5.

ACT 102

H.B. NO. 230

A Bill for an Act Relating to the Motor Vehicle Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437-17, Hawaii Revised Statutes, is amended to read as follows:

"§437-17 Bond of dealer. (a) Each new motor vehicle dealer receiving a license shall keep in force a bond to the motor vehicle industry licensing board in the penal sum of [\$25,000 if the license is for a county with a population of 200,000 or more and \$15,000 if the license is for any county with a population of less than 200,000.] \$200,000. Each used motor vehicle dealer shall give and keep in force a bond to the board in the penal sum of [\$10,000.] \$100,000; provided that the penal sum shall be \$25,000 for a dealer that sells twenty-five or less motor vehicle units a month. More than one bond may be furnished by the same applicant, provided [they] that the aggregate [the full] amount is as prescribed by this section. If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall be applicable as nearly as may be to furnishing of such bond and the surety or sureties and the security thereof, with the substitution of the board hereunder for the awarding officer mentioned in sections 103-35 and 103-37 as may be applicable.

(b) It is provided:

- (1) That if the applicant maintains an established place of business in the county concerned which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board the excess over ten per cent of the bond may be waived without unduly jeopardizing the possible rights and interests of present and prospective claimants against the applicant intended to be secured by the bond, then the amount of the bond for new motor vehicle dealers or used motor vehicle dealers may be reduced at the discretion of the board; and
- (2) That if the dealer is licensed to engage in the business of selling only motorcycles and motor scooters, the bond shall be only in the amount of \$5,000 [for a county with a population of 200,000 or more, and \$1,000 for any county with a population of less than 200,000].

(c) The bond shall be conditioned:

- (1) That the dealer will faithfully and truly comply with all the valid provisions of this chapter as the same now is or may hereafter be

amended, and with [such valid regulations] any rule as may be promulgated by the board pursuant to this chapter.

- (2) That [he] the dealer will not be guilty of fraud, misrepresentation, or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and that [he] the dealer will satisfy all judgments rendered against [him] the dealer based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle.
- (3) That [he] the dealer will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon¹ certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the dealer.

(d) Suit on bond. The board, director of commerce and consumer affairs, or the treasurer, or any person, who has been or claims to have been injured by the breach of the conditions shall have the right of action to recover on any such bond, plus a reasonable attorney's fee (to be allowed by the court, no other attorney's fees shall be permitted from the bond proceeds) incurred to procure the recovery under the bond, but the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the dealer and any other person from being joined or consolidated with an action on the bond, and¹ recovery of a larger amount than the amount of the bond founded upon any other cause or causes of action so joined or consolidated."

SECTION 2. Section 437-18, Hawaii Revised Statutes, is amended to read as follows:

"**§437-18 Bond of broker.** (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than [\$10,000.] \$200,000.

(b) All provisions contained in section 437-17 pertaining to reduction of bond, bond condition, and suit on bond for a used motor vehicle dealer shall be applicable to a broker."

SECTION 3. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§437- Requirements to maintain license.** A new motor vehicle dealer, used motor vehicle dealer, motorcycle or motor-scooter dealer, broker, salesperson, auction, auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative shall have and maintain in full force and effect a bond as required under sections 437-17, 437-18, 437-21, and 437-21.1. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under sections 437-17, 437-18, 437-21, or 437-21.1 is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited. A licensee

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may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 5. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Notes

1. Word missing.
2. Edited pursuant to HRS §23G-16.5.

ACT 103

S.B. NO. 27

A Bill for an Act Relating to the State Fire Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 132-16, Hawaii Revised Statutes, is amended to read as follows:

“[]§132-16[] **State fire council; composition; functions.** There is established a state fire council [the members of which shall be ex officio the] which shall be placed within the department of labor and industrial relations for administrative purposes. The fire chiefs of the counties and the chief of the fire prevention bureau of the city and county of Honolulu[.] shall be ex officio members. The state fire council shall appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee shall include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii firefighters association, and such other members of the public as the state fire council may determine can best assist it. The state fire council shall elect a chairman from among its members. In addition to adopting a state model fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire-related projects shall be made. The state fire council may advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations, and reporting of fire,¹ may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

Note

1. Prior to amendment, "fire" read "fires".

ACT 104

S.B. NO. 128

A Bill for an Act Relating to the Shores and Shoreline.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 266-1, Hawaii Revised Statutes, is amended to read as follows:

"§266-1 Department of transportation; harbors; jurisdiction. All ocean shores [below mean highwater mark,] seaward of the shoreline, shore waters and navigable streams, and all harbors and roadsteads, and all harbor and waterfront improvements, belonging to or controlled by the State, and all shipping within the harbors, roadsteads, waters, and streams shall be under the care and control of the department of transportation."

SECTION 2. Section 266-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In addition to the powers vested in the director by sections 266-1 and 266-2, the director, to promote public safety, health, and welfare in or on the shore waters and shores [and], on beaches encumbered with easements in favor of the public, and on public beaches constructed seaward of an existing shoreline, may [promulgate, alter, amend, and repeal] adopt rules [and regulations] governing the shore waters, shores, [and] beaches encumbered with easements in favor of the public[.], and public beaches constructed seaward of an existing shoreline. The rules [and regulations] to be [promulgated] adopted under this subsection may include:

- (1) Safety measures, requirements, and practices in or on the shore waters and shores of the State;
- (2) The licensing and registration of persons or organizations engaged in commercial activities in or on the shore waters or shores of the State;
- (3) The licensing and registration of equipment utilized for commercial activities in or on the shore waters or shores of the State;
- (4) The prohibition of the following uses and activities on beaches encumbered with easements in favor of the public[:], and on public beaches constructed seaward of an existing shoreline:
 - (A) Commercial activities[.];
 - (B) The storage, parking, and display of any personal property[.];
 - (C) The placement of [any] structures or obstructions[.]; and
 - (D) [Any other] Other uses or activities that may interfere with the public use and enjoyment of the beaches[.]; and
- (5) Any other [matters] matter relating to the safety, health, and welfare of the general public.

For the purpose of this chapter, if not inconsistent with the context: ["Shore waters and shores" means all ocean waters below mean highwater mark and within the jurisdiction of the State.]

"Beaches encumbered with easements in favor of the public" means any lands which lie along the shores of the State above [mean highwater mark] the shoreline and which are now, or may hereafter be, encumbered by easements in favor of the public for bathing purposes and for foot passage.

“Shore waters and shores” means all ocean shores and waters seaward of the shoreline and within the jurisdiction of the State.

“Shoreline” means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.”

SECTION 4.¹ Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5.¹ This Act shall take effect upon its approval.

(Approved May 20, 1985.)

Note

- 1. So in original.

ACT 105

S.B. NO. 132

A Bill for an Act Relating to Lights for Motor Vehicles, Motorcycles, Motor Scooters, Motorized Bicycles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to revise the present law relating to lights for motor vehicles, motorcycles, motor scooters, and motorized bicycles.

SECTION 2. Section 291-25, Hawaii Revised Statutes, is amended to read as follows:

“§291-25 Lights for motor vehicles, motorcycles, motor scooters, motorized bicycles. (a) From thirty minutes after sunset until thirty minutes before sunrise, every motor vehicle moving upon any public highway shall carry at the front thereof at least two lighted head lamps which shall display white lights of equal candle power[.]. The head lamps shall be securely mounted, not less than twenty-four inches nor more than fifty-four inches above the road surface when measured to the head lamp center, on a rigid part of the vehicle designed specifically for head lamp installation by the manufacturer, and so arranged, adjusted, and constructed that, when the motor vehicle is fully loaded, any pair of headlights under the conditions of use shall produce a light sufficient to reveal any person, vehicle, or substantial object on the highway straight ahead of the motor vehicle for a distance of two hundred feet.

The light when measured at a distance of one hundred feet directly in front of the motor vehicle, and at a height of sixty inches above the level surface on which the motor vehicle stands, shall not exceed two thousand four hundred apparent candle power, nor shall this candle power be exceeded at a greater height than sixty inches.

When measured at a distance of one hundred feet ahead of the motor vehicle and seven feet or more to the left of the axis of the same, and at a height of sixty inches above the level surface on which the motor vehicle stands, the light shall not exceed eight hundred apparent candle power.

(b) During the time [hereinbefore] specified[,] in subsection (a), every motorcycle, motor scooter, or motorized bicycle while moving on a public highway shall carry, at the front thereof, at least one lighted headlight which shall give a light of such power and so distributed as provided in subsection (a); provided[,] that any motorcycle, motor scooter, or motorized bicycle with a side

car or similar contrivance attached shall, in addition to the foregoing required light, carry on the side car or similar contrivance a lighted lamp visible from a point at least two hundred feet ahead of the vehicle. Any headlight required by this subsection shall display white light and shall be securely mounted, not less than twenty-four inches nor more than fifty-four inches above the road surface when measured to the headlight's center on a rigid part of the vehicle designed specifically for installation of a light by the manufacturer."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 106

S.B. NO. 188

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) The department of commerce and consumer affairs shall provide administrative support to the board. The department shall employ, not subject to chapters 76 and 77, an executive secretary to administer the board's activities and an employee to administer the medical claims conciliation panels established under chapter 671. The employee responsible for administration of the medical claims conciliation panels [shall be under the executive secretary, but] shall have no duties in administration of the board's activities."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 107

S.B. NO. 255

A Bill for an Act Relating to Compliance with Court Orders in Traffic Cases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-109, Hawaii Revised Statutes is amended to read as follows:

"§286-109 General provision governing the issuance of licenses. Upon payment of the required fee and upon demonstrating [his] the ability to operate a certain category or categories of motor vehicles to the satisfaction of the examiner of drivers, an applicant for a driver's license shall be issued a single license of a design approved by the director of transportation upon which is made a notation of the category or categories of motor vehicles [he] the applicant may operate and any restrictive provisions to which the license is subject.

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Statutes of limitations and other provisions of this chapter notwithstanding, no driver's license or instruction permit shall be issued or renewed under any of the provisions hereof, where the examiner of drivers is notified by the district judge, traffic violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws of the [State or] county, [or of] this chapter or chapters 286G, 287, 290, 291, 291C, or 294, and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court], and the same remains delinquent and outstanding.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 108

S.B. NO. 651

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by amending the definition of “Historic property” to read as follows:

““Historic property”¹ means any building, structure, object, district, area, or site, including heiau and underwater site, that is significant in the history, architecture, archaeology, or culture of this State, its communities or the nation.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

Note

1. Prior to amendment, this definition was preceded by “(2)”.

ACT 109

S.B. NO. 1299

A Bill for an Act Relating to County Liquor Commissions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-17, Hawaii Revised Statutes, is amended to read as follows:

“§281-17 **Jurisdiction and powers.** The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To control, supervise, and regulate the manufacture, importation, and sale of liquors[.] by investigation, enforcement, and education;

- provided that any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
- (3) From time to time to make, amend, and repeal such rules [and regulations], not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules [and regulations], when [approved by the elected executive head of the county and promulgated and filed] adopted as provided in chapter 91[, as amended,] shall have the force and effect of law;
 - (4) Subject to [the provisions of] chapters 76 and 77, to appoint and remove a secretary (who may also be appointed an inspector), and such inspectors and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every inspector [shall], within the scope of [his] the inspector's duties, shall have the powers of a police officer. No employee of any commission [shall], aside from exercising the right to vote, shall support, advocate, or aid in the election or defeat of any candidate for public office, and upon satisfactory proof of such prohibited activity the offender shall be summarily dismissed;
 - (5) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
 - (6) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of¹ any indemnity deemed appropriate to the case;
 - (7) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which [hours] shall be uniform throughout the county as to each class respectively;
 - (8) To prescribe all forms to be used for the purposes of this chapter not [herein] otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
 - (9) To investigate violations of this chapter, through its inspectors or otherwise, and to report such violations to the prosecuting officer for prosecution; to hear and determine complaints against any licensee; to subpoena and examine witnesses under oath and require the production of, and examine any of the books, papers, and records of any licensee which may pertain to [his] the licensee's business under [his] the license or which shall or may pertain to any matter at any hearing or investigation by or before the commission. Each member of the commission may investigate any matter of which the commission may take cognizance, and take testimony in

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- the same manner as any court and neither the commission nor any member shall be bound by the strict legal rules of evidence;
- (10) To prescribe, by rule [and regulation], the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of dispensers' and cabaret licenses;
 - (11) To prescribe, by rule [and regulation], the term of license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount and the manner of payment of fees for such licenses and permits, and the amount of filing fees.

The commission and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining the witnesses as are possessed by a circuit court.

The exercise by the commission of the power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

Note

- 1. Prior to amendment, "of" read "for".

ACT 110

H.B. NO. 113

A Bill for an Act Relating to Regulation of Dealers in Farm Produce.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 145-10, Hawaii Revised Statutes, is amended to read:

"§145-10 Administrative penalties. (a) The department may, after notice and opportunity for hearing, revoke or suspend any license issued under this chapter for any violation of this chapter.

(b) The department may, after notice and opportunity for hearing, fine any person who violates this chapter or any rule adopted under this chapter, not more than \$5,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 111

H.B. NO. 114

A Bill for an Act Relating to Agricultural Commodities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 147-2, Hawaii Revised Statutes, is amended to read as follows:

“§147-2 **Duties of department; violations; proceedings; penalties.** The department shall administer and enforce this part and rules adopted by the department pursuant thereto.

The following penalties, remedies, procedures, and actions shall apply in instances of violations and complaints of violations of this part, or of the rules adopted by the department under the authority of this part:

- (1) **Administrative penalty.** The department may, after notice and opportunity for hearing, fine any person who violates this part or any rule adopted under this part, not more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this [subsection] paragraph shall be considered a civil action;
- (2) **Nuisance** may be enjoined, abated. Violation of this part or of any rule adopted thereunder is declared a public nuisance and may be enjoined or abated as such in a suit filed and prosecuted in the circuit court by the department or the attorney general. The several circuit courts are hereby vested with jurisdiction to prevent and restrain violation of this part or of any rule effective thereunder;
- (3) **Misdemeanor.** Any person who violates this part or any rule adopted under this part shall be fined not more than \$1,000 or imprisoned not more than one year, or both;
- (4) The penalties and remedies prescribed in this section with respect to any violation mentioned in this section shall be concurrent and alternative and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or alternative rights, remedies, or penalties provided or allowed by law with respect to any such violation.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 112

H.B. NO. 211

A Bill for an Act Relating to High Technology Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206M-5, Hawaii Revised Statutes, is amended to read as follows:

“[[§206M-5[]] **Development rules.** [The control and administration of any industrial park, the cost of which is financed from the proceeds of bonds shall be in the development corporation. The] Whenever the proceeds of bonds are used to finance the cost of a project, the board shall adopt rules under chapter 91 to be followed during the course of the development of any industrial

park, which are to be known as development rules in connection with health, safety, building, planning, zoning, and land use. The rules, upon final adoption of a development plan for an industrial park, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon within the industrial park. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development. The corporation shall establish policies and procedures for monitoring and ensuring that the operation of the industrial park complies with these development rules and may establish fines and penalties or take any other means available under the law to eliminate any non-complying action."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 20, 1985.)

ACT 113

S.B. NO. 93

A Bill for an Act Relating to Fish Catch Reports.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 189-3, Hawaii Revised Statutes, is amended to read:

"§189-3 Monthly catch report. (a) Every commercial marine licensee [who sells or offers to sell or profits from any sale of marine life anywhere in the State] shall furnish to the department [of land and natural resources] a report with respect to the marine life taken and any live, fresh, or frozen bait used for each month upon a form prescribed by the department, the form to be known as the "monthly catch report"; provided that whenever the total marine life taken monthly in respect to any commercial marine licensee is insufficient in the judgment of the department to require the submission of a monthly catch report, a certificate of exemption may be issued, and thereafter the exmpted commercial marine licensee [to whom the certificate of exemption is issued] shall not be required to submit monthly catch reports until the [certificate] exemption is canceled by the department. [Certificates of exemption] Exemptions may be canceled at any time. The monthly catch report shall be submitted to the department not later than the tenth day of the month following the month in which the marine life was taken. Failure or refusal on the part of any commercial marine licensee to submit a monthly catch report as prescribed in this section shall be sufficient cause for the revocation by the department of the commercial marine license. In any proceeding for the revocation of a commercial marine license, the licensee shall be given notice and opportunity for hearing in conformity with chapter 91. Upon revoking the license, the department may specify a period of time during which the commercial marine licensee shall not be eligible to apply for another license; provided that the period shall not exceed one year from the date of revocation.

(b) Any information submitted to the department by any person in compliance with any requirement under this section shall be confidential and shall not be disclosed, except when required under court order or pursuant to

subpoena issued by the state attorney general's office, or with the prior written consent of the person submitting the information[.], or under cooperative agreements with government agencies of the United States for exchange and use of the information specifically to manage marine life. The department, by rule, may establish [such] procedures [as may be] necessary to preserve [such] the confidentiality, except that the department may release or make public any [such] of the information in [any] the aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits [such] information.

This subsection shall not be construed to include the wet weight harvest of *Corallium secundum*, *Corallium regale*, *Corallium laauense*, *Gerardia*, *Callogorgia gilberti*, *Narella*, *Calyptrophora*, *Lepidisis olapa*, and *Acanella*. The wet weight harvest for each of the above shall be reported to the public by the department."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 114

S.B. NO. 182

A Bill for an Act Relating to Time Sharing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

"§514E-10 Registration required; developer, acquisition agent, sales agent, plan manager and exchange agent. (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] for which it is providing prospective purchasers, its address, the telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the acquisition agent is not a natural person, the name of the responsible managing employee. All acquisition agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any acquisition agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The acquisition agent shall furnish evidence that (i) [a bond or blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any violations by the acquisition agent of any solicitation ordinances or other regulations governing the use of the premise or premises in which time sharing plan or plans are promoted;] the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any violations by the acquisition agent of any solicitation ordinances or other regulations governing the use of the

premise or premises in which the time share plan is promoted; provided that this bonding requirement shall be separately applicable to each time share plan for which the acquisition agent is providing prospective purchases; or (ii) that the acquisition agent is currently licensed pursuant to chapter 467 as a real estate salesman or a real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(c) A sales agent (including the developer if it is also the sales agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] that it is selling, its address, telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the sales agent is not a natural person, the name of the responsible managing employee, and the escrow account required under section 514E-16 for the deposit and collection of purchasers' funds. The director shall not approve any sales agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The sales agent shall furnish evidence that the sales agent is currently licensed pursuant to chapter 467 as a real estate salesman or real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(d) A plan manager (including the developer if it is also the plan manager) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that [a blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any default of the plan manager and any of its employees of their duties and responsibilities.] the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that this bonding requirement shall be separately applicable to each time share plan under the management of the plan manager.

(e) An exchange agent (including the developer if it is also an exchange agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan or plans for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

[(f) If the acquisition agent or plan manager is under the control of, a subsidiary of, or an affiliate of the developer, the bonds or blanket bonds can be consolidated and set in the amount of \$20,000; provided that there is a disclosure of the affiliation.]

[(g)] (f) Any registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this shall not relieve the person required to register from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of time share interests."

SECTION 2. Section 514E-8, Hawaii Revised Statutes, is amended to read as follows:

"§514E-8 Mutual right to cancel. Within [five] seven calendar days after the execution of the contract to purchase an interest in a time share plan, or within [five] seven calendar days after the purchaser's receipt of a disclosure

statement required by this chapter, whichever occurs later, either party may cancel the contract without penalty[.] by mailing or delivering a notice of cancellation to the other party at an address specified on the contract. The notice of cancellation shall be effective upon mailing or delivery to the other party at the address specified on the contract."

SECTION 3. Section 514E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§514E-9 Disclosure statement.¹ (a) Any offering of a time sharing plan to the public shall disclose:

- (1) The name and address of the developer and of the time share units;
- (2) The name and address of the plan manager, if any, and a description of his responsibilities and authority;
- (3) A description of the time share units, including the developer's schedule for completion of all buildings, units and amenities and dates of availability;
- (4) If the time share plan is located in a horizontal property regime, a description of the project and any pertinent provisions of the project instruments;
- (5) Any restraints on the transfer of the buyer's time share interest in the time share units or plan;
- (6) Whether the time share plan is a time share ownership plan or a time share use plan, along with a description of the rights and responsibilities under said plan;
- (7) A statement that there is a [five] seven calendar day period of mutual rescission;
- (8) A statement that pursuant to section 514E-11.3, every sale or transfer, made in violation of this chapter is voidable at the election of the purchaser;
- (9) Notice of any liens, title defects or encumbrances on or affecting the title to the units or plan;
- (10) Notice of any pending or anticipated suits that are material to the time share units or plan, of which the developer has, or should have, knowledge;
- (11) The total financial obligation of the purchaser, which shall include the initial price and any additional charges to which the purchaser may be subject;
- (12) An estimate of the dues, maintenance fees, real property taxes, and similar periodic expenses, and the method or formula by which they are derived and apportioned; and
- (13) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91."

SECTION 4. Section 514E-11.1, Hawaii Revised Statutes, is amended to read as follows:

"§514E-11.1 Deceptive trade practices. It shall constitute an unfair or deceptive practice, within the meaning of chapter 480, for any developer, acquisition agent, or sales agent of time share units or plans to:

- (1) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements without fully disclosing that the device is being used for the purpose of soliciting sales of time share interests;

- (2) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan, if in order to claim the prize or gift, the prospective purchaser must attend a sales presentation unless the written disclosure described in section 514E-11(3) is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type;
- (3) Fail to inform each purchaser orally and in writing, at the time he signs the contract of his [five] seven-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (4) Misrepresent in any manner the purchaser's right to cancel or void any contract to purchase a time share interest in a time share plan or unit;
- (5) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (6) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser, and within fifteen business days after receipt of such notice, fail or refuse to refund all payments made under the contract or sale; or fail or refuse to cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any appropriate action to terminate promptly any mortgage, lien, or other security interest created in connection with the transaction;
- (7) Fail to include on promotional literature and other printed or written material the caption "THIS IS A TIME SHARING SALES PRESENTATION" (in capital letters of 24-point bold type, or type as large as the largest printing or writing elsewhere in the material), under which must be printed (in type of the same size as the caption described above) the following: "Any purchaser has, under the law, a [five] seven-day right of rescission of any time sharing sales contract";
- (8) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
- (9) Misrepresent or deceptively represent the location or locations of the offered time share unit;
- (10) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
- (11) Misrepresent the nature or extent of any services incident to the time share unit;
- (12) Misrepresent the conditions under which a purchaser may exchange his occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location; or
- (13) Fail to orally disclose during the initial oral contact with a prospective purchaser that any promised entertainment, prizes, gifts, food and drinks, games, or other inducements are being offered for the purpose of soliciting sales of time share interests in time share units or plans."

SECTION 5. Section 514E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“§514E-16 Deposit of purchaser’s funds, notes, and contracts into escrow.¹ (a) All funds and any negotiable instruments and purchase money contracts received before closing from or on behalf of purchasers or prospective purchasers in connection with the purchase or reservation of time share interests must be placed in an escrow account. However, the developer or a sales agent may hold, until the expiration of the [five] seven-day-cancellation period provided by section 514E-8 or any longer purchaser cancellation period provided in the sales contract, a negotiable instrument, or purchase money contract made by a purchaser:

- (1) For which subsequent holders cannot claim holder in due course status within the meaning of article 3 of chapter 490; or
- (2) Where the payee is: (A) The escrow agent; or (B) The trustee of a lien payment trust.”

SECTION 6. Section 514E-18, Hawaii Revised Statutes, is amended to read as follows:

“§514E-18 Release of purchaser’s funds, notes, and contracts from escrow upon closing. (a) Upon the closing of the escrow for the sale of a time share interest, the purchaser’s funds and any negotiable instruments and purchase money contracts made by the purchaser shall be delivered by the escrow agent:

- (1) To the trustee of a lien payment trust if a lien payment trust is established pursuant to section 514E-19 to protect purchasers from blanket liens; or
- (2) As provided by any alternative arrangements accepted by the director pursuant to section 514E-27 where such alternative arrangements are used pursuant to section 514E-19 to protect purchasers from blanket liens; or
- (3) To the developer only after the requirements of any other alternative under section 514E-19 for protecting purchasers from blanket liens have been satisfied.

(b) Notwithstanding any other provisions¹ of this chapter, the escrow agent may not release the purchaser’s funds, negotiable instruments, and purchase money contracts from the escrow account to or for the benefit of the developer or a sales agent or for construction until:

- (1) The [five] seven-day cancellation period under section 514E-8 expires as to the purchaser whose funds are being released; and
- (2) The escrow agent receives a sworn statement from the developer that:
 - (A) No cancellation notice postmarked on a date within the [five] seven-day cancellation period was received from the purchaser whose funds are being released; and
 - (B) No cancellation notice was otherwise received during the [five] seven-day cancellation period from the purchaser whose funds are being released.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

1. So in original.

A Bill for an Act Relating to Psychologists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, [factory built housing advisory board.] board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of [practicing psychologists,] psychology, board of detectives and guards, real estate commission, board of veterinary examiners, and speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The following chapters are hereby repealed effective December 31, 1988:

- (1) Chapter 465 (Board of [Certification for Practicing Psychologists] Psychology)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 359L (Factory Built Housing Advisory Board)
- (4) Chapter 468B (Solar Energy Device Dealers)
- (5) Chapter 468K (Travel Agencies)
- (6) Chapter 373 (Commercial Employment Agencies)
- (7) Chapter 442 (Board of Chiropractic Examiners)
- (8) Chapter 448 (Board of Dental Examiners)”

SECTION 3. Section 465-1, Hawaii Revised Statutes, is amended by amending the definition of “board” to read as follows:

““Board” means the board of [certification for practicing psychologists.] psychology.”

SECTION 4. Section 465-2, Hawaii Revised Statutes, is amended to read as follows:

“§465-2 [Certification] License required. Except as otherwise provided in this chapter, [no person shall represent himself to be] it shall be unlawful to represent one's self as a psychologist or engage in the practice of psychology without having first obtained a [certificate] license as provided in this chapter.”

SECTION 5. Section 465-3, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) This chapter shall not apply to:

- (1) Any person teaching, lecturing, consulting, or engaging in research in psychology insofar as the activities are performed as part of or are dependent upon employment in a college or university; provided that the person shall not engage in the practice of psychology as defined in section 465-1 outside the responsibilities of the person's employment;
- (2) Any person who performs any, or any combination[,] of the professional services [described in section 465-1(5)] defined as the practice of psychology in section 465-1 under the direction of a person who is qualified under this chapter; provided that the person shall not identify the person's self as a psychologist or imply that the person is licensed to practice psychology;
- (3) Any person employed by a local, state, or federal government agency whose psychologists must qualify for employment under government licensing or under civil service regulations, but only at those times when that person is carrying out the functions of such governmental employment; or
- (4) Any person who is a student of psychology, a psychological intern, or a resident in psychology preparing for the profession of psychology under supervision in a training institution or facility and who is designated by a title as ["psychological trainee"] "psychology trainee" or "psychology student" which indicates [their] the person's training status; [or] provided that the person shall not identify the person's self as a psychologist or imply that the person is licensed to practice psychology.
- (5) Any person who holds a license to practice medicine and surgery in the State.]

(b) Nothing in this chapter shall in any way restrict any person from carrying on any of the psychological activities [in subsection (a),] as defined in section 465-1; provided that such person does not offer psychological services as defined in this chapter except as such activities are incidental to [his] the person's lawful occupational purpose.

(c) A person may use the title of industrial/organizational psychologist, provided that the person registers with the board, and:

- (1) Is professionally competent in the practice of industrial/organizational psychology; and
- (2) Holds a doctoral degree from an accredited institution of higher education with training and education in industrial/organizational psychology, satisfactory to the board[;

and does not engage in the practice of psychology as defined in section 465-1(5).”

SECTION 6. Section 465-4, Hawaii Revised Statutes, is amended to read as follows:

“§465-4 Board of [certification for practicing psychologists;] psychology; appointment, qualifications, term, expenses. (a) There is created a board of [certification for practicing psychologists,] psychology within the department of commerce and consumer affairs for administrative purposes, consisting of seven members. In accordance with section 26-34, the governor shall appoint, with the advice and consent of the senate, five members representing varied specialties of the profession from persons who would qualify for [certification] licensure under this chapter and two lay members from the community at large. [The terms of the board will be overlapping. Two psychologists and one lay member will be

appointed for three years, two psychologists and one lay member will be appointed for two years, and one psychologist will be appointed for one year.] The board shall elect one of its members to serve as chairman.

(b) Members shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in the performance of official duties on islands other than [on] the island of their residence.”

SECTION 7. Section 465-5, Hawaii Revised Statutes, is amended to read as follows:

“§465-5 Meetings; quorum. The first meeting of the board [of certification for practicing psychologists] shall be held within thirty days after the appointment of the board at a time and place designated by the governor. Thereafter, the board shall meet at least once a year and as many other times as the board may deem necessary to discharge its duties. Four members of the board constitute a quorum.”

SECTION 8. Section 465-6, Hawaii Revised Statutes, is amended to read as follows:

“§465-6 Powers and duties. The board [of certification for practicing psychologists] shall:

- (1) Examine the qualifications of applicants for [certification] licensing under this chapter to determine their eligibility for [certification] licensing as psychologists and forward to the director the names of applicants who are eligible for [certification] licensing no later than ninety days after the date of application;
- (2) Prepare, administer, and grade examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of the examinations and tests, whether they shall be oral, written, or both and the score that shall be deemed a passing score. Examinations must be scheduled at least once annually;
- (3) Keep a record of action taken on all applicants for [certification;] licensing; the names of all persons [certified;] licensed; petitions for temporary [certificates;] permits; actions involving suspension, revocation, or denial of [certificates;] licenses; and recommendations for reciprocity and receipt and disbursement of any moneys; and
- (4) [Promulgate,] Adopt, amend, and repeal pursuant to chapter 91, rules as it deems proper for the purposes of this chapter.”

SECTION 9. Section 465-7, Hawaii Revised Statutes, is amended to read as follows:

“§465-7 Requirements for licensing. Every applicant for a license as a psychologist shall submit evidence satisfactory to the board that the applicant meets the requirements set forth in paragraphs (1) and (2), or (3), and (4).¹

- (1) Is professionally competent and has demonstrated knowledge in the practice of psychology.
- (2) Holds a doctoral degree from [an accredited institution of higher education with training and education in the field of psychology adequate to the satisfaction of the board.] a training program approved by the American Psychological Association (APA), or holds a doctoral degree from a regionally accredited institution of higher education and also meets the experiential requirements for

inclusion in the National Register of Health Service Providers in Psychology.

- (3) Holds a diplomate certificate in good standing granted by the American Board of Examiners in Professional Psychology.
- (4) Has passed an examination as may be prescribed by the board.”

SECTION 10. Section 465-8, Hawaii Revised Statutes, is amended to read as follows:

“§465-8 Licenses, issuance, display. Upon the board [of certification for practicing psychologists] forwarding to the director the name of each applicant who is entitled to a license under this chapter and upon receipt of the prescribed fee, the director shall promptly issue to each applicant a license authorizing the applicant to engage in the practice of psychology for a period of two years. The license shall be in the form as the director shall determine. A licensed psychologist shall display the license in a conspicuous place in the psychologist’s principal place of business.”

SECTION 11. Section 465-9, Hawaii Revised Statutes, is amended to read as follows:

“§465-9 Temporary permit. A person not [certified] licensed in the State who wishes to engage in the practice of psychology for a period not to exceed ninety days within a calendar year shall petition the board for a temporary permit. If the person is licensed or certified in another state deemed by the board [of certification for practicing psychologists] to have standards equivalent to this chapter, [he] the person shall be entitled to a temporary permit in the same manner and subject to the same conditions specified in section 465-8 applicable to the issuance of [certificates.] licenses. The period of ninety days may be extended at the discretion of the board but not to exceed ninety days.”

SECTION 12. Section 465-10, Hawaii Revised Statutes, is amended to read as follows:

“§465-10 Reciprocity. (a) The board [of certification for practicing psychologists] may recommend licensing without written or oral examination of an applicant who has not previously failed to pass an examination in psychology prescribed by the board and who submits evidence satisfactory to the board that the applicant:

- (1) Holds a doctoral degree from an accredited institution of higher education with training and education in the field of psychology adequate to the satisfaction of the board; and
- (2) Is certified or licensed, and in good standing, to practice psychology in another state deemed by the board to have standards equivalent to this chapter; or
- (3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology.

(b) The director [of commerce and consumer affairs] shall issue a license under this section in the same manner and subject to the same conditions specified in section 465-8.”

SECTION 13. Section 465-12, Hawaii Revised Statutes, is amended to read as follows:

“§465-12 Fees; disposition. Application, examination, [certificate,] license, renewal, and temporary permit fees required by this chapter, none of

which are refundable, shall be as provided in rules adopted by the director pursuant to chapter 91.

All fees shall be paid to the director and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 14. Section 465-13, Hawaii Revised Statutes, is amended to read as follows:

“§465-13 Denial, suspension, revocation of license, or probation of a license holder. The board [of certification for practicing psychologists] shall refuse to grant a license to any applicant and may revoke or suspend any license, or may place a license, or may put a license holder on conditional probation, upon any of the following grounds:

- (1) Professional misconduct or gross carelessness or manifest incapacity in the practice of psychology;
- (2) Habitual use of narcotic drugs or any other substance which impairs the intellect and judgment to such an extent as to incapacitate the applicant or license holder for the practice of psychology;
- (3) Habitual drunkenness;
- (4) Violation of this chapter by the applicant within one year of the application, or violation of this chapter by a license holder any time the license is valid; or
- (5) Any unethical practice of psychology as defined by the board in accordance with its own rules.”

SECTION 15. Section 465-14, Hawaii Revised Statutes, is amended to read as follows:

“§465-14 Procedure. All proceedings for denial, suspension, or revocation of a [certificate] license or permit on any ground specified in section 465-13 shall be pursuant to chapter 91, including the right of judicial review.”

SECTION 16. Section 465-15, Hawaii Revised Statutes, is amended to read as follows:

“§465-15 Prohibited acts; penalties. (a) No person shall:

- (1) Use in connection with the person’s name any designation tending to imply that the person is a licensed psychologist unless the person is duly licensed and authorized under this chapter[.];
- (2) Represent oneself as a licensed psychologist during the time the person’s license issued under this chapter is suspended or revoked;
- (3) Advertise or make a representation, either publicly or privately, as being a psychologist, licensed or otherwise, or as being able to perform professional services described in section [465-1(5),] 465-1, except as otherwise provided in this chapter, without having a valid unrevoked license or temporary permit issued by the director[.]; or
- (4) Otherwise violate this chapter.

(b) Any person who violates this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both.”

SECTION 17. Section 481B-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who deposits any money to attend a sensitivity-awareness group seminar and before the first day of the seminar, requests to cancel his or her right to attend and requests a refund of moneys deposited or

paid, shall be refunded in full less identifiable nonrecoverable costs not to exceed the lesser of \$50 or twenty per cent of the price of the course, by the sensitivity-awareness group. Any person who while attending or after completing a sensitivity-awareness seminar, deposits any money to attend subsequent seminars of a sensitivity-awareness group and within five days of making the deposit or before the first day of the subsequent seminar, whichever occurs later, requests to cancel his or her right to attend and requests a refund of moneys deposited or paid, shall be refunded in full less identifiable nonrecoverable costs not to exceed the lesser of \$50 or twenty per cent of the price of the course, by the sensitivity-awareness group. Any offering of a sensitivity-awareness group seminar by a representative of the sensitivity-awareness group sponsoring the sensitivity-awareness group seminar shall disclose to the offeree these rights of refund.

For purposes of this section, "sensitivity-awareness groups" includes any individual, associated group of persons, or organizations which advertise or assert that attendance by persons at seminars, meetings, training sessions, therapy sessions, or the like sponsored by the individual, group, or organization, will help the persons attending have greater self-awareness or awareness of others, greater self-understanding or understanding of others, or greater capacity for life adjustment or success in life; provided that psychological or psychotherapeutic techniques are used as part of the individual's, group's, or organization's methodology at the seminars, meetings, training sessions, therapy sessions, or the like. The term "sensitivity-awareness groups" does not include [certified] licensed psychologists, or psychologists with a temporary permit, in accordance with chapter 465, or a psychiatrist licensed in accordance with chapter 453, who teach, direct, administer, conduct, preside over, or are similarly involved in seminars, meetings, training sessions, therapy sessions, or the like.

"Sensitivity-awareness group seminars" means any seminar, meeting, training session, therapy session, or the like sponsored by a sensitivity-awareness group for which monetary compensation is required from persons to attend."

SECTION 18. Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (a) of rule 504.1 to read as follows:

"(a) Definitions. As used in this rule:

- (1) A "client" is a person who consults or is examined or interviewed by a psychologist.
- (2) A "psychologist" is a person [certified,] licensed, or reasonably believed by the client to be [certified,] licensed, to practice psychology under chapter 465, while engaged in interviewing, counseling, or psychotherapy with respect to behavioral problems, including substance addiction or abuse.
- (3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the client in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the counseling or psychotherapy under the direction of the psychologist, including members of the client's family."

SECTION 19. Any person enrolled in an APA-approved program or a regionally accredited school prior to January 1, 1986 and who meets the requirements established by the Board of Psychology, need not meet the one

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year, supervised post-doctoral clinical experience requirement and shall be allowed to sit for the examination.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 21. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

- 1. All of following material of this section should be underscored.

ACT 116

S.B. NO. 280

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Reopening. In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be [the rental for the immediately preceding period or] the fair market rental at the time of reopening[, whichever is the higher]. At least six months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the board[;] and the lessee shall be promptly notified of the determination; provided[,] that should the lessee fail to agree upon the fair market rental, he may appoint his own appraiser who together with the board’s appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 658. The lessee shall pay for his own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board.[”] Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six month notice required, shall apply to leases with original lease rental reopening dates effective after the enactment of this bill into law.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 117

S.B. NO. 327

A Bill for an Act Relating to Motor Vehicle Accident Reparations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 294-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Tort liability of the owner, operator, or user of an insured motor vehicle, or the operator or user of an uninsured motor vehicle who operates or

uses such vehicle without reason to believe it to be an uninsured motor vehicle, with respect to accidental harm arising from motor vehicle accidents occurring in this State, is abolished, except as to the following persons or their personal representatives, or legal guardians, and in the following circumstances:

- (1) Death occurs to such person in such a motor vehicle accident; or injury occurs to such person which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or injury occurs to such person which consists of a permanent and serious disfigurement which results in subjection of the injured person to mental or emotional suffering;
- (2) Injury occurs to such person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 294-10(b) for expenses provided in section 294-2(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit; or
- (3) Injury occurs to such person in such an accident and as a result of such injury the aggregate limit of no-fault benefits outlined in section 294-2(10) payable to such person are exhausted.

This section shall apply whether or not the injured person is entitled to receive no-fault benefits. The party against whom the presumption under this section is directed shall have the burden of proof to rebut the presumption."

SECTION 2. This Act shall not affect any case in which a determination regarding qualification under the medical-rehabilitative limit was made prior to its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 118

S.B. NO. 457

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-82, Hawaii Revised Statutes, is amended to read as follows:

"§514A-82 Contents of bylaws. The bylaws shall provide for at least the following:

- (1) Board of directors:
 - (A) The election of a board of directors;
 - (B) The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than seventy-five per cent of all apartment owners vote by [secret written] mail ballot, or at a special or annual meeting, to [set] reduce the minimum number of directors [at less than nine during an annual meeting or special meeting called for the purpose of reducing the minimum number of directors];

- (C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;
 - (D) The powers and duties of the board;
 - (E) The compensation, if any, of the directors;
 - (F) The method of removal from office of directors; and
 - (G) Whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners and that votes allocated to any area which constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, whether or not it is so designated in the declaration.
 - (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
 - (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
 - (5) Election of a treasurer who shall keep the financial records and books of account.
 - (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
 - (7) Manner of collecting common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges.
 - (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
 - (9) Method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.
 - (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
 - (11) The bylaws may be amended at any time by the vote or written consent of not less than sixty-five per cent of all apartment owners[, but]; provided that each one of the particulars set forth in this section shall always be embodied in the bylaws.
 - (12) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request.

- (13) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one representative on the board of directors from any one apartment.
- (14) A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest.
- (15) No resident manager of a condominium shall serve on its board of directors.
- (16) The board of directors shall meet at least once a year.
- (17) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- (18) No resident manager, or managing agent shall solicit, for use by such manager or managing agent, any proxies from any apartment owner of the association of owners which employs him, nor shall he cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.
- (19) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.
- (20) The members of the association of apartment owners may require, by vote at the annual meeting, a yearly audit of the association books by a certified public accountant.
- (21) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.
- (22) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to the meeting.
- (23) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto, method of determination of violations, and manner of enforcing such penalties, if any."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that this Act shall not affect any right or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved May 28, 1985.)

A Bill for an Act Relating to the Hawaii Criminal Justice Data Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 846-2.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general shall select and enforce systems of identification, including fingerprinting, of all persons arrested [or charged with] for a criminal offense [and provide for the recording and compilation of statistics related to crime. The attorney general shall establish systems of identification], or persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and provide for the collection, recording, and compilation of data and statistics relating to crime.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of such systems of identification and statistics in their respective jurisdictions; provided that all such expenses in connection with prison matters exclusively within the control of the State shall be borne by the State.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in such manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable (1) for the study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law and (2) for the examination of the records of the operations of such officers and the results thereof.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. The legislature finds the certificate of need approval from the state health planning and development agency has been received as required for the facility at the Moanalua Medical Center on Oahu and is pending for the Wailuku Clinic on Maui.

SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in the amounts set forth below to assist not-

for-profit corporations that provide health care facilities to the general public and to be used for financing as follows:

- | | |
|---|------------|
| 1. Kaiser Foundation Hospitals, Oahu | 11,400,000 |
| For additions and parking to Moanalua Medical Center and construction of a Skilled Nursing Facility, including a Reference Laboratory and a Data Processing Center. | |
| 2. Kaiser Foundation Health Plan, Maui | 7,000,000 |
| For expansion of the Wailuku Clinic. | |

Issuance of the special purpose revenue bonds for the Wailuku Clinic is contingent on the approval of the certificate of need from the state health planning and development agency.

SECTION 3. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in Section 2 of this Act and in Act 16, First Special Session Laws of Hawaii 1981 and Act 164, Session Laws of Hawaii 1982. In making such determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 4. The special purpose revenue bonds and refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations to provide and improve health care to the general public.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 121

S.B. NO. 936

A Bill for an Act Making an Appropriation for the Redevelopment of the Aloha Tower Complex.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is hereby appropriated out of revenue bond funds the sum of \$33,260,000, or so much thereof as may be necessary, for fiscal years 1985-86 and 1986-87, for the public participation portion of the redevelopment of the Aloha Tower Complex.

SECTION 2. The Aloha Tower Development Corporation, with the approval of the Governor, is authorized to issue revenue bonds for the purposes of this Act; provided that the sum total of the bonds so issued shall not exceed \$33,260,000; and provided that no bonds shall be issued under this Act and no demolition or site development shall proceed until development proposals have been incorporated into firm contractual commitments.

SECTION 3. The sum appropriated shall be expended by the Aloha Tower Development Corporation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1985.

(Approved May 28, 1985.)

A Bill for an Act Relating to Motor Vehicle Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-35.1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§291-35.1[]] Regulation of bumper height. [[Text effective July 1, 1985.]] Maximum bumper heights of motor vehicles shall be determined by the weight category of gross vehicle weight rating (GVWR) as measured from a level surface to the highest point on the bottom of the bumper. Maximum heights are as follows:

Gross Vehicle Weight Rating	Front	Rear
<u>Passenger vehicles</u>	<u>22 inches</u>	<u>22 inches</u>
4,500 lbs. and under	[22] 29 inches	[22] 29 inches
4,501 lbs. to 7,500 lbs.	[24] 33 inches	[26] 33 inches
7,501 lbs. to 10,000 lbs.	[28] 35 inches	[30] 35 inches

For any vehicle with bumpers or attaching components which have been modified or altered from the original manufacturer’s design to conform with the maximum bumper height requirements of this section, the bumper height shall be measured from a level surface to the bottom of the bumper. [vehicle frame rail where the original bumper brackets were installed. This section shall not apply to motor vehicles which, at manufacture, have a bumper height in excess of that provided in this section.] The vehicle frame rail, measured from a level surface to the bottom of the vehicle frame rail, shall not exceed the attached bumper height. The maximum distance between vehicle body to vehicle frame rail shall not exceed three inches. The distance between the vehicle body to vehicle frame rail shall be measured from the vehicle body mount seat to the vehicle frame rail mount seat. “Bumper”, for purposes of this section means a horizontal load bearing protective system installed on a motor vehicle which is constructed of sturdy materials that will not shatter or split upon moderate impact and [provide] provides adequate protection against damages to the front and rear external lighting and reflective devices, hood, trunk, doors, painted surfaces, cooling system, exhaust system, and other components during a low speed impact. Any vehicle that exceeds the Vehicle Equipment Safety Commission - Regulation 12 recommended bumper height, based on the GVWR, shall be equipped with an audible reverse warning system. The audible reverse warning system is not required on any open cab vehicle with a distance of less than four feet from the rear of the driver’s seating position to the rear most part of the vehicle body.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1985.

(Approved May 28, 1985.)

A Bill for an Act Relating to Real Estate.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify and disclose the relationship of a real estate broker to the buyer and seller of real estate in the State of Hawaii.

The question of whether the broker represents the buyer or the seller in a real estate transaction has numerous answers, depending upon the particular situation. It is the further intent of this Act to require the real estate commission to educate the consumer and the licensee on the "disclosure" requirements by delaying until July 1, 1987 the effective date of disciplinary action for failure to disclose agency relationship to a buyer or seller.

SECTION 2. Chapter 467-14, Hawaii Revised Statutes, is amended to read as follows:

"§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued hereunder, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misinterpretation¹ concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for his services from both of such parties;
- (5) When licensee, being a real estate salesman, accepts any commission or other compensation for the performance of any of the acts hereinabove enumerated in the definition of real estate salesman from any person, copartnership, or corporation other than his employer or the broker with whom he associates or, being a real estate broker or salesman, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesman, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than his employer or the broker with whom he is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;

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- (11) When the licensee, being a real estate salesman, fails to file with the commission a written statement setting forth the name of the real estate broker by whom he is employed or with whom he is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;¹
- [(12)] (13) Violating this chapter, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- [(13)] (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that a licensed broker may pay a commission to:
 - (A) A licensed broker for¹ another state, territory, or possession of the United States; or
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country¹ if such broker does not conduct in this State any of the negotiations for which a commission is paid;
- [(14)] (15) Commingling the money or other property of his principal with his own;
- [(15)] (16) Adjudicated insane or incompetent.

No license shall be suspended for longer than two years and no person who¹ license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1987.

(Approved May 28, 1985.)

Note

- 1. So in original.

ACT 124

H.B. NO. 181

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 6E-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§6E-7[]] State title to historic property [on state lands]. [The State reserves to itself the exclusive right and privilege of ownership and control over historic property located on lands or under waters owned or controlled by the State. Standards of control over all historic property located on lands owned by the State shall be vested in the department and the department may issue permits for activities relating to the historic property, and may establish restrictions and covenants controlling permitted activities for the purposes of historic preservation.

The State shall not transfer any historic property under its jurisdiction without the concurrence of the department. The State shall retain the rights to, and control over, all historic property located on lands leased to others. In all

cases where property is leased or conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the department may prescribe to accomplish the purposes of historic preservation.]

(a) All historic property located on lands or under waters owned or controlled by the State shall be the property of the State. The control and management of the historic property shall be vested in the department.

(b) The department may dispose of the historic property subject to chapter 171 and subject further to those reservations, restrictions, covenants or conditions which relate to the preservation of the historic property, such as rights of access, public visitation, operation, maintenance, restoration, and repair. The department shall determine the conditions for any research affecting the historic property and may issue permits for the research.

(c) The State shall not transfer any historic property under its jurisdiction without the concurrence of the department."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 125

S.B. NO. 217

A Bill for an Act Relating to Podiatry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

(b) The following chapters are hereby repealed effective December 31, 1985:

(1) Chapter 460 (Board of Osteopathic Examiners)

(2) Chapter 461 (Board of Pharmacy)

(3) Chapter 455 (Board of Examiners in Naturopathy)

[(4) Chapter 463E (Podiatry)]

(5) (4) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

[(6) (5) Chapter 457B (Board of Examiners of Nursing Home Administrators)]

[(7) (6) Chapter 448H (Elevator Mechanics Licensing Board)]

[(8) (7) Chapter 462A (Board of Pilot Commissioners)]

(c) The following chapters are hereby repealed effective December 31, 1986:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

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1987: (d) The following chapters are hereby repealed effective December 31,

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 459 (Board of Examiners in Optometry)
- (3) Chapter 452 (Board of Massage)
- (4) Chapter 471 (Board of Veterinary Examiners)
- (5) Chapter 441 (Cemeteries and Mortuaries)
- (6) Chapter 463 (Board of Detectives and Guards)

1988:

- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
 - (2) Chapter 468E (Board of Speech Pathology and Audiology)
 - (3) Chapter 359L (Factory Built Housing Advisory Board)
 - (4) Chapter 468B (Solar Energy Device Dealers)
 - (5) Chapter 468K (Travel Agencies)
 - (6) Chapter 373 (Commercial Employment Agencies)
 - (7) Chapter 442 (Board of Chiropractic Examiners)
 - (8) Chapter 448 (Board of Dental Examiners)
- (f) The following chapters are hereby repealed effective December 31,

1989:

- (1) Chapter 444 (Contractors License Board)
 - (2) Chapter 448E (Board of Electricians and Plumbers)
 - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
 - (4) Chapter 466 (Board of Public Accountancy)
 - (5) Chapter 467 (Real Estate Commission)
- (g) The following chapters are hereby repealed effective December 31,

1990:

- (1) Chapter 447 (Dental Hygienists)
 - (2) Chapter 453 (Board of Medical Examiners)
 - (3) Chapter 457 (Board of Nursing)[.]
- (h) The following chapter is hereby repealed effective December 31,

1991:

- (1) Chapter 463E (Podiatry).”

SECTION 2. Section 463E-3, Hawaii Revised Statutes, is amended to read as follows:

“[]§463E-3[] **Qualification for examination.** No person shall be licensed to practice podiatry unless he has passed an examination and has been found to be possessed of the necessary qualifications as required by the board.

Before any applicant shall be eligible for such examination he shall furnish satisfactory proof to the board that:

- (1) He is a graduate in podiatry of a college approved by the [American Podiatry Association Council on Education] Council on Podiatric Medical Education of the American Podiatric Medical Association and by the board of medical examiners;
- (2) He has taken and satisfactorily completed in a college, a residence course of professional instruction in podiatry, which has been approved by the board; and¹
- [(3) He is a person of good moral character; and]
- (4) (3) He has passed the examinations in podiatry and related sciences which have been administered by the board.”

SECTION 3. Section 463E-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§463E-4]] **Examinations.** (a) The board shall administer examinations which shall include, but not be limited to, examinations in the following areas: anatomy, histology and embryology, physiology, biochemistry, hygiene and public health, pathology, bacteriology, dermatology, syphilology, surgery and anesthesia, podiatry, therapeutics, physical medicine, podiatric medicine, pharmacology, materia medica, roentgenologic technique, and radiation safety.

(b) The examinations shall be held in Honolulu twice a year [on the 15th of January and the 15th of July. If the 15th falls on a weekend or holiday, the examination shall be held on the weekday immediately before or after the 15th, whichever] at a time and day which is convenient for the board.

(c) The board may accept the certificate of the National Board of Podiatry Examiners as approved by the American Podiatry Association in lieu of and as equivalent to its own written examination. Every applicant for licensure upon the basis of the certificate¹ shall upon application, show the necessary qualifications required under this chapter and pay the same fees required of applicants for examination by the board.

(d) The written examination shall be secured from and corrected by the National Board of Podiatry Examiners. [The oral examination shall be taken and recorded on tape and the tapes shall be held for one year. A practical examination shall also be required at the time and place prescribed by the board.]”

SECTION 4. Section 463E-6, Hawaii Revised Statutes, is amended to read as follows:

“**§463E-6 Revocation and suspension of license[.]; sanctions.** (a) Any license to practice podiatry may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of the license:

- (1) Employing what is popularly known as a “capper” or “steerer”;
- (2) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;
- (3) Wilfully betraying a professional secret;
- (4) Advertising one’s podiatrist business with any untruthful and improbable statement;
- (5) False or fraudulent advertising;
- [(6)] Being habitually intemperate;
- (7) Habitually using any habit-forming drug;]
- [(7)¹] (6) Procuring a license through fraud, misrepresentation, or deceit[.]; or knowingly permitting an unlicensed person to perform activities requiring a license;
- [(8)¹] (7) Violation of section 453-2;
- [(9)¹] (8) Professional misconduct or gross carelessness or manifest incapacity in the practice of podiatry;
- [(10)¹] (9) Engaging in the practice of podiatry other than as defined in section 463E-1[.];
- (10) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbituate, amphetamine, hallucinogen, or other drug having similar effect;
- (11) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

- (12) Negligence or incompetence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
 - (13) Revocation, suspension, or other disciplinary action by another state of a license for reasons as provided in this section;
 - (14) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a podiatrist, notwithstanding any statutory provision to the contrary;
 - (15) Violation of chapter 329, uniform controlled substance act, or any regulation promulgated thereunder; or
 - (16) Failure to report disciplinary action taken against the licensee in another jurisdiction.
- (b) In addition to or in lieu of revoking or suspending a license to practice podiatry, the board may impose one or more of the following actions:
- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists.
 - (2) Limit the license by restricting the field of practice in which the licensee may engage.
 - (3) Fine the licensee, including assessment against him of the cost of the disciplinary proceedings.
 - (4) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public.
 - (5) Require further education or training or require proof of performance competency.”

SECTION 5. Chapter 463E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§463E- Reporting requirements. (a) Every podiatrist licensed pursuant to this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to the department of commerce and consumer affairs within thirty days after any written settlement agreement has been reduced to writing and signed by all the parties thereto or thirty days after service of the arbitration award on the parties.

(b) Failure of a podiatrist to comply with the provisions of this section is an offense punishable by a fine of not less than \$100 for the first offense, \$250 to \$500 for the second offense, and \$500 to \$1,000 for subsequent offenses.

(c) The clerks of the respective courts of this State shall report to the department any judgment or other determination of the court which adjudges or finds that a podiatrist is liable criminally or civilly for any death or personal injury caused by the podiatrist’s professional negligence, error, or omission in the practice of the podiatrist’s profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after the judgment is entered by the court.

(d) The department shall prescribe forms for the submission of reports required by this section.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved May 28, 1985.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5

ACT 126

S.B. NO. 556

A Bill for an Act Relating to Pilotage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 462A-1, Hawaii Revised Statutes, is amended to read as follows:

“§462A-1 Definitions. As used in this chapter:

- (1) [“Board” means a board of pilot commissioners established pursuant to this chapter.] “Department” means the department of commerce and consumer affairs.
- (2) “Director” means the director of the department of commerce and consumer affairs.
- [(2)] (3) “License” means a pilot’s license issued pursuant to this chapter.
- [(3)] (4) “Pilot” means a state pilot licensed pursuant to this chapter as a port pilot or a deputy port pilot.
- [(4)] (5) “Pilotage waters” means the waters of this State covered by this chapter.
- [(5)] (6) “Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Each tug and each of its tows shall be considered a separate vessel.”

SECTION 2. Section 462A-2, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 462A-3, Hawaii Revised Statutes, is amended to read as follows:

“§462A-3 Powers and duties of the [board] director¹. [The board shall have powers and perform the duties hereinafter set forth and such other powers and duties as may be provided by law:] In addition to any other duties and powers granted by this chapter the director shall:

- [(1)] Adopt rules pursuant to chapter 91, not inconsistent with law, which shall be binding upon all pilots licensed by the board and upon all parties employing such pilots; and from time to time² revise or amend such rules as may be necessary to enable the board to carry into effect the provisions of this chapter. The rules shall include but shall not be limited to:
 - (A) Establishment of the qualifications of and examinations for any person applying for a pilot’s license;
 - (B) Issuance, suspension, or revocation of any pilot’s license and regulation of the number of pilots that may be licensed;
- (2) Hear and decide complaints made in writing against any pilot for any misbehavior or neglect or breach of rules, which it deems material to be investigated;

- (3) Administer oaths and compel the attendance of witnesses at such hearing³ as it may conduct;]
- (1) Grant licenses to port pilots and deputy port pilots pursuant to this chapter;
- (2) Make, amend, or repeal rules in accordance with chapter 91 as may be necessary to carry out the purposes of this chapter which are to provide for maximum efficiency in navigating vessels entering or leaving the waters of this State; maintain a pilotage system devoted to the preservation, and protection of lives, property and vessels entering or leaving waters of the State; and ensure an adequate supply of qualified pilots in aid of commerce and navigation.
- (3) Develop appropriate standards for licensure including examinations and investigations to determine whether persons applying for full pilot, port pilot, or deputy port pilot licenses are qualified;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend, revoke or deny the issuance of any license for any cause prescribed by this chapter, or for any violation of the rules;
- (6) Investigate any person for violations of any provisions of this chapter;
- (7) Adopt methods to improve disciplinary and enforcement program against violations of this chapter.
- [4] (8) Do all things reasonable, necessary² and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter.”

SECTION 4. Section 462A-4, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 462A-5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 462A-6, Hawaii Revised Statutes, is amended to read as follows:

“§462A-6 Duration and renewal of license. All licenses shall expire on June 30 of even-numbered years. All applicants for renewal of license shall submit a renewal application and comply with all applicable rules of the [board] department. No applicant shall be denied a renewal of his license, except as provided in [section 462A-8,] this chapter, as long as he possesses the qualifications established by the [board] department and remains in active service as a pilot in the State.”

SECTION 7. Section 462A-8, Hawaii Revised Statutes, is amended to read as follows:

“§462A-8 Denial, suspension, or revocation. The [board] director may deny the issuance of a license to any applicant, and may suspend or revoke the license of any pilot [upon satisfactory proof that such applicant or pilot] for any of the following reasons:

- (1) [Has willfully disobeyed] Violation of this chapter or any rule adopted by the board;
- (2) [Has negligently lost or damaged any vessel which he was piloting] Loss, damage, or injury due to negligent pilotage;
- (3) [Is habitually intoxicated] Habitual use of any substance rendering [him] a pilot unfit to be entrusted with the charge of a vessel;
- (4) [Is] Inability to physically or mentally [incapable of performing] perform the duties of a pilot;⁴

- (5) [Is no longer actively serving] Failure to maintain active service as a pilot in the State.
- (6) Procurement of a license through fraudulent misrepresentation or deceit;
- (7) Participation in any unfair or deceptive act or practice as prohibited by section 480-2;
- (8) Violation of any law or regulation intended to promote marine safety or protect navigational waters;
- (9) Failure to report marine accidents in accordance with the rules of this chapter;
- (10) Failure to maintain a current and valid federal pilots license issued in accordance with title 46, USC chapter 71."

SECTION 8. Section 462A-11, Hawaii Revised Statutes, is amended to read as follows:

"**§462A-11 Rates of pilotage.** The [board] director shall establish the rates of pilotage for vessels subject to this chapter as follows:

- (1) The rates of pilotage in effect upon passage of this bill shall remain in effect until changed by the [board] director pursuant to this chapter.
- (2) No rate shall be increased, lowered or altered without a public hearing in accordance with chapter 91. Due notice of hearing shall be mailed at least thirty days prior to the date of hearing to the individual licensed pilots, the pilot's association, and all owners, charterers, operators, and agents of vessels who have registered with the board.
- (3) The [board] director, in setting rates of pilotage, shall fix such amounts as will be a fair charge for the services rendered with due regard to necessary operating expenses, maintenance of, depreciation on, and return on investment for property used in the business of pilotage, and the rates and charges of pilotage at comparable ports of the United States.
- (4) Persons aggrieved by the [board's] director's decision setting the rates of pilotage may appeal to circuit court as provided in chapter 91."

SECTION 9. Section 462A-12, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 462A-13, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 462A-15, Hawaii Revised Statutes, is amended to read as follows:

"**§462A-15 Pilot association.** The pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs his duties. The association may adopt any working rules that are not inconsistent with the law or of the rules of the [board] department."

SECTION 12. Section 462A-16, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 462A-19, Hawaii Revised Statutes, is amended to read as follows:

“§462A-19 Exempt vessels. This chapter does not apply to:

- (1) Any vessel required by the laws of the United States of America to be under the direction and control of a federally licensed pilot;
- (2) Public vessels of the United States of America;
- (3) Motorboats as defined in section 1 of the Federal Motorboat Act of 1940; or
- (4) Fishing vessels that have been issued a fishery license or appropriately endorsed registry under the laws of the United States of America.

[If any such exempt vessel employs a pilot, such pilot shall be entitled to receive, as compensation for the person’s services, pilotage fees in the amount prescribed by the rules of the board.]

This section provides minimum pilotage requirements, and is not intended to negate the department of transportation’s responsibility for the safety of all ports and shore waters in the State, nor does it limit the department’s right to require additional pilotage should that department determine it is necessary to ensure safety in the ports or shore waters of the State.”

SECTION 14. Section 462A-20, Hawaii Revised Statutes, is amended to read as follows:

“§462A-20 Hearings; appeal. (a) Before any applicant may be denied a license, and before any pilot shall have his license suspended or revoked by the [board,] department, the applicant or pilot shall be given a hearing pursuant to chapter 91.

(b) An applicant who has been denied a license, and a pilot whose license has been suspended or revoked may appeal the [board’s] department’s decision to a circuit court as provided in chapter 91.”

SECTION 15. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following chapter is hereby repealed effective December 31, 1984:

- (1) Chapter 436D (Board of Acupuncture)
- (b) The following chapters are hereby repealed effective December 31, 1985:

- (1) Chapter 460 (Board of Osteopathic Examiners)
- (2) Chapter 461 (Board of Pharmacy)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 463E (Podiatry)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (6) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (7) Chapter 448H (Elevator Mechanics Licensing Board)
- [(8) Chapter 462A (Board of Pilot Commissioners)]

(c) The following chapters are hereby repealed effective December 31, 1986:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 460J (Pest Control Board)

- (5) Chapter 438 (Board of Barbers)
 (6) Chapter 439 (Board of Cosmetology)
 (d) The following chapters are hereby repealed effective December 31,
- 1987:
- (1) Chapter 458 (Board of Dispensing Opticians)
 (2) Chapter 459 (Board of Examiners in Optometry)
 (3) Chapter 452 (Board of Massage)
 (4) Chapter 471 (Board of Veterinary Examiners)
 (5) Chapter 441 (Cemeteries and Mortuaries)
 (6) Chapter 463 (Board of Detectives and Guards)
 (e) The following chapters are hereby repealed effective December 31,
- 1988:
- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
 (2) Chapter 468E (Board of Speech Pathology and Audiology)
 (3) Chapter 359L (Factory Built Housing Advisory Board)
 (4) Chapter 468B (Solar Energy Device Dealers)
 (5) Chapter 468K (Travel Agencies)
 (6) Chapter 373 (Commercial Employment Agencies)
 (7) Chapter 442 (Board of Chiropractic Examiners)
 (8) Chapter 448 (Board of Dental Examiners)
 (f) The following chapters are hereby repealed effective December 31,
- 1989:
- (1) Chapter 444 (Contractors License Board)
 (2) Chapter 448E (Board of Electricians and Plumbers)
 (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
 (4) Chapter 466 (Board of Public Accountancy)
 (5) Chapter 467 (Real Estate Commission)
 (g) The following chapters are hereby repealed effective December 31,
- 1990:
- (1) Chapter 447 (Dental Hygienists)
 (2) Chapter 453 (Board of Medical Examiners)
 (3) Chapter 457 (Board of Nursing)[.]
 (4) Chapter 462A (Pilotage)."

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.⁵

SECTION 17. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Notes

1. Should be underscored.
2. A "." is missing.
3. Formerly read "hearings".
4. "Or" is missing.
5. Edited pursuant to HRS §23G-16.5.

ACT 127

S.B. NO. 702

A Bill for an Act Relating to Environmental Quality.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 275, Session Laws of Hawaii 1984, is amended by amending section 1 to read as follows:

“SECTION 1. [Title 19, Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

PESTICIDES AND ENVIRONMENTAL QUALITY

§ -1] (a) Findings and purpose. The legislature finds that the problem of pesticide contamination has increased in scope and urgency, requiring a comprehensive and innovative approach in statewide efforts to address recent problems in our various communities. The legislature further finds that the enhancement of the authority of the office of environmental quality [and] control and the delegation to the office of additional responsibilities to protect and preserve the health of Hawaii's people are appropriate responses to a compelling state interest.

[Accordingly, the purpose of this chapter is to delegate to the office of environmental quality control the following additional and specific responsibilities: coordinating the establishment of an integrated pesticide policy; coordinating agency responsibilities and programs in the area of pesticide use and environmental quality; conducting, contracting for, and coordinating research on pesticide use; and serving as a central clearinghouse for information collection, classification, and dissemination.

§ -2] (b) Definitions. As used in this [chapter,] section, unless the context otherwise requires:

“Affected agencies” means the department of health, department of agriculture, the department of land and natural resources; the boards of water supply for Maui county, Kauai county, Hawaii county, and the city and county of Honolulu; the college of tropical agriculture and human resources, the pesticide hazard assessment project, and the water resources research center of the University of Hawaii; and other agencies as may be determined by the director.

“Director” means the director of environmental quality control. “Office” means the office of environmental quality control.

[§ -3] (c) Duties and responsibilities in general. The office [shall] is authorized to review, evaluate, make recommendations to, and coordinate all affected agencies involved in the prevention, monitoring, and mitigation of [ground water] pesticide contamination. For the purposes of this Act, the authorization of the office may be liberally interpreted to extend to suspected or actual contamination related to, similar to, or coincidental with pesticides pollution. To further the purposes of this [chapter,] Act, the office [shall:] is authorized to:

- (1) Coordinate studies of potentially toxic and hazardous pesticides used in the State to determine the movement and fate of such pesticides in soils, potable water sources, animal feed, and food products.
- (2) (1) Coordinate the development of a systematic approach to monitoring by the department of health and board of water supply of all aquifers and surface water sources, regardless of whether they are used as drinking water sources, for [locally-suspected] locally suspected pesticides and chemical by-products. Monitoring priority shall be given to potable [aquifers and surface] drinking water resources.
- (3) (2) Assist the department of agriculture in developing, compiling, and maintaining a data base of historical and current pesticide use

patterns and practices to assist in identifying areas where ground water contamination resulting from the field application of pesticides is most likely to occur.

- [(4)] (3) Coordinate the development, by each of the affected agencies, of a pesticides action plan which clearly defines each agency's responsibilities, needs, and procedures for preventing or mitigating pesticide-related contamination.
- [(5)] Coordinate the establishment of] (4) Assess the feasibility and usefulness of establishing a mandatory reporting system for all pesticides sold and distributed in Hawaii.
- [(6)] (5) Assess the feasibility and usefulness of a [record-keeping] record keeping requirement for the application of all restricted use pesticides in Hawaii.
- [(7)] (6) Coordinate the preparation by the affected agencies of a contingency plan to provide for the State's preparedness and ability to respond effectively in the event of any emergency contamination or crisis situation involving pesticides [or other toxic or hazardous substance. The plan shall provide for the establishment of a communication and information network of the affected agencies and shall include recommendations for improved coordination of information dissemination and public education].
- [(8)] Develop] (7) Assess the feasibility of developing criteria to assess the risks associated with the contamination of water, food products, and the environment by pesticides, supplementing federal standards in this area[,] and, if feasible, develop such criteria.
- [(9)] (8) Coordinate and disseminate on behalf of the affected agencies all public information on pesticide-related environmental and health matters.

[§ -4 (a) (d) Powers and duties of the director. To further the purposes of this [chapter,] Act, the director shall have the power to:

- (1) Accept grants-in-aid or outright grants;
- (2) Contract for services;
- (3) Enlist the aid of community organizations and private entities in information gathering and dissemination activities; and
- (4) Hire on a contractual basis individuals from relevant fields, to include at least one environmental toxicologist.

[(b)] The powers and duties provided in this [section] Act are in addition to those assigned the director in section 341-4[.], Hawaii Revised Statutes.

[§ -5] (e) Rules. In conformity with and subject to chapter 91, Hawaii Revised Statutes, after consultation with the affected agencies the director shall make rules deemed necessary for or conducive to proper application and enforcement of this [chapter,] Act.

[§ -6] (f) Advisory committee. There shall be established a technical advisory committee on pesticides to assist and advise the office in carrying out the purposes of this [chapter,] Act. The committee shall be composed of the chairperson of the environmental council, one representative each from the department of agriculture, the department of health, the department of land and natural resources, the Honolulu board of water supply, and the University of Hawaii, and five at-large members representing a mixture of disciplines and including at least one member each from the U.S. military in Hawaii, the agricultural industry, an environmental organization, and a community organization. Members of the advisory committee other than the military representa-
tive shall be appointed by the governor in accordance with section 26-34[.],

Hawaii Revised Statutes. The representative of the U.S. military shall be invited to serve without necessity of appointment by the governor. The committee shall be chaired by the director or the director's designated representative.

(g) Progress report. The office shall submit a report to the legislature prior to the convening of the regular session of 1986 on the progress of the office's actions and plans under this Act.

[\S -7] (h) Repeal date. This [chapter] section is repealed effective June 30, [1985.] 1987."

SECTION 2. Act 275, Session Law of Hawaii 1984, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval and shall be repealed on June 30, [1985.] 1987."

SECTION 3. Section 341-4, Hawaii Revised Statutes, is amended to read as follows:

"[[]§341-4[]]¹ **Powers and duties of the director.** (a) The director shall have such powers delegated by the governor as are necessary to coordinate and, when requested by the governor, to direct pursuant to chapter 91 all state governmental agencies in matters concerning environmental quality.

(b) To further the objective of subsection (a), the director shall:

- (1) Direct the attention of the university community and the residents of the State in general to ecological and environmental problems through the center and the council, respectively[.], and through public education programs.
- (2) Conduct research or arrange for the conduct of research through contractual relations with the center, state agencies, or other persons with competence in the field of ecology and environmental quality.
- (3) Encourage public acceptance of proposed legislative and administrative actions concerning ecology and environmental quality, and receive notice of any private or public complaints concerning ecology and environmental quality through the council.
- (4) Recommend programs for long-range implementation of environmental quality control.
- (5) [Recommend] Submit direct to the governor and to the legislature such [legislation] legislative bills and administrative policies, objectives, and actions, as is necessary to preserve and enhance the environmental quality of the State.
- (6) [Initiate] Conduct public educational programs.
- (7) Offer advice and assistance to private industry, governmental agencies, or other persons upon request."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

1. So in original.

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The actuarial valuations made for years ending on June 30, [1980, 1981, 1982, 1983, and 1984] 1985 and 1986 shall be based on [a seven] an eight per cent investment yield rate and such tables and factors as are adopted by the board of trustees for actuarial valuations of the system”.

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

A Bill for an Act Relating to Fishing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 188-28.5, Hawaii Revised Statutes, is amended to read as follows:

“§188-28.5 Bullpen trap; description; prohibitions. (a) For the purpose of this chapter, a “bullpen trap” has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering the pen, whether or not the guide or guides are connected to the pen.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length [exceeds seven hundred fifty feet]. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than [twelve hours.] sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Notwithstanding subsection (d), it is lawful to capture or to attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Molokai west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Molokai east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps within one thousand yards from the shoreline may be allowed under this subsection.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 130

S.B. NO. 1297

A Bill for an Act Relating to the General Excise Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-30, Hawaii Revised Statutes, is amended to read as follows:

“§237-30 Monthly [or], quarterly, or semiannual return, computation of tax, payment. (a) The taxes levied hereunder shall be payable in monthly installments on or before the last day of the calendar month following the month in which they accrue. The taxpayer shall, on or before the last day of the calendar month following the month in which the taxes accrue, make out and sign a return of the installment of tax for which he is liable for the preceding month and transmit the same, together with a remittance, in the form required by section 237-31, for the amount of the tax, to the office of the department of taxation in the appropriate district hereinafter designated.

(b) Notwithstanding [the foregoing,] subsection (a), the director of taxation may, for good cause, permit a taxpayer to file his return required under this section and make payments thereon [on]:

- (1)** On a quarterly basis during the calendar year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit, on or before April 30, July 31, October 31, and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and further that the director is satisfied that the taxpayer's total tax liability for the calendar year under this chapter will not exceed [\$1,000.] \$2,000; or
- (2)** On a semiannual basis during the calendar year, the return and payment to be made on or before the last day of the calendar month after the close of each six month period, to wit on July 31 and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and that the director is satisfied that the taxpayer's total tax liability for the calendar year under this chapter will not exceed \$1,000.

The director may also, for good cause, permit a taxpayer to make monthly payments based on his estimated quarterly or semiannual liability, provided the taxpayer files a reconciliation return at the end of each quarter or at the end of each six month period during the calendar year, as heretofore provided.

(c) If a taxpayer filing his return on a quarterly or semiannual¹ basis, as [herein] provided[,] in this section, becomes delinquent in either the filing of his return or the payment of the taxes due thereon, or if the liability of a taxpayer, who possesses a permit to file his return and to make payments on a [quarterly] semiannual basis exceeds \$1,000 in general excise taxes during the calendar year[,] or exceeds \$2,000 in general excise taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of

the general excise tax, the director may, at any time, revoke a taxpayer's permit, in which case the taxpayer will then be required to file his return and make payments thereon as herein provided in [the first paragraph of this section.] subsection (a).

(d) The director may adopt and promulgate rules and regulations to carry out the purposes of this section.

(e) Section 232-2 does not apply to a monthly return."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

1. Underscoring missing.

ACT 131

S.B. NO. 1353

A Bill for an Act Relating to Pesticides.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 149A, Hawaii Revised Statutes, is amended by adding a new section into part III to be appropriately designated and to read as follows:

"§149A- Cancellation or suspension of pesticide uses. Notwithstanding any law, rule, regulation, or executive order to the contrary, the chairperson of the board of agriculture, in consultation with the advisory committee on pesticides and also with the approval of the director of health, shall suspend, cancel, or restrict the use of certain pesticides or specific uses of certain pesticides when such usage is deemed to have unreasonable adverse effects on the environment. In addition to other circumstances which may require a determination as to whether unreasonable adverse effects exist, a determination shall be made:

- (1) When residues of the pesticides are detected in drinking water; or
- (2) When a use under special local needs registration involves a pesticide for which any use has been suspended or canceled by the United States Environmental Protection Agency."

SECTION 2. Section 149A-32, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 149A-2, Hawaii Revised Statutes, is amended by amending the definition of "unreasonable adverse effects on the environment" to read:

"(35) "Unreasonable adverse effects on the environment" means any [injury] unreasonable risk to man or [any unreasonable adverse effects on environmental values,] the environment taking into account the [public interest, including benefits from] economic, social, and environmental costs and benefits of the use of the pesticide."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 132

S.B. NO. 1354

A Bill for an Act Relating to Social Services and Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

§ -1 **Terms and provisions of compact.** The Interstate Compact on Placement of Children is hereby entered into and enacted into law with all jurisdictions legally joining therein, in form substantially as follows:

ARTICLE I. *Purpose and Policy.* It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. *Definitions.* As used in this compact:

(a) “Child” means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) “Sending Agency” means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) “Placement” means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or

epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. *Conditions for Placement.*

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. *Penalty for Illegal Placement.* The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for the children.

ARTICLE V. *Retention of Jurisdiction.*

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a

receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. *Institutional Care of Delinquent Children.* A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. *Compact Administrator.* The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. *Limitations.* This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. *Enactment and Withdrawal.* This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability. The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ -2 Financial responsibility for child placed under compact. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V of the compact in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions under any other chapter also may be invoked.

§ -3 Appropriate public authorities. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children, with reference to this State, means the department of social services and housing and the department shall receive and act with reference to notices required by Article III.

§ -4 Appropriate authority in Hawaii. As used in paragraph (a) of Article V the phrase "appropriate authority in the receiving state" with reference to this State means the department of social services and housing.

§ -5 Entering agreements with other states. The officers and agencies of this State and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the director of finance in the case of the State and of the chief local fiscal officer in the case of a subdivision of the State.

§ -6 Requirements for visitation, inspection, supervision. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under any other chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

§ -7 Chapters not applicable. The provision under any other chapter shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

§ -8 Court jurisdiction. Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

§ -9 Executive head. As used in Article VII of the Interstate compact on the placement of children, the term "executive head" means the governor. The governor may appoint a compact administrator in accordance with the terms of Article VII."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sums of \$40,257 for fiscal year 1985-86 and \$36,761 for fiscal year 1986-87, for participation in the Interstate compact on the Placement of Children.

SECTION 3. The sum appropriated shall be expended by the department of social services and housing for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

ACT 133

H.B. NO. 111

A Bill for an Act Relating to Plant and Non-Domestic Animal Quarantine.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

“§150A-5 Conditions of importation. The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil[.]; [live bird, reptile,] bacteria, fungus, [nematode,] or virus[.]; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in [other sections] chapter 142); box, vehicle, baggage, [barrel, or crate] or any other container in which such articles have been transported [or contained] or any packing material used in connection therewith[. into the State,] shall be made [and conducted] in the manner [and subject to the conditions] hereinafter set forth:

- (1) Notification of arrival. Any person[,] who receives for transport[,] or brings or causes to be brought to the State[.] as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as ship's stores, any of the foregoing articles [enumerated], shall, immediately upon the arrival thereof, notify the department, in writing, of the arrival, giving the waybill number, container number, name and address of the consignor, name and address of the consignee or [his responsible] the consignee's agent in the State, marks, number of packages, description of contents of each package, port at which laden, and any other information that may be necessary to locate or identify the same, and shall hold such articles [on] at the [dock,] pier, [wharf,] airport, [air terminal,] or any other [places,] place where they are first received or discharged, in such a manner that they will not spread or be likely to spread any infestation or infection of insects or diseases that may be present until inspection and examination can be made by the inspector[.] to determine whether or not any article, or any portion thereof, is infested[.] or infected with or contains any pest. In addition, [by rules and regulations,] the department by rules shall designate restricted articles that shall require a permit [to be obtained] from

the department in advance of importation. The restricted articles shall include, but not be limited to, fungi, bacteria, virus, or living insects. Failure to obtain [such permits] the permit in advance shall result in the articles being refused entry, [or] confiscated, or destroyed. Any expense or loss in connection therewith shall be borne by the owner or [his responsible] the owner's agent [in the State].

- (2) Individual passengers, officers, and crew.
 - (A) It shall be the responsibility of the transportation company to distribute, prior to arrival, the State of Hawaii plant and animal declaration [forms] form to each passenger, officer, and crew member of any aircraft or vessel originating [from] in the continental United States or its [possession,] possessions or from any other [areas] area not under the jurisdiction of the appropriate federal agency [prior to arrival] in order that the passenger, officer [and], or crew member can comply with the directions and [requirement] requirements appearing thereon. Any [adult, guardian of minor or transiting] passenger, officer [and], or crew member bringing or causing to be brought for entry into the State the [items] articles listed on the form shall complete the declaration. Any person who defaces the declaration form required under this section, gives false information, [or] fails to declare restricted [materials] articles in his possession or [luggage] baggage, or fails to declare in cargo manifests shall be in violation of this section.
 - (B) [Such completed] Completed forms shall be collected by the transportation company and be delivered, immediately upon arrival, to the inspector at the first airport or seaport of arrival.
- (3) Plant and animal declaration form. [Such forms] The form will include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter.
- (4) Labels. Each [and every case, box, package, crate, bale, or bundle containing] container in which any of the above-mentioned articles [above enumerated,] are imported into the State[,] shall [have] be plainly and legibly marked [thereon], in a conspicuous manner and place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or [his responsible] the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement of the contents of the [package.] container. Upon failure to comply with this paragraph, the importer or carrier shall be liable to suffer the penalty for the violation of this section.
- (5) Authority to inspect. Whenever [he] the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:
 - (A) Enter any aircraft, [ship,] vessel, or other carrier[,] at any time after its arrival within the boundaries of the State, whether [offport,] offshore, at the [dock,] pier, [wharf,] or at the airport [or air terminal].
 - (B) Enter into or upon any [dock,] pier, [or wharf,] warehouse [or depot], airport [or air terminal], or any other place in the

State[,] where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the [items listed in this section] articles is infested or infected with any pest or disease or contaminated with soil[.] or contains prohibited plants or animals.

- (C) Inspect any baggage [and] or personal effects of disembarking passengers, officers, and crew members [of crews] on aircraft[, ships,] or vessels[, or other surface craft] arriving [into] in the State to ascertain if they contain any of the articles or pests enumerated in this chapter.

Such baggage inspection shall be made at the discretion of the inspector, on the [dock] pier, [or on the ship,] vessel, [other surface craft] or aircraft or in any quarantine or inspection area. No baggage or other personal effects of the passengers or crew members shall be released until said effects have been passed.

Whenever [he] the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, [bale, crate, bundle,] package, [truck, bag,] suitcase, or any other container carried as ship's stores, cargo or otherwise[,] by any [ship,] vessel[, other surface craft] or aircraft[,] moving between the continental United States and Hawaii[,] or between the Hawaiian Islands, be opened for inspection to determine whether any article or pest prohibited by this chapter or by [regulations] rules promulgated pursuant thereto is present. If any prohibited article or any pest or any plant, fruit, or vegetable infested with plant pests is found, the department may order the return of the article to the place of origin or otherwise dispose of it or such part thereof as necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

[Any expense or loss in connection therewith shall be borne by the owner or his responsible agent in the State.]

- (6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by [himself] the importer or [his responsible] the importer's agent [in the State], setting forth [his] the importer's desire to import certain of the above-mentioned articles [above enumerated,] into the State[,] and giving the following additional information: the kind (scientific name), quantity, and description [of same]; the locality where same were grown or produced; the certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately prior to importation or have been specifically approved for importation by the board; the port from which the same were last shipped; the name of the shipper; and the name of the consignee [thereof]. The statement shall also contain:
 - (A) A request that the department, by its duly authorized agent, examine the articles described;
 - (B) An agreement by the importer to be responsible for all costs, charges, or expenses; and

- (C) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection, quarantine, or destruction of the articles, or any of them, as hereinafter provided [for], if any treatment is [adjudged] deemed necessary.

Failure or refusal to file a statement, including the agreement and waiver, shall be held to be a violation of this section and may, in the discretion of the department, [give] be sufficient cause for refusing to permit the entry of the articles into the State.

- (7) Place of inspection. If, in the judgment of the inspector, it is deemed necessary or advisable to move any of the above-mentioned articles [above enumerated], or any portion thereof, to a place more suitable for inspection than the [dock,] pier, [wharf,] airport, [air terminal, depot] or any other place where they are first received or discharged, [authority therefor is granted,] the inspector is authorized to do so. [and all] All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or [his responsible] the importer's agent [in the State owning or having charge thereof].
- (8) Disinfection or quarantine. If, upon inspection, any article so received or brought [to] into the State for the purpose of debarkation or entry therein is found to be infested or infected[,] or there is reasonable cause to presume that it is infested or infected and the infestation or infection can, in the judgment of the inspector, be eradicated, a treatment shall be given such article. The treatment shall be at the expense of the owner or [his] the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or [his responsible] the owner's agent[,] at a satisfactory place approved by the department[,] for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated [in the manner described above], or if it is a potentially destructive pest[,] or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or [his responsible] the owner's agent [in the State]. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred.
- (9) Disposition. Upon completion of inspection, either [At] at the time of arrival[,] or at any time thereafter[,] should any article be held for inspection, treatment or quarantine, the inspector shall [upon completion of inspection,] affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate that the article has been inspected and passed. This action shall [in effect be] constitute a permit to bring the article into the State.
- [10] What constitutes importation. The landing of any of the articles for the purpose of inspection or quarantine is not, nor shall it be construed to be, an importation in the sense of giving to the articles

so landed any status, or the owner thereof any right or privilege, incident to articles which have actually been imported into the State; but in legal effect the articles so landed for the purpose of inspection shall be construed to be still without the State seeking entry thereinto, and shall not, in whole or in part, be considered suitable for importation into the State unless a tag, label, or stamp has been affixed thereon by the inspector as provided in section 150A-5(9).

- (11) Exceptions to right to import. Nothing in this chapter contained shall permit the importation of any animal or article, from any particular place, if the same, or any of them, has, by special rule or regulation of the department been prohibited.
- (12) (10) Ports of entry. None of the articles [enumerated] mentioned in this section shall be allowed entry into the State except through the [air and sea ports] airports and seaports in the State designated and approved by the board.
- [(13) Enforcement; citation and summons; penalty. Any officer or employee of the department, authorized and designated by the board to enforce the provisions of this chapter, and all rules and regulations promulgated and adopted by the department pursuant thereto, may issue a citation to any person for violation of any provision of this chapter or of any rule or regulation promulgated and adopted pursuant thereto, and issue to him a summons summoning him to appear at a certain place at a time within seven days of such citation, to answer the charges against him.

- (A) Form of citation and summons. There shall be printed a form of citation and summons for use in citing violators of this chapter and regulations promulgated pursuant thereto. The form and contents of such citation and summons shall be as adopted or prescribed by the district courts.

In every case when a citation and summons are issued the original of the same shall be given to the accused; provided that, the district courts may prescribe the issuance to the accused of a carbon copy of the citation and summons and provide for the disposition of the original and any other copies. Every citation and summons shall be consecutively numbered and each carbon copy shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

- (B) Administration of oath. When a complaint is made to any prosecuting officer of the violation of the provisions of this chapter or the rules and regulations promulgated and adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to the complaint under oath.
- (C) Penalty. Any person who violates the provisions of section 150A-6(3) or any person who owns or intentionally transports or harbors any snake or other prohibited animal seized under section 150A-7(b) shall be fined not more than \$1,000 or imprisoned not more than one year, or both; provided that a person who voluntarily surrenders any prohibited snake or other prohibited animal prior to the initiation of seizure action by the department shall not be subject to this penalty. Any

person who violates any other provision of this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.]”

SECTION 2. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

“§150A-6 Soil, [snakes, injurious insects,] plants, animals, etc., importation or possession prohibited. (a) [All persons are prohibited from receiving for transportation, bringing, or causing to be brought] No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following [named articles]:

- (1) Soil, provided that limited quantities of soil may be imported into the State for experimental or other scientific purposes[,] under permit with conditions prescribed by the department.
- (2) Rocks, plants, plant products or any [commodity] article with soil adhering thereto.
- (3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal in any stage of development that is detrimental or potentially harmful to agriculture [or], horticulture [or], animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board; provided that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a [public zoological park,] government zoo, but only after the board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment, and after the board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include the continuing supervision and control by the board and shall provide that the board may determine the manner in which such snakes shall be disposed of or destroyed. In case of the death of one or both snakes, the government agency may import and maintain replacements subject to the above conditions.
- (4) The board shall maintain either a list of animals and plants which may be imported into the State or a list of animals and plants which are prohibited entry into the State.

(b) No person shall possess, propagate, or harbor any plant or animal included on the list of prohibited plants and animals maintained by the board under this section.”

SECTION 3. Section 150A-7, Hawaii Revised Statutes, is amended to read as follows:

“[[]§150A-7[]] Disposition. (a) Any plant, plant product, or any [commodity] article contaminated with soil, which may be brought to the State contrary to section 150A-6, shall be refused admittance, and the same may, in the discretion of the inspector, be seized and treated, destroyed, or excluded at the expense of the owner or [his responsible] the owner’s agent [in the State].

(b) Any [or all] living [creatures] creature mentioned in section 150A-6 brought to or possessed in the State shall constitute contraband and shall be seized immediately upon discovery wherever found, and be destroyed, donated to a [governmental] government zoo, or sent out of the State, at the discretion of the department[; any]. Any expense or loss in connection therewith [to] shall be

borne by the owner or [his responsible] the owner's agent. The foregoing shall not apply to any snake which is brought into the State by a [governmental] government agency solely for the purpose of exhibition in a [public zoological park] government zoo pursuant to section 150A-6(3).

(c) Whenever any living creature introduced or admitted under rules [and regulations] of the department escapes, or is found to be free from confinement, the department shall confiscate[,] or capture [or have] it and [its] any progeny [captured] at the expense of the owner. The department may destroy the creature, donate it to a government zoo, or send it out of the State after five days at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or [his responsible] the owner's agent."

SECTION 4. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- What constitutes importation. (a) The landing of any article for the purpose of inspection or quarantine is not, nor shall it be construed to be, an importation in the sense of giving the article any status, or the owner any right incident to articles which have actually been imported into the State.

(b) In legal effect, articles landed for the purpose of inspection or quarantine shall be construed to be still without the State seeking entry, and shall not, in whole or in part, be considered suitable for importation into the State unless a tag, label, or stamp has been affixed to the article or its container by the inspector as provided in section 150A-5(9)."

SECTION 5. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- Exceptions to the right to import. Nothing in this chapter shall permit the importation of any animal or article if the same, or any of them, has, by rule of the department been prohibited."

SECTION 6. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- Enforcement. Inspectors shall enforce the provisions of this chapter and related rules promulgated by the department.

Inspectors shall be provided with suitable badges or insignia of office by the department, and shall have power to serve and execute warrants in all matters relating to the quarantine laws, to issue a citation for any violation of this chapter and related rules, and to seize contraband articles throughout the State."

SECTION 7. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- Citation and summons. There shall be printed a form of citation and summons for use in citing violators warning the person to appear and answer the charge against the person at a certain place and at a time within seven days after the citation. The citation and summons shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and contents of such citation and summons shall be adopted or prescribed by the district courts.

In every case when a citation and summons is issued, the original of the same shall be given to the accused; provided that the district courts may

prescribe the issuance to the accused of a carbon copy of the citation and summons and provide for the disposition of the original and any other copies.

Every citation and summons shall be consecutively numbered and each carbon copy shall bear the number of its original.”

SECTION 8. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§150A- Administration of oath. When a complaint is made to any prosecuting officer of the violation of the provisions of this chapter or the rules promulgated and adopted pursuant thereto, the inspector who issued the citation and summons shall subscribe to the complaint under oath.”

SECTION 9. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§150A- Penalty. Any person who violates the provisions of section 150A-6(3) or any person who owns or intentionally transports, possesses, or harbors any snake or other prohibited animal seized under section 150A-7(b) shall be fined not more than \$1,000 or imprisoned not more than one year, or both; provided that a person who voluntarily surrenders any prohibited snake or other prohibited animal prior to the initiation of any seizure action by the department shall not be subject to this penalty. Any person who violates any other provision of this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.”

SECTION 10. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§150A- Failure to obey summons. Any person who fails to appear at the place and time specified in the citation and summons issued to that person by the inspector upon the person’s citation for violation of the quarantine laws or rules shall be guilty of a misdemeanor and, on conviction, fined not more than \$500 or imprisoned not more than six months, or both.

If any person fails to comply with a citation and summons issued to him, the inspector shall cause a complaint to be entered against the person and secure the issuance of a warrant for that person’s arrest.

When a complaint is made to any prosecuting officer of the violation of any quarantine law or any rule promulgated thereunder, the inspector who issued the complaint and summons shall subscribe to it under oath.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 134

H.B. NO. 147

A Bill for an Act Relating to the Hawaii Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act establishes the amounts of, and appropriates funds for, adjustments to the monthly contributions paid to the Hawaii public employees health fund by the State and several counties on behalf of public officers and employees who are employee-beneficiaries of the fund and whose salaries presently are limited or fixed by legislative enactment or whose salaries presently are authorized to be fixed by the appointing authority, as applicable.

SECTION 2. The monthly contributions by the State and several counties to the Hawaii public employees health fund on behalf of their respective employee-beneficiaries specified in section 1 of this Act shall be as follows:

1. \$27.34 for each respective employee-beneficiary and \$84.05 for each respective employee-beneficiary with a dependent-beneficiary to be used towards the payment of costs of hospital, medical, and surgical benefits of a health benefits plan.
2. \$5.72 effective July 1, 1985, and \$5.96 effective July 1, 1986, for each child, who has not attained the age of nineteen, of the respective employee-beneficiaries who are enrolled for dental benefits, to be used towards the payment of cost of dental benefits of a health benefits plan.
3. \$2.25 for each respective employee to be used towards the payment of group life insurance benefits.

SECTION 3. There is hereby appropriated from the source of funding indicated below to the department of budget and finance the following sums, or so much thereof as may be necessary, for the fiscal Biennium 1985-87:

	<u>FY 1985-1986</u>	<u>FY 1986-1987</u>
General Funds	\$220,517	\$221,272

SECTION 4. Funds appropriated by this Act shall be allotted by the director of finance in the respective fiscal year for the purpose of this Act. Funds appropriated by this Act which are not expended or encumbered by June 30, 1986, and June 30, 1987, of the respective fiscal years shall lapse as of those dates.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

A Bill for an Act Relating to Commercial Employment Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 373-1, Hawaii Revised Statutes, is amended to read as follows:

“§373-1 Definitions. As used in this chapter[:], unless the context otherwise requires:

- (1) “Director” means the director of commerce and consumer affairs.
- (2) “Employment agency” means any individual, agent, partnership, corporation, or association, engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received, but

shall not include the United States or the State of Hawaii or instrumentalities thereof.

- (3) "Employer" includes any individual, agent, partnership, corporation, or association, employing or seeking to employ any person for hire.
- (4) "Applicant" means any person who uses the services of an employment agency to secure employment for himself.
- (5) "Gross wages, salaries, or commissions" means the gross amount of the applicant's actual earnings from employment.]

"Actual earnings from employment" means the total compensation, including reported amount of tips for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation, but shall not include the reasonable cost to an employer of furnishing an employee with fringe benefits or board, lodging, or other facilities and non-cash gratuities of any kind.

"Applicant" means any person who uses the services of an employment agency to secure employment for that person.

"Branch office" means an employment agency office maintained away from the principal employment agency office.

"Director" means the director of commerce and consumer affairs.

"Employer" means any individual, partnership, corporation, or association, employing or seeking to employ any person for hire.

"Employment agency" means any individual, partnership, corporation, or association engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received, but shall not include the United States or the State or instrumentalities thereof.

"Gross wages, salaries, or commissions" means the gross amount of the applicant's actual earnings from employment.

"Principal agent" means the responsible managing agent who is responsible for managing an employment agency."

SECTION 2. Section 373-2, Hawaii Revised Statutes, is amended to read as follows:

"§373-2 License required. No employment agency shall engage in business without a license obtained under this chapter and the rules [and regulations] of the director."

SECTION 3. Section 373-3, Hawaii Revised Statutes, is amended to read as follows:

"§373-3 [License fee.] Fees; biennial renewal; restoration. [Every employment agency shall pay an annual license fee of \$37.50.

- (1) The fee shall be paid to the director on or before July 1 of each year.
- (2) Failure to pay the annual license fee shall constitute a forfeiture of license.
- (3) Fees collected by the director shall be deposited in the general fund of the State.]

No applicant shall be examined under this chapter until the appropriate fees have been paid. The director shall establish the amount for application, examination, license, restoration, and renewal fees by rules adopted pursuant to chapter 91. All fees shall be deposited with the director of finance to the credit of the general fund.

Every person holding a license under this chapter shall register with the director and pay a biennial fee on or before June 30 of each even-numbered year. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of a restoration fee."

SECTION 4. Section 373-5, Hawaii Revised Statutes, is amended to read as follows:

"§373-5 Application for license. (a) Every individual, [agent,] partnership, corporation, or association seeking a license to operate an employment agency shall file a written application with the director which shall contain such information and shall be in such form as the director may prescribe; provided that in addition to complying with all other requirements of this chapter, no license shall be issued unless the applicant has either passed a certified employment consultant examination as designated by the director[. Such examination shall cover the following requirements:] or has in its employ a principal agent.

(b) Every principal agent shall file a written application with the director which shall contain such information and shall be in such form as the director may prescribe and no license shall be issued unless the applicant has passed a certified employment consultant examination as designated by the director.

The examination shall cover the following:

- (1) Interview principles and techniques;
- (2) Job descriptions and specifications;
- (3) Placement procedure, including [(recruitment, solicitation, and referral)];
- (4) Aids for applicants;
- (5) Agency management;
- (6) General principles of business law; and
- (7) State statutes [including] and rules [and regulations] relating to an employment agency.

(c) A principal agent who does not engage in the employment agency business in the State during the succeeding year shall not be required to pay the renewal fee as long as the principal agent remains inactive. Should the principal agent wish to resume work as a principal agent at some future time, the principal agent shall so notify the director and remit the renewal fee for the current biennial period.

[This section shall not apply to persons holding valid licenses on June 1, 1982.]

(d) An employment agency shall file a written application for a branch office with the director which shall contain such information and shall be in such form as the director may prescribe."

SECTION 5. Section 373-7, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 373-11, Hawaii Revised Statutes, is amended to read as follows:

"§373-11 Prohibitions. No employment agency licensed under this chapter and no agent or employee of an employment agency shall do, make, or cause to be made or done any of the following acts herein prohibited and every such employment agency, its agents, and employees shall do and perform every act, duty, or requirement hereinafter prescribed.

- (1) No employment agency shall cause to be printed, published, or circulated any false, fraudulent, or misleading information, notice,

- or advertisement, nor shall an employment agency give or cause to be made or given any false promise, misrepresentation, or misleading statement or information.
- (2) No employment agency shall send out any applicant for employment without having first obtained either orally or in writing a bona fide job order from the prospective employer.
 - (3) No employment agency shall knowingly send out any applicant for employment to any place where a strike, walk-out, or other labor dispute exists without first furnishing the applicant with a written statement as to the existence of the labor dispute, and the employment agency shall retain on file for two years after the date thereof, a copy of the statement of fact, signed by the applicant so sent.
 - (4) No employment agency shall divide or share, or offer to divide or share with any employer, his employees, agents, or representatives, any fee, charge, or compensation received from any applicant. No employment agency shall cause or attempt to cause the discharge of any person not an employee of the employment agency for the purpose of obtaining other employment through the agency for such person.
 - (5) No employment agency shall send out any minor applicant for employment without making an investigation of the nature of the employment or engagement and the duties thereof and reputation of the employer. No employment agency shall wilfully or knowingly send or direct any applicant for employment to any employment of an immoral character. No employment agency shall wilfully or knowingly procure or place or attempt to place any minor in any employment in any place where intoxicating liquors are served or sold.
 - (6) No employment agency shall wilfully or knowingly place or assist in placing any applicant in employment in violation of any law of this State or any lawful order, rule, or regulation prescribed by the director.
 - (7) No employment agency shall require an applicant to pay any advance fee or any other fee, deposit, or compensation other than as prescribed in this chapter.
 - (8) No employment agency shall display, on any sign or window or in any publication the name "United States Employment Service" or "State of Hawaii Employment Service".
 - (9) No employment agency or any person connected therewith shall receive or require any applicant to execute any power of attorney, promissory note, negotiable instrument, assignment of wages or salary, note authorizing a confession of judgment, or any instrument or document relating to the liability of the applicant, unless this instrument or other document has been approved both as to form and content by the director or [his] the director's authorized representative.
 - (10) No employment agency or any person connected therewith shall make representations to applicants concerning prospective positions, the character and probable length of employments, hours, salary, and other relevant terms and conditions of employment which are not, to the best of its knowledge, accurate.

- (11) No employment agency shall withhold from applicants written disclosure of any fees or charges for services rendered prior to the rendering of such services.
- (12) No employment agency shall provide information relating to an applicant's personal record, employment[,] record, qualifications, and salary requirement to an employer directly, by mail, or otherwise, unless such information is accurate and complete to the best of its knowledge.
- (13) No employment agency shall charge an applicant any fee or service charge until such time as an applicant is employed by an employer as a result of the employment agency's efforts[.] and has received actual earnings from employment.
- (14) No employment agency shall require the employer to withhold from the applicant's actual earnings from employment any fee or service charge that has been negotiated by contract between the applicant and the employment agency unless the withholding of such fee or service charge is specifically authorized or requested, by full signature, in writing by the applicant."

SECTION 7. Chapter 373, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§373- Requirements to maintain license. Every employment agency shall have and maintain in full force and effect a bond as required under section 373-4. Failure, refusal, or neglect to maintain a bond in full force and effect shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under section 373-4 is received by the director.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

The director may assess a fee not to exceed \$200 as a condition for the reinstatement of a license suspended pursuant to this section.

A licensee, within fifteen calendar days after receipt of notification of the license forfeiture, may request an administrative hearing pursuant to chapter 91 to review the suspension."

SECTION 8. Chapter 373, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§373- Exemption of vocational rehabilitation services. Providers of vocational rehabilitation services for injured workers covered by approved worker compensation plans under section 386-25 shall not be considered employment agencies under this section; provided that the providers confine their services to those specified under section 386-25 and do not hold themselves out to the public as employment agencies under this chapter."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on January 1, 1986.

(Approved May 28, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Family Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A petition for relief under this chapter may be made by any family or household member on his or her own behalf or on behalf of [minor] a family or household [members.] member who is a minor, who is incapacitated as defined in section 560:5-101(2), or who is physically unable to go to the appropriate place to complete or file the petition.”

SECTION 2. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

“[]§586-4[] **Temporary restraining order.** Upon petition to a family court judge, a temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time such order is granted, is a family or household member as defined in section 586-1. The family court judge may issue the ex parte temporary restraining order orally, but shall reduce the order to writing by the close of the next court day following the application. The order shall state that there is probable cause to believe that a recent past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order shall further state that the temporary restraining order is necessary for the purpose of preventing acts of abuse, or a recurrence of actual domestic abuse, and assuring a period of separation of the parties involved. The order shall describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order, and may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing [the children or other relatives of the applicant residing with the applicant at the time of the granting of the order.] the applicant's family or household members. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (1) to read as follows:

“(1) Upon the death of the lessee, his interest in the tract or tracts and the improvements thereon, including growing crops and agricultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of his interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee, husband and wife, children, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, the lessee shall designate the person or persons to whom he directs his interest in the tract or tracts to vest upon his death. Such person or persons must be qualified to be a lessee of Hawaiian home lands; provided that Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under the provisions of section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended; provided further that such person or persons need not be twenty-one years of age. Such designation shall be in writing, shall be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In the absence of such a designation as approved by the department, the department shall select from the relatives of the lessee in order named above as limited by the foregoing paragraph one or more persons who are qualified to be lessees of Hawaiian home lands, except as hereinabove provided, as the successor or successors of the lessee’s interest in the tract or tracts, and upon the death of the lessee, his interest shall vest in the person or persons so selected. The department may select such a successor or successors after the death of the lessee, and the rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee.

In the case of the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease such land to a native Hawaiian [or Hawaiians] as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee’s death, or to the legal representative of the deceased lessee, or the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, from the deceased lessee or the previous lessee. Such payments shall be made out of the loan fund and shall be considered an advance therefrom reimbursable out of payments made by the successor or successors to the tract involved.

Such appraisal shall be made by three appraisers, one of which shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers hereinbefore mentioned.”

SECTION 2. The amendments made by this Act are declared to be severable, and if any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

SECTION 3. The amendments made by this Act shall not affect the validity of any amendments to the Hawaiian Homes Commission Act, 1920, as amended, that may be pending before the United States Congress or that may be acted upon by the Congress before or after the effective date of this Act and, upon Congress' consent to such amendments, this Act shall be amended to conform to such amendments as consented to by Congress.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

1. Prior to amendment, the word "to" appeared here.

ACT 138

S.B. NO. 153

A Bill for an Act Relating to Geothermal Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§182- Geothermal royalties. (a) The board shall fix the payment of royalties to the State for the utilization of geothermal resources at a rate which will encourage the initial and continued production of such resources. With respect to all geothermal mining leases previously issued or to be issued, where the board determines that it is necessary to encourage the initial or continued production of geothermal resources, the board shall have the authority to waive royalty payments to the State for any fixed period of time up to but not exceeding eight years.

(b) The board shall adopt, amend, or repeal rules pursuant to chapter 91 to establish the basis upon which the amount and duration of royalty payments to the State will be fixed or waived. The board's assessment of each application shall include, but not be limited to, the examination of such factors as the progress of geothermal development taking place in the State at the time of the application, the technical and financial capabilities of the applicant to undertake the project, and the need for providing a financial incentive in order for the applicant to proceed. The granting of any favorable terms to an applicant for the payment of royalties under this section may be revoked by the board if the applicant fails to satisfy any of the terms and conditions established by the board, or if the applicant wholly ceases operations and for reasons other than events which are outside the control of the parties and which could not be avoided by the exercise of due care by the parties.

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(c) The board shall submit a written report of all geothermal royalty dispositions to the legislature in accordance with section 171-29."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 139

S.B. NO. 634

A Bill for an Act Relating to Litter Law Violation Penalties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 339-8, Hawaii Revised Statutes, is amended to read as follows:

"§339-8 Penalties. Except as otherwise provided [in] by this chapter, any person violating any provision of this chapter or any rule [promulgated] adopted hereunder shall be guilty of a violation, and shall be fined not more than [\$250] \$500 for each offense, [or be ordered to pick up and remove litter from a public place under the supervision of the director or as the court shall otherwise provide for a period not exceeding eight hours, or both, for each offense. The penalty shall depend upon the type, quantity and location of the litter and on whether the litterer has previously been found in violation of this chapter. Major offenders should be subject to both the fine and to litter pick up and removal.] or ordered to pick up and remove litter from a public place under the supervision of the director for a total of forty hours, or both. If the court judges the violator to be incapable of litter removal and pick up, the court may provide some other community work as it deems appropriate. All persons who are caught littering may be required to remove the litter that they caused or are liable for the costs of removing that litter."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

ACT 140

S.B. NO. 1136

A Bill for an Act Relating to Real Estate Brokers and Salesmen.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

"§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued hereunder, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transactions¹;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for [his] the licensee's services from both of such parties;
- (5) When licensee, being a real estate [salesman,] salesperson, accepts any commission or other compensation for the performance of any of the acts hereinabove enumerated in the definition of real estate [salesman] salesperson from any person, copartnership, or corporation other than [his] the salesperson's employer or the broker with whom [he] the salesperson associates or, being a real estate broker or [salesman,] salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate [salesman,] salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than [his] the salesperson's employer or the broker with whom [he] the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate [salesman's] salesperson's license to act as a real estate [salesman] salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate [salesman's] salesperson's license to act as a real estate [salesman] salesperson therefor;
- (11) When the licensee, being a real estate [salesman,] salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom [he] the licensee is employed or with whom [he] the licensee is associated;
- (12) Violating this chapter, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States; or
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country

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if such broker does not conduct in this State any of the negotiations for which a commission is paid;

(14) Commingling the money or other property of [his] the licensee's principal with [his] the licensee's own;

(15) Converting other people's moneys to the licensee's own use;

[(15)] (16) Adjudicated insane or incompetent.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

- 1. Formerly read "transaction".

ACT 141

S.B. NO. 1178

A Bill for an Act Relating to Real Estate Brokers and Salesmen.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§467- Licenses and bonding required to operate condominium hotel. (a) As used in this section, "condominium hotel" includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, providing for customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard.

(b) Any sole proprietor, partnership, corporation, or other business entity who, in the operation of a condominium hotel engages in any activity set forth in the definitions of "real estate", "real estate broker", and "real estate salesman" in section 467-1 and who also is not a custodian or caretaker shall obtain a license as a real estate broker in compliance with this chapter and the rules of the commission, and shall provide evidence of bonding to the real estate commission in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the broker's condominium hotel contracts; except that the minimum of the bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the owners of the apartments whose apartments are used to provide customary hotel services.

(c) Neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, corporation, or other business entity performing or facilitating the delivery of customary hotel services as described in this section."

SECTION 2. Section 467-1, Hawaii Revised Statutes, is amended to read as follows:

"§467-1 Definitions. As used in this chapter:

[(1)] “Commission” means the real estate commission of the State.

“Custodian or caretaker” means any person, who for compensation or valuable consideration, is employed either directly or indirectly by a single owner and has the responsibility to manage or care for that real property left in the person’s trust; provided that the term “custodian” or “caretaker” shall not include any person who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative or planned unit development.

“Hotel” includes a structure or structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments in a project as defined by section 514A-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of “hotel” as set forth in the various county ordinances.

“Real estate” means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of an ongoing business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

[(2)] “Real estate broker” means and includes any person, copartnership, or corporation, who for compensation or a valuable consideration, sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or lists, or solicits for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, any real estate, or the improvements thereon, for others, as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by him of the option and for the purpose or as a means of evading the licensing requirement of this chapter[;].

[(3)] “Real estate salesman” means any person who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent any real estate, or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by him of such option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesman must be under the direction of a broker for all real estate transactions.

[(4)] “Real estate” means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of a going business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

(5) "Custodian or caretaker" means any person, who for compensation or valuable consideration, is employed either directly or indirectly by a single owner and has the responsibility to manage or care for that real property left in his trust; provided that the term "custodian" or "caretaker" shall not include any person who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further, that a single owner shall not include an association of owners of a condominium, cooperative or planned unit development.]"

SECTION 3. Section 467-2, Hawaii Revised Statutes, is amended to read as follows:

"§467-2 Exceptions. The provisions requiring a person to be licensed as a real estate broker or salesman shall not apply:

- (1) To any person who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesman with reference to such real estate; provided that the term "owner" as used in this [part] paragraph shall not include any person engaged in the business of real estate development or brokerage or include such person who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further[,] that the term person "acting under power of attorney" as used in this [part] paragraph shall not include any person engaged in the business of real estate development or brokerage or such person who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;
- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any person who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which he is the custodian or caretaker[.];
- (4) To any person who manages, rents, or operates a hotel."

SECTION 4. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

"§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued [hereunder,] under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for his services from both of such parties;

- (5) When the licensee, being a real estate salesman, accepts any commission or other compensation for the performance of any of the acts [hereinabove] enumerated in the definition set forth in section 467-1 of real estate salesman from any person, copartnership, or corporation other than his employer or the broker with whom he associates or, being a real estate broker or salesman, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesman, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than his employer or the broker with whom he is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (11) When the licensee, being a real estate salesman, fails to file with the commission a written statement setting forth the name of the real estate broker by whom he is employed or with whom he is associated;
- (12) Violating this chapter, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States[; or] if such broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;

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(14) Commingling the money or other property of his principal with his own; or

(15) [Adjudicated] The licensee is adjudicated insane or incompetent. No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 142

S.B. NO. 1392

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in the amount set forth below to assist not-for-profit corporation that provides health care facilities to the general public and to be used for financing as follows:

Wahiawa General Hospital, Oahu	\$4,600,000
For the last major component of the hospital's building program including, correction of existing code deficiencies and accommodations not conforming to current standards, provision for modernization of hospital's obstetrical service, replacement of surgical suite, and refurbishing of radiology facility.	

SECTION 3. The department of budget and finance is further authorized to issue from time to time refunding special revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in this Act. In making such determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 4. The special purpose revenue bonds and refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II of chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations to provide health care to the general public.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

ACT 143

S.B. NO. 1408

A Bill for an Act Relating to Abuse of Family and Household Members.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

“§709-906 [Spouse abuse.] Abuse of family and household members; penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse [his or her spouse,] a family or household member, or to refuse compliance with the lawful order of a police officer under subsection [(3).] (4). The police, in investigating any complaint of [spouse] abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses or former spouses, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer may, with or without a warrant, arrest a person if [he] the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, [his or her spouse] a family or household member, and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

[(3)] (4) Any police officer may, with or without a warrant, take the following course of action where the officer has reasonable grounds to believe that there was recent physical abuse or harm inflicted by one [spouse] person upon [the other,] a family or household member, whether or not such physical abuse or harm occurred in [said police] the officer’s presence:

- (a) The police officer may make reasonable inquiry of the [spouse] family or household member upon whom the officer believes recent physical abuse or harm has been inflicted and other witnesses as there may be; and
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one [spouse] person upon [the other,] a family or household member, the police officer may lawfully order such [other spouse] person to leave the premises for a cooling off period of [three] twelve hours; and
- (c) If [such spouse] the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of [three] twelve hours, [such spouse may] the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the [victim spouse.] family or household member.

[(4)] (5) [Spouse abuse.] Abuse of a family or household member, and refusal to comply with the lawful order of a police officer under subsection [(3)] (4) are misdemeanors[.]; provided that a person convicted under this section

shall serve a minimum jail sentence of forty-eight hours and be required to undergo any available domestic violence treatment and counseling program as ordered by the court.

(5) (6) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting such arrest.

(6) (7) The [spouse] family or household member who has been physically abused or harmed by [his or her spouse] another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith, or may file a criminal complaint through the prosecuting attorney of the applicable county.

(7) (8) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may then dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(8) (9) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for [spouse] abuse[.] of a family or household member.

(9) (10) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

(10) (11) This section shall not preclude the physically abused or harmed [spouse] family or household member from pursuing any other remedy under law or in equity.

(11) (12) Upon dismissal of such person and discharge of the proceeding against [him or her] the person under this section, such person, if the offense is the only offense against the other [spouse] family or household member for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to [his or her] the person's arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against [him or her] the person were discharged and that no other similar offenses were charged against [him or her] the person for a period of not less than one year, it shall enter such order.

(13) If a person is ordered by the court to undergo treatment or counseling at any available domestic violence program, that person shall provide adequate proof of compliance with the court order as instructed by the court."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

“(c) The director may establish rules as necessary for the enforcement of this part. The rules shall be adopted pursuant to chapter 91; except that the director may, without regard to chapter 91, establish tolerance levels and regulatory or action levels by reference to the provisions of the regulations or guidelines of the United States established in 21 CFR Part 193, 40 CFR Part 180 [and] or the United States Food and Drug Administration Compliance Policy Guides as the regulations or guidelines become effective at any time or from time to time.”

SECTION 2. Section 328-24, Hawaii Revised Statutes, is amended to read:

“**§328-24 Furnishing of samples to director.** (a) If any person manufacturing, keeping for sale, exhibiting for sale, or offering for sale any food, drug, device, or cosmetic included in this part refuses to furnish the duly appointed director of health or any of his agents, upon demand, either personal or in writing, a sample sufficient for the analysis of the food, drug, device, or cosmetic, which is in his possession, [the director or any of his agents tendering the market price therefor,] such refusal shall be prima facie evidence that the food, drug, device, or cosmetic so manufactured, kept for sale, exhibited for sale, or offered for sale is adulterated within the meaning of this part.

(b) A sample of any product covered under this section that is known to be or suspected of being contaminated shall be furnished upon request to the director or any of the director's agents at no cost to the department.

The director or agent securing a sample under this section from any retailer or wholesaler or any person other than the manufacturer shall, prior to leaving the premises, provide the establishment with a receipt describing the sample obtained. The receipt may be used for reimbursement from the appropriate supplier or manufacturer.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

ACT 145

H.B. NO. 236

A Bill for an Act Relating to Time Sharing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

“**§514E-10 Registration required; developer, acquisition agent, sales agent, plan manager, and exchange agent.** (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] for which it is providing

prospective purchasers, its address, the telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the acquisition agent is not a natural person, the name of the responsible managing employee. All acquisition agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any acquisition agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The acquisition agent shall furnish evidence that [(i) a bond or blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any violations by the acquisition agent of any solicitation ordinances or other regulations governing the use of the premise or premises in which time sharing plan or plans are promoted;] (1) the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any violation by the acquisition agent of any solicitation ordinance or other regulation governing the use of the premise or premises in which the time share plan is promoted; provided that the acquisition agent shall be separately bonded for each time share plan for which it is providing prospective purchasers; or [(ii)] (2) that the acquisition agent is currently licensed pursuant to chapter 467 as a real estate salesman or a real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(c) A sales agent (including the developer if it is also the sales agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] that it is selling, its address, telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the sales agent is not a natural person, the name of the responsible managing employee and the escrow account required under section 514E-16 for the deposit and collection of purchasers' funds. The director shall not approve any sales agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The sales agent shall furnish evidence that the sales agent is currently licensed pursuant to chapter 467 as a real estate salesman or real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(d) A plan manager (including the developer if it is also the plan manager) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that [a blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any default of the plan manager and any of its employees of their duties and responsibilities.] the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that the plan manager shall be separately bonded for each time share plan under the management of the plan manager.

(e) An exchange agent (including the developer if it is also an exchange agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan [or plans] for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

[(f) If the acquisition agent or plan manager is under the control of, a subsidiary of, or an affiliate of the developer, the bonds or blanket bonds can be

consolidated and set in the amount of \$20,000; provided that there is a disclosure of the affiliation.]

[(g)] (f) Any registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this shall not relieve the person required to register from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of time share interests."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on September 1, 1985.

(Approved May 29, 1985.)

ACT 146

H.B. NO. 614

A Bill for an Act Relating to the Public Officers and Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The Public Officers and Employees Compensation Review Commission was established by the Legislature in 1982. The purpose of the Commission was to study the compensation of elected and appointed officers and employees of all three branches of State government as well as those of the various counties. Act 129, Session Laws of Hawaii 1982, established the Commission and required it to formulate and recommend a compensation schedule containing appropriate salaries for the above-mentioned State and county officers and employees.

According to Act 129, "to ensure a stable situation while the commission is conducting its review and for the fullest benefit to be derived from the intended schedule, the salaries of top-level county officers must not be increased until after legislative review of the recommendation." Act 129 also added Section 46-21.5 and Section 78-18.3, Hawaii Revised Statutes, to: 1) prohibit counties from increasing the compensation of elected or appointed officers and employees; and 2) prohibit counties from linking executive pay to collective bargaining increases.

The Commission submitted a recommended salary schedule to the Legislature during the Regular Session of 1983. The schedule was not adopted. Although the Legislature reviewed the recommendation of the commission, Section 46-21.5, Hawaii Revised Statutes, remains in effect.

The purpose of this Act is to allow the equal treatment of elected or appointed individuals by repealing Section 46-21.5, Hawaii Revised Statutes.

SECTION 2. Section 46-21.5, Hawaii Revised Statutes, is hereby repealed.

SECTION 3. Statutory material to be repealed is bracketed.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Land Court Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 501-63, Hawaii Revised Statutes, is amended to read as follows:

“§501-63 Appeal to supreme court. Pursuant to section 641-1(a) and the Hawaii Rules of Civil Procedure, in all cases an appeal to the supreme court shall lie from the final decree of the land court on behalf of any party aggrieved by the decree. The aggrieved party shall file a notice of appeal and pay the fees for appeal as prescribed by section 501-218, together with the deposit of costs on appeal pursuant to section 607-7, to the registrar of the land court; provided that the registrar of the land court shall thereafter pay the costs on appeal so deposited to the clerk of the supreme court.”

SECTION 2. Section 501-218, Hawaii Revised Statutes, is amended to read as follows:

“§501-218 Schedule of fees. Except where otherwise provided the fees payable under this chapter are as follows:

- (1) For every application filed pursuant to this chapter, including indexing and recording the same, and transmitting to registrar, when filed with assistant registrar, \$3.
- (2) For every plan filed, \$1.
- (3) For indexing any instrument recorded while application for registration is pending, 25 cents.
- (4) For examining title, \$10 and two-tenths of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation, or the value of the same as determined under section 501-211 when the land was not separately assessed.
- (5) For verifying and checking map on the ground, for lots of one acre or less, \$25; an addition of \$1 an acre or fraction thereof for all area over one acre and up to one hundred acres; an addition of 50 cents an acre or fraction thereof for all area over one hundred acres and up to five hundred acres; an addition of 50 cents an acre or fraction thereof for all area over five hundred acres and up to one thousand acres; an addition of 25 cents an acre or fraction thereof for all area over one thousand acres.
- (6) For checking survey and map as to form and mathematical correctness but not on the ground, \$3 an hour.
- (7) For approving subdivision of registered land, and for checking same as to form and mathematical correctness but not on the ground, \$3 an hour.
- (8) For all services by a sheriff or other police officer under this chapter, the same fees as are now provided by law for like services.
- (9) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2.
- (10) For filing an amended application, \$1.
- (11) For each notice by publication, 25 cents.
- (12) For entering any general default, \$1.
- (13) For filing any answer, \$1, to be paid by the party filing the same.
- (14) For every subpoena, \$1.
- (15) For swearing each witness, 10 cents.

- (16) For entering any discontinuance, \$1.
- (17) For filing notice of appeal, [\$1.] \$30.
- (18) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1.
- (19) For copy of decree of registration, \$1.
- (20) For entry of original certificate of title and issuing owner's duplicate certificate, or for making and entering a new certificate of title including issue of one owner's duplicate, \$20 if contained within four pages. For each additional page or fraction thereof, \$1.
- (21) For each owner's duplicate certificate after the first, \$10 if contained within four pages. For each additional page or fraction thereof, \$1.
- (22) For the registration of every instrument, including entering, indexing, filing, attesting registration, and making and attesting memorandum on certificates not in excess of four, \$5, except where herein otherwise provided, and 50 cents for each additional memorandum on certificates in excess of four required by any one instrument.
- (23) For the certification of a copy of any instrument, the same fees as are provided by section 502-25.
- (24) For filing and registering an adverse claim, \$3.
- (25) For entering statement of change of residence and post office address, including indorsing and attesting same on a duplicate certificate, \$2.50.
- (26) For entering any note in the entry book or in the registration book, \$1.
- (27) For registration of a suggestion of death, fact of marriage, order for subdivision, or notice of issue of an order in bankruptcy, \$1.
- (28) For filing any petition after original registration, \$1.
- (29) For filing any order after original registration, \$1.
- (30) In all cases not expressly provided for by law the fees of all public officers for any official duty or service under this chapter shall be at a rate established by the court.
- (31) For any application made by or in the name of the State, or any political subdivision thereof, any proceedings had upon such application or any dealing with registered land by the State, or any political subdivision thereof, as owner, no fees shall be charged."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved May 29, 1985.)

ACT 148

S.B. NO. 1397

A Bill for an Act Relating to Land Evaluation and Site Assessment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Pursuant to Article XI, section 3, of the Hawaii State Constitution, the legislature, through Act 273, Session Laws of Hawaii 1983, established the State of Hawaii land evaluation and site assessment commission to provide for standards, criteria, and procedures which are designed to conserve and protect agricultural lands and assure long-term availability of agriculturally

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suitable lands. The purpose of the commission is to identify, develop, and recommend for legislative adoption important agricultural lands pursuant to a land classification system specified in Act 273, section 2(d).

The commission in its draft report dated February, 1985, requested authorization to continue its function beyond the present expiration date at the adjournment sine die of the regular session of 1985, in order to coordinate the testing and evaluation of the LESA standards, criteria, and procedures system it has developed.

The purpose of this Act is to extend the life of the land evaluation and site assessment commission for at least one year so that a final report may be presented to the 1986 session of the legislature.

SECTION 2. Act 273, Session Laws of Hawaii 1983, to the contrary notwithstanding, the land evaluation and site assessment commission created by Act 273 shall continue its existence until the adjournment sine die of the 1986 session of the regular session of the legislature.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1985-1986, for use by the commission to carry out the purposes of this Act. The sum appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

ACT 149

S.B. NO. 1409

A Bill for an Act Relating to Conservation Easements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

CONSERVATION EASEMENTS

§ -1 **Conservation easement defined.** For the purposes of this chapter, a “conservation easement” is an interest in real property created by deed, restrictions, covenants, or conditions, the purpose of which is to preserve and protect land predominantly in its natural, scenic, forested, or open-space condition.

§ -2 **Nature.** (a) A conservation easement is freely transferable in whole or in part for the purposes stated in section -1 by any lawful method for the transfer of interests in real property in this State.

(b) A conservation easement shall be perpetual in duration.

(c) A conservation easement shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding the fact that it may be negative in character.

(d) The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.

§ -3 **Holder.** Any public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal

Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of this chapter, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not by eminent domain.

§ -4 **Recordation.** Instruments creating, assigning, or otherwise transferring conservation easements shall be recorded in the bureau of conveyances, or the land court, as the case may be, and such instruments shall be subject in all respects to the requirements of chapters 501 and 502.

§ -5 **Enforcement of easement.** (a) All conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership, and no conservation easement shall be unenforceable on account of the lack of privity of estate or contract, or on account of such conservation easement not being an appurtenant easement, or because such easement is a general easement.

(b) Actual or threatened injury to or impairment of a conservation easement, or actual or threatened violation of its terms, may be prohibited or restrained, or the interest intended for protection by such easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the holder of the easement.

(c) In addition to the remedy of injunctive relief, the holder of a conservation easement shall be entitled to recover money damages for any injury to such easement or to the interest being protect thereby or for the violation of the terms of such easement. In assessing such damages there may be taken into account, in addition to the cost of restoration, the loss of scenic, aesthetic, or environmental value to the real property subject to the easement, and other damages.

(d) The court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees.

§ -6 **Construction.** This chapter shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions of this chapter be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire, by purchase, gift, eminent domain, or otherwise, and to use land for public purposes."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

ACT 150

S.B. NO. 76

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Alfentanil;

- [2] (3) Allylprodine;
- [3] (4) Alphacetylmethadol;
- [4] (5) Alphameprodine;
- [5] (6) Alphamethadol;
- (7) Alpha-Methylfentanyl;
- [6] (8) Benzethidine;
- [7] (9) Betacetylmethadol;
- [8] (10) Betameprodine;
- [9] (11) Betamethadol;
- [10] (12) Betaprodine;
- [11] (13) Clonitazene;
- [12] (14) Dextromoramide;
- [13] (15) Diampromide;
- [14] (16) Diethylthiambutene;
- [15] (17) Difenoxin;
- [16] (18) Dimenoxadol;
- [17] (19) Dimepheptanol;
- [18] (20) Dimethylthiambutene;
- [19] (21) Dioxaphetyl butyrate;
- [20] (22) Dipipanone;
- [21] (23) Ethylmethylthiambutene;
- [22] (24) Etonitazene;
- [23] (25) Etoxidine;
- [24] (26) Furethidine;
- [25] (27) Hydroxypethidine;
- [26] (28) Ketobemidone;
- [27] (29) Levomoramide;
- [28] (30) Levophenacylmorphane;
- [29] (31) Morpheridine;
- [30] (32) Noracymethadol;
- [31] (33) Norlevorphanol;
- [32] (34) Normethadone;
- [33] (35) Norpipanone;
- (36) Parahexyl;
- [34] (37) Phenadoxone;
- [35] (38) Phenampromide;
- [36] (39) Phenomorphan;
- [37] (40) Phenoperidine;
- [38] (41) Piritramide;
- [39] (42) Proheptazine;
- [40] (43) Properidine;
- [41] (44) Propiram;
- [42] (45) Racemoramide;
- (46) Tilidine;
- [43] (47) Trimerperidine.”

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
 - (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
 - (3) Opium poppy and poppy straw.
 - (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine[.]; cocaine or any salt or isomer thereof.
- (c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
- (1) Alphaprodine;
 - (2) Anileridine;
 - (3) Bezitramide;
 - (4) Bulk Dextropropoxyphene (nondosage form);
 - (5) Dihydrocodeine;
 - (6) Diphenoxylate;
 - (7) Fentanyl;
 - (8) Isomethadone;
 - (9) Levomethorphan;
 - (10) Levorphanol;
 - (11) Metazocine;
 - (12) Methadone;
 - (13) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
 - (14) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
 - (15) Pethidine;
 - (16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - (17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
 - (18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 - (19) Phenazocine;
 - (20) Piminodine;
 - (21) Racemethorphan;
 - (22) Racemorphan[.];
 - (23) Sufentanil."

SECTION 3. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- [(1)] (2) Barbitol;
- [(2)] (3) [Chloral betaine;] Bromazepam;
- [(3)] (4) [Chloral hydrate;] Camazepam;

- [4] (5) [Chlordiazepoxide;] Chloral betaine;
- [5] (6) [Clonazepam;] Chloral hydrate;
- [6] (7) [Clorazepate;] Chlordiazepoxide;
- [7] (8) [Diazepam;] Clobazam;
- [8] (9) [Ethchlorvynol;] Clonazepam;
- [9] (10) [Ethinamate;] Clorazepate;
- [10] (11) [Flurazepam;] Clotiazepam;
- [11] (12) [Lorazepam;] Cloxazolam;
- [12] (13) [Mebutamate;] Delorazepam;
- [13] (14) [Meprobamate;] Diazepam;
- [14] (15) [Methohexital;] Estazolam;
- [15] (16) [Methylphenobarbital;] Ethchlorvynol;
- [16] (17) [Oxazepam;] Ethinamate;
- [17] (18) [Paraldehyde;] Ethyl loflazepate;
- [18] (19) [Petrichloral;] Fludiazepam;
- [19] (20) [Phenobarbital;] Flunitrazepam;
- [20] (21) [Prazepam.] Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;
- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Meprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephorbarbital);
- (33) Nimetazepam;
- (34) Nitrazepam;
- (35) Nordiazepam;
- (36) Oxazepam;
- (37) Oxazolam;
- (38) Paraldehyde;
- (39) Petrichloral;
- (40) Phenobarbital;
- (41) Pinazepam;
- (42) Prazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Triazolam.”

SECTION 4. Section 329-22, Hawaii Revised Statutes, is amended to read as follows:

“§329-22 Schedule V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
 - (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
 - (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
 - (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (c) [Loperamide.] Buprenorphine.”

SECTION 5. Section 329-55, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In the event of the seizure of property described in subsection (a)(1) to (6), pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly. When property is seized under this chapter, the department shall report the fact of the seizure within ten days thereof to the prosecuting attorney of the county where the seizure was made. Within thirty days of the notification of the seizure, the prosecuting attorney shall cause to be filed in the circuit court in the county in which the property was seized, an action in rem, petitioning the court for forfeiture of the property. Upon the filing of the action, the court shall order the department to hold the property for further order of the court, and shall order that the owner of the seized property be served with notice of action. Notice of such action shall be made promptly in person, by registered mail, or by publication in accordance with section 634-23. At the expiration of twenty days after such [filing,] notice, if no claimant has appeared, the court shall order the property forfeited to the State, to be disposed of by the department in a manner consistent with subsection (e).

If a claim is made in response to the petition for forfeiture within the twenty-day period, the court shall schedule a hearing, at which time the State shall prove by preponderance of evidence that the property was used, intended to be used, furnished, or acquired in violation of this chapter. At the conclusion of such hearing, the court shall order the property forfeited to the State; provided that if any claimant proves the claimant’s right to an exception under subsection (a)(4)(A), (B), or (C) the court shall order the return of the property or such portion of the property that is proved to be encumbered, to the bona fide owner, lienholder, or mortgagee.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 31, 1985.)

ACT 151

S.B. NO. 141

A Bill for an Act Relating to the University of Hawaii’s Vocational and Technical Training Projects Revolving Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-8.4, Hawaii Revised Statutes, is amended to read as follows:

“[[§304-8.4]] Vocational and technical training projects revolving fund. There is established a revolving fund for the vocational and technical training projects of the community colleges into which shall be deposited the receipts from fees for services, [and] supplies, and use of equipment provided by or in connection with these projects. Funds deposited in this account shall be expended for vocational and technical training projects, and supplies, equipment, and services related thereto.”

SECTION 2. Statutory material to be deleted is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 152

S.B. NO. 260

A Bill for an Act Relating to Financial Disclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The financial disclosure statements of the following persons shall be public records and available for inspection as specified in section 92-51:

- (1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the members of the board of education, the trustees of the office of Hawaiian affairs, and candidates for state elective offices.
- (2) The directors of the state departments and their first and second deputies.
- (3) The administrative director of the State.
- (4) The president, the vice presidents, and the chancellors of the University of Hawaii.
- (5) The superintendent and the deputy superintendent of the department of education.”

SECTION 2. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved May 31, 1985.)

Note

1. No bracketed material.

ACT 153

S.B. NO. 462

A Bill for an Act Relating to Terms of Boards and Commissions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The members of each board and commission established by law shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. Unless otherwise provided by this chapter or by law hereafter enacted, the terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year for each board and commission. Unless otherwise provided by law, each term shall commence on July 1 and expire on June 30, except that the terms of the chairpersons of the board of agriculture, the board of land and natural resources, and the Hawaiian homes commissions shall commence on January 1 and expire on December 31. No person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.”

SECTION 2. Notwithstanding any other law to the contrary, the term of all board and commission members appointed pursuant to section 26-34, Hawaii Revised Statutes, on or before the effective date of this Act, except for the terms of the chairpersons of the board of agriculture, the board of land and natural resources, the Hawaiian homes commission, and the members of the statewide health coordinating council, shall be extended from the ending date specified on the members' commissions through the next occurring June 30.

SECTION 3. Act 267, Session Laws of Hawaii 1984, is amended by amending section 18 to read as follows:

“SECTION 18. Notwithstanding section 323D-13, Hawaii Revised Statutes, the terms of members on the statewide health coordinating council on July 1, 1984 or appointed to the council after June 30, 1984, but prior to July 1, 1985, shall terminate on June 30, 1985. After June 30, 1985, members of the statewide health coordinating council shall be appointed in accordance with section 323D-13, Hawaii Revised Statutes; provided that the first appointees after June 30, 1985:

- (1) Shall be considered initial appointees for the purposes of establishing staggered terms under section 26-34, Hawaii Revised Statutes; and
- (2) Shall be appointed to terms beginning on July 1, 1985 [but ending on December 31 of the appropriate years, notwithstanding] pursuant to section 26-34, Hawaii Revised Statutes.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

A Bill for an Act Relating to Notaries Public.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 456-17, Hawaii Revised Statutes, is amended to read as follows:

“§456-17 Fees. Subject to section 456-18, every notary public is entitled to demand and receive the following fees:

For noting the protest of mercantile paper, [~~\$2;~~] \$5;

For each notice and certified copy of protest, [~~\$2;~~] \$5;

For noting any other protest, [~~\$3;~~] \$5;

For every notice thereof, and certified copy of protest, [~~\$3;~~] \$5;

For every deposition, or official certificate, [~~\$2;~~] \$5;

For the administration of oath, including the certificate of the oath, [~~\$1;~~] \$4; for affixing the certificate of the oath to every duplicate original instrument beyond four, [50 cents;] \$2.50;

For taking any acknowledgment, [~~\$2]~~ \$4 for each party signing; for affixing to every duplicate original beyond one of any instrument acknowledged before [him, his] the notary, the notary's certificate of the acknowledgment, [~~\$1]~~ \$2.50 for each person making the acknowledgment.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 155

S.B. NO. 1132

A Bill for an Act Relating to Liquor Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes the importance of regulating the kinds of persons who are granted liquor licenses; yet, the legislature also recognizes that imposing an absolute bar to an applicant may result in a harsh and inequitable application of the statute.

The purpose of this Act is to allow local liquor commissions to grant liquor licenses, to applicants who have been convicted of a felony in those cases where the applicant can demonstrate to the satisfaction of the commission that a prior conviction should not be held as an absolute bar to the granting of a license.

SECTION 2. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

“§281-45 [No license issued, when. No license shall be issued under this chapter:] Reasons for refusal. The commission may refuse to grant a license under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license;
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) of this section from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock would be disqualified under such paragraph (1) from obtaining the license individually;
- (3) Unless the applicant for a license, a renewal, or a transfer of license presents to the issuing agency, a signed certificate from the director

of taxation and from the Internal Revenue Service showing that the applicant does not owe the state or federal governments any delinquent taxes, penalties, or interest;

- (4) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter.”

SECTION 3. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, [this subsection shall not apply to] a person who has been convicted of a felony[.] may be denied a liquor license by the liquor commission.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 156

S.B. NO. 1157

A Bill for an Act Relating to the Hawaii Youth Correctional Facility.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are children whose presence within the community may pose a threat to their own safety and to the safety of the general public. These children require a safe, secure residential facility in which they can learn to become law abiding, productive, self-sufficient citizens.

The Legislature further finds that programming to this end, regardless of the duration of the child's stay, must be offered continuously throughout the year to accommodate the fact that commitments are sporadic and for varying terms, and that such programs, to the extent possible, shall be individualized so that these children may realize their full educational, vocational, social and emotional potential.

SECTION 2. Section 352-2, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 352, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§352- Purpose. (a) This chapter creates within the department of social services and housing, under the supervision of the director and such other subordinates as the director shall designate, the Hawaii youth correctional facilities, in order to provide for the incarceration, punishment, and institutional care and services to reintegrate into their communities and families, children committed by the courts of the State of Hawaii.

(b) The policy and purpose of this chapter is to harmonize the sometimes conflicting requirements of public safety, secure placement, and individualized

services for law violators in the custody and care of the director. To that end, the director shall provide the opportunity for intelligence and aptitude evaluation, psychological testing and counseling, prevocational and vocational training, and employment counseling to all persons committed to the Hawaii youth correctional facilities. Counseling services shall be available to the committed person's family during the term of commitment. The director shall coordinate services provided to the facilities by other departments and agencies, to realize these policies and purposes."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 157

S.B. NO. 1175

A Bill for an Act Relating to Retail Installment Sales.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 476-5, Hawaii Revised Statutes, is amended to read as follows:

"§476-5 Balloon payments. [Text of section effective July 1, 1985.] With respect to any sale of goods, services, or both, purchased primarily for a personal, family, or household purpose, which is subject to this chapter, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. If the principal balance of the original contract is less than \$10,000, and the finance charge either is stated as a dollar amount and added on or deducted in advance or is computed at a fixed rate, all the terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale[.], except that the payment schedule may be modified so as to effect the amortization of the total amount refinanced over the period for which it is refinanced, which shall not be less than the term of the original contract, or that no scheduled payment required upon refinancing shall be greater than the amount of the average scheduled payment required by the original contract. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 158

S.B. NO. 1221

A Bill for an Act Relating to the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 10-8, Hawaii Revised Statutes, is amended to read as follows:

“[[]§10-8[]] **Organization; quorum; meeting.** The board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve [a term of two years.] at the pleasure of the board. Their election shall be immediately certified by the board to the lieutenant governor.

A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members.

Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The board shall meet at least once annually on each of the islands of Hawaii, Maui, Molokai, Lanai, Kauai, and Oahu.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 159

H.B. NO. 155

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this bill is to allow the department of Hawaiian home lands greater flexibility in granting licenses to agencies of the United States government.

SECTION 2. Section 207 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (c) to read:

“(c)(1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section, for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians).

(2) The department is also authorized[, with the approval of the governor,] to grant licenses to the United States [for terms not to exceed five years,] for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges[; provided that any such license may be extended from time to time by the department, with the approval of the governor, for additional terms of three years].

(3) Any license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall

not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities.”

SECTION 3. Statutory material to be repealed is bracketed.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 160

H.B. NO. 228

A Bill for an Act Relating to Contractors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 444-4, Hawaii Revised Statutes, is amended to read:

“§444-4 Powers and duties of board. In addition to any other duties and powers granted by this chapter the contractors license board shall:

- (1) Grant licenses to contractors pursuant to this chapter;
- (2) Make, amend, or repeal such rules [and regulations] as it may deem proper fully to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules [and regulations] shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules [and regulations] may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules [and regulations] may require contractors to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules [and regulations], or as will better enable the board from time to time to amend the rules [and regulations] more fully to effectuate the purposes of this chapter. The rules [and regulations] may require contractors to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of rules [and regulations] shall not be construed to limit the board's general power to make all rules [and regulations] necessary fully to effectuate the purpose of this chapter;
- (3) Enforce this chapter and rules [and regulations] adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules [and regulations], and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (5) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter[.]; and
- (6) [Prepare,] Contract for professional testing services to prepare, administer, and grade such examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of such examinations and tests,

whether they shall be oral, written, or both, and the score that shall be deemed a passing score.”

SECTION 2. Section 444-12, Hawaii Revised Statutes, is amended to read:

“§444-12 Application; fees. (a) Every applicant for a license under this chapter shall file an application with the contractors license board in such form and setting forth such information as may be prescribed or required by the board, and shall furnish such additional information bearing upon the issuance of the license as it shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership, joint venture, or corporation, any member or officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application for a license hereunder shall be accompanied by an application fee of \$25.

(c) Every applicant who is required by the board to be examined shall pay, directly to the testing agency, an examination fee as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 161

H.B. NO. 462

A Bill for an Act Relating to Warranties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437-3.5, Hawaii Revised Statutes is renumbered section 490:2-313.1.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 162

H.B. NO. 522

A Bill for an Act Relating to Mandatory Retirement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-3, Hawaii Revised Statutes, is amended to read as follows:

“§378-3 Exceptions. Nothing in this part shall be deemed to:

- (1) Repeal or affect any law or ordinance or government rule or regulation having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and which have a substantial relationship to the functions and responsibilities of the prospective or continued employment;

- (3) Prohibit or prevent an employer, employment agency, or a labor organization from refusing to hire or refer or from discharging any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan [based on age], which is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age; provided further that any existing bona fide retirement, pension, employee benefit, or insurance plan or existing bargaining agreement shall be exempt from the provisions of this paragraph for two years after April 30, 1984, or until the termination of the plan or agreement, whichever occurs first;
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making such selection as is calculated by the organization to promote the religious principles for which it is established or maintained[.];
- (6) Conflict with or affect the application of security regulations in employment established by the United States or the State; or
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a handicapped person."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 163

S.B. NO. 83

A Bill for an Act Relating to Agricultural Parks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 171, Part V, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171- Agricultural park special fund. (a) There is created in the state treasury a special fund to be designated as the "agricultural park special fund". The proceeds in the fund shall be used for the following purposes:

- (1) Payment of agricultural park lease rents of privately owned lands under lease to the State pursuant to section 171-112;
- (2) Establishing, operating, maintaining, and improving infrastructure improvements in agricultural parks selected by the department; and
- (3) Any other purposes deemed necessary by the department for the purpose of maintaining and operating those selected agricultural parks.

For the purpose of paragraph (2), infrastructure improvements may include, but shall not be limited to: irrigation water system projects, wind power

or hydro power and pumping systems, waste disposal systems, domestic water systems, roads, street lights, land and roads drainage, and bridges.

(b) Moneys appropriated for the purpose of the fund; all moneys received or collected from a project including residential and agricultural lot lease rents; and all moneys collected or received by the department for the use and maintenance of a domestic and irrigation water system and any other system enumerated in subsection (a) shall be deposited into this fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund. Moneys in the fund shall be expended upon warrants drawn by the comptroller.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 164

S.B. NO. 224

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

“§514A-102 **Announcement, publication.** Beginning fifteen calendar days prior to the date any developer notifies the commission of the developer’s intention to sell a project which is subject to this chapter, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is to be located, not less than [twice] once in each of two successive weeks, an announcement containing a summary of at least the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of apartments to be included in the project;
 - (B) The number of apartments designated as residential units;
 - [(C) The number of floors in the project;
 - (D) The number of bedrooms and square feet of each residential unit;
 - (E) The price and amount of monthly maintenance fees for each residential unit; and
 - (F) The amount of lease rent for each residential unit and the applicable time periods.]
 - (C) The price range of the units;
 - (D) The approximate size of the units; and
 - (E) A designation whether the units are fee simple or leasehold.
- (3) The statement that the apartments shall be offered for sale upon the issuance of the first public report by the commission, and the approximate date of the issuance;

- (4) A statement of the intended use, such as, but not limited to, commercial, timesharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
- (5) The statement that fifty per cent of the residential units shall initially be offered for a ten-day period to only prospective owner-occupants, and a designation of such residential units;
- (6) The name and address of a real estate broker, which shall be designated by the developer, who any interested individual may contact to be placed on a reservation list, and to obtain further information on the project; and
- (7) A statement that a public report has not been issued for the project, and that the commission has not yet determined whether the developer has adequately disclosed all material facts as required by law.

Proof of publication of the announcement[,] summarizing the information required by paragraphs (1) to (7) of this section, and a copy thereof, shall be filed with the commission as a condition of issuance of any public report. The developer or the developer's broker shall also provide a copy of the announcement and the following information: the number of floors in the project; the number of bedrooms and square feet of each residential unit; the price and amount of monthly maintenance fees for each residential unit; the amount of lease rent for each residential unit and the applicable time periods; to each prospective purchaser[.] and to any individual by certified mail, delivered to the addressee only, return receipt requested, occupying such unit immediately prior to any conversion."

SECTION 2. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

"§514A-105 Sale of residential units. From the issuance of the first public report until ten calendar days thereafter, the developer shall offer all the residential units designated pursuant to section 514A-103 for sale to only the individuals whose names are on the reservation list in the order in which their names appear on such list; provided that in the case of a project which includes one or more existing structures being converted to condominium status, each residential unit contained in the project shall first be offered for sale to any individual occupying such unit immediately prior to the conversion and who otherwise complies with section 514A-104.

Each contract for the purchase of a designated residential unit by an owner-occupant shall be conditioned upon the buyer obtaining adequate financing, or a commitment for adequate financing¹ within [thirty] **forty-five** calendar days following the end of the ten calendar day period during which the developer is limited to selling to owner-occupants, and if such financing or commitment is not obtained, the contract shall be canceled. If during the ten calendar day period following the issuance of the first public report, any individual with whom a contract for the sale of one of the designated residential units was entered desires to cancel the contract on account of hardship circumstances such as those set forth in section 514A-104(1), or indicates an intent not to become an owner-occupant of such unit, the developer shall cancel the sales contract and shall offer the unit to persons whose names are on the reservation list, beginning with the first name listed; provided that if there are no additional names on the list, at the end of the ten calendar day period the

developer may honor the original sales contract, or cancel the contract and sell to any other person without any further restriction imposed by this part.

Upon the cancellation of any contract, the developer shall return all moneys paid pursuant to the contract but may deduct from the moneys returned any reasonable amount representing expenses incurred by the developer to process the sales contract; provided that the cancellation shall be approved by any lender financing the project; and provided further that the deposit of each individual on the reservation list who has not been offered a residential unit shall be refunded in full. Any individual on the reservation list may at any time be offered any residential unit in the project not subject to the designation required by section 514A-103."

SECTION 3. Section 514A-106, Hawaii Revised Statutes, is amended to read as follows:

"§514A-106 Financial institutions, obligations. Any person subject to chapter 403, 407, 408, 410, or 454, or who is subject to any other law for the purpose of lending money upon the security of real property shall:

- (1) Within [thirty] ~~forty-five~~ days after receipt of an application for credit from any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, notify the applicant of the action on the application; and
- (2) Prior to making any commitment to extend credit to any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, take all reasonable steps necessary to determine that the individual, in fact, intends to become an owner-occupant of such residential unit."

SECTION 4. Section 514A-108, Hawaii Revised Statutes, is amended to read as follows:

"§514A-108 Inapplicability of part. (a) This part shall not apply to any project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 206, 206E, 356, 359, or 359G.

(b) This part shall not apply to small condominium projects where the developer sells or intends to sell the project to a spouse or family members related by blood, descent or adoption.

(c) This part shall not apply to condominium projects where the developer builds or converts two houses on a single lot."

SECTION 5. Act 189, Session Laws of Hawaii 1980, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval, [terminate on December 31, 1985,] and shall apply to projects for which a notice of intent has not been filed with the real estate commission prior to the effective date."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 31, 1985.)

Note

1. A ",", is missing.

A Bill for an Act Relating to the Hawaii Criminal Justice Data Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§846- Criminal justice data interagency board; establishment. There shall be a criminal justice data interagency board consisting of eleven members, established within the department of the attorney general for administrative purposes. The members of the board shall be appointed by the governor as provided in section 26-34; provided that members of the board shall be representative of criminal justice agencies, shall include a resident member from each county in the State, and shall also have ex officio members, as necessary, to effectuate the purpose of this chapter. The attorney general shall designate the executive secretary of the board. The board shall meet no less than quarterly. The board shall be responsible for promoting interagency cooperation and coordination in the development and management of an accurate, complete, timely, and fully integrated statewide criminal justice information reporting and retrieval system. The members of the board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. This section shall be repealed on June 30, 1989.”

SECTION 2. Section 846-2, Hawaii Revised Statutes, is amended to read as follows:

“§846-2 Establishment of the Hawaii criminal justice data center. There shall be a data center, to be known as the “Hawaii criminal justice data center”, established in the department of the attorney general. The data center shall be directed and managed by a director appointed by the attorney general without regard to chapters 76 and 77. [There shall also be a committee, appointed by the attorney general, composed of selected criminal justice user-agency personnel, to act in an advisory capacity to the data center in matters related to interagency coordination and user needs.]”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Bail.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 804-3, Hawaii Revised Statutes, is amended to read as follows:

“§804-3 Bailable offenses. (a) For purposes of this section, “serious crime” means a class A or B felony, except forgery in the first degree and failing

to render aid under section 291C-12, and "bail" includes release on one's own recognizance[.], supervised release, and conditional release.

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that [no] bail [shall be allowed] may be denied where the charge is for a serious crime [where the proof is evident and the presumption great], and

- [(1) The offense is punishable by imprisonment for life not subject to parole; or
- (2) The defendant has been previously convicted of a serious crime within the ten-year period immediately preceding the date of the charge against him; or
- (3) The defendant is already on bail on a felony charge; or
- (4) The defendant is on parole.

(c) If the defendant has been admitted to bail on any charge, the prosecutor may move at any time for revocation of bail on the grounds set out in subsection (b) above, and bail shall be revoked upon proof thereof.]:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

(c) Under subsection (b)(1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life without possibility of parole. For purposes of subsection (b)(3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

- (1) The defendant has been previously convicted of a serious crime involving violence against a person within the ten year period preceding the date of the charge against the defendant;
- (2) The defendant is already on bail on a felony charge involving violence against a person; or
- (3) The defendant is on probation or parole for a serious crime involving violence to a person.

(d) If, after a hearing the court finds that no condition or combination of conditions will reasonably assure the appearance of the person required and the safety of any other person or community, bail may be denied."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 1985.)

ACT 167

S.B. NO. 249

A Bill for an Act Relating to the Confidentiality of Adult Probation Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 806-73, Hawaii Revised Statutes, is amended to read as follows:

“§806-73 Duties and powers of probation officers[.]; adult probation records. A probation officer shall investigate any case referred to him for investigation by the court in which he is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under his supervision regarding the terms and conditions of his probation. He shall keep informed concerning the conduct and condition of the defendant and shall report thereon to the court and shall use all suitable methods to aid the defendant and to bring about improvement in his conduct and condition. The probation officer shall keep such records and perform such other duties as the court may direct.

All records of the State of Hawaii adult probation divisions are confidential and are not public records, including but not limited to, all records made by any adult probation officer in the course of performing official duties; provided that such records, or the content of such records, shall be divulged only as follows:

- (1) A copy of any adult probation division case record or of a portion of it, or the case record itself, shall upon request be provided to an adult probation officer of the State of Hawaii adult probation division which originated the record; provided that a written summary of the record may be provided upon request to an adult probation officer of another State of Hawaii adult probation division or to an adult probation officer of a probation department of another state which is providing supervision of a probationer convicted and sentenced by the courts of Hawaii.
- (2) A copy of a presentence report shall be provided to the persons or entities named in section 706-604; to the Hawaii paroling authority; to any psychiatrist, psychologist, or other mental health practitioner who is treating the defendant pursuant to a court order for mental health care; in accordance with applicable law, to persons or entities doing research; to any adult probation officer providing supervision of an offender in Hawaii; or to any adult probation officer providing supervision of an offender in another state if the offender was convicted and sentenced in the courts of Hawaii. Any persons or entities not entitled pursuant to this section or pursuant to section 706-604 to receive a copy of a presentence report are not entitled to receive a summary of a report and are not entitled to view a report.

Every probation officer shall, within the scope of his duties, have the powers of a police officer.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 168

H.B. NO. 38

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§431- Commissioner’s summary orders and supervision proceedings. (a)

If, upon examination or at any other time, the commissioner has reasonable cause to believe that any domestic insurer requires supervision because it is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the commissioner, upon the commissioner’s determination shall:

- (1) Notify the insurer of the commissioner’s determination; and
- (2) Furnish to the insurer a written list of the commissioner’s requirements to abate the commissioner’s determination.

(b) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (a), the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsection (a) and also may require that the insurer shall not do any of the following things, during the period of supervision, without the prior written approval of the commissioner or the supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
- (2) Withdraw from any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company;
- (8) Enter into any new reinsurance contract or treaty; or
- (9) Write any new or renewal business.

(c) Any insurer subject to an order under this section shall comply with the requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within the time specified, the commissioner may institute proceedings under section 431-653 or 431-655 to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(d) Any insurer subject to an order under this section may request a hearing to review the order. The hearing shall be held as provided in section 431-60, but the request for a hearing shall not stay the effect of the order.

(e) If the commissioner issues an order under this section, the insurer, at any time, may waive a commissioner’s hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(f) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying where the action complained of is believed not to be in the best interest of the insurer.

(g) If any person has violated any supervision order issued under this section which as to the person was then still in effect, the person shall be liable to

pay a civil penalty imposed by the circuit court of the first judicial circuit of this State not to exceed \$10,000 for each violation.

(h) The commissioner may apply for and any court of general jurisdiction may grant restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(i) If any person, subject to this section, including any officer, manager, trustee, owner, employee, or agent of the insurer, or any person:

- (1) With authority over or in charge of any segment of the insurer's affairs; or
- (2) Who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer;

knowingly violates any valid order of the commissioner issued under this section and, as a result of the violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, the person shall become personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor may bring an action on behalf of the insurer in the circuit court of the first judicial circuit of this State to recover the amount of the reduction or loss together with any costs.

§431- Court's seizure order. (a) The commissioner may file in the circuit court of the first judicial circuit of this State a petition alleging, with respect to a domestic insurer:

- (1) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under section 431-653 or 431-655;
- (2) That the interests of policyholders, creditors, or the public will be endangered by delay; and
- (3) The contents of an order deemed necessary by the commissioner.

(b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of the insurer, and of the premises occupied by it for transaction of its business, and until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(c) The court shall specify in the order what its duration shall be, which shall be the time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court from time to time may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under section 431-653 or 431-655 after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under section 431-653 or 431-655 shall vacate the seizure order.

(d) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held

privately in chambers and it shall be so held if the insurer proceeded against so requests.

(f) If, at any time after the issuance of an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

§431- Confidentiality of hearings. In all proceedings and judicial reviews thereof under sections 431- and 431- , all records of the insurer, other documents, and all files, court records, and papers of the insurance division of the department of commerce and consumer affairs, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the circuit court of the first judicial circuit of this State, after hearing arguments from the parties in chambers, orders otherwise, or unless the insurer requests that the matter be made public. Until the court order, all papers filed with the court shall be held in a confidential file."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 169

H.B. NO. 99

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. Short Title. This Act shall be known as the Judiciary Appropriations Act of 1985.

SECTION 2. Definitions. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

A General fund

B Special fund

N Other federal funds

C General obligation bond fund

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. Appropriations. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 1985 and ending June 30, 1987. The total expenditures and the number of permanent established positions in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

Item No.	Program	Program ID	M		M		Total M	
			FY 1985-86	O F	FY 1986-87	O F	Biennium 1985-87	O F
THE JUDICIAL SYSTEM								
1	Court Operations							
	Courts of							
	Appeal	JUD 101	59.00*		59.00*			
	Operating		2,650,649A		2,650,649A			5,301,298A
2	Circuit							
	Courts	JUD 111	319.00*		319.00*			
	Operating		11,143,803A		11,143,803A			22,287,606A
			154,317N		162,033N			316,350N
3	Family							
	Courts	JUD 112	276.50*		276.50*			
	Operating		9,766,712A		9,766,712A			19,533,424A
			184,800N		184,800N			369,600N
4	District							
	Courts	JUD 121	617.50*		617.50*			
	Operating		13,576,111A		13,576,111A			27,152,222A
			52.00*		53.00*			
			1,251,052B		1,272,944B			2,523,996B
	Support Services							
5	Administrative							
	Director							
	Services	JUD201	114.00*		114.00*			
	Operating		7,263,587A		7,263,587A			14,527,174A
	Investment:	Capital	13,014,000C		300,000C			13,314,000C

SECTION 4. Whenever the expending program of the judiciary to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the chief justice shall transfer the necessary funds and positions to the proper expending program.

SECTION 5. Whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for research and development and operating purposes; provided that such transfer shall not be made to implement any collective bargaining contract signed after this legislature adjourns sine die; provided further that a report of all such transfers shall be

made to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 6. Where the chief justice or any agency or any government unit is able to secure federal funds or other property made available under any act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice or agency with the chief justice's approval shall have the power to enter into such undertaking with the proper offices or agencies of the federal government or private organization or individuals. While most federal aid allocations are known and state matching funds are provided in this Act, there may be programs for which federal-state cost sharing is not yet determined. In such instances, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 7. Provided, that the judiciary is authorized to transfer savings from its general fund appropriation to the driver education special fund to accommodate any temporary cash flow deficits. Provided, further, that all such transfers for the prior fiscal year shall be reported to the legislature at the beginning of each fiscal year.

SECTION 8. Provided that the judiciary shall lapse at the close of each fiscal year, an amount equal to workers' compensation benefits paid in lieu of general fund salary costs; provided further that the judiciary shall prepare a report of the general fund salary cost savings lapsed at the end of fiscal year 1984-85 due to workers' compensation benefits paid; provided further that the report shall contain the amounts lapsed by program ID; provided further that the report shall be submitted to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 9. (a) Provided that for purchases of service, for which funds are appropriated within the judiciary, a report shall be submitted to the legislature twenty days prior to the convening of the 1986 regular session; provided further that the report shall contain the following:

- (1) A listing of all agencies/activities contracted during the fiscal year 1985-86, the amount of the contract by activity, and the source of funding.
 - (2) An evaluation of each agency/activity funded in fiscal year 1984-85 including a statement of program accomplishments.
- (b) Provided further that in submitting the fiscal year 1986-87 supplemental budget request to the 1986 legislature, all requests for grants, subsidies, and purchases of service shall include the following budget details;
- (1) A listing of all agencies/activities recommended for funding in fiscal year 1986-87, including identification of sources of funding; and
 - (2) A listing of any changes in funding from fiscal year 1985-86 and the reasons for the changes.

PART III. CAPITAL IMPROVEMENT PROJECTS

SECTION 10. Capital Improvement Projects. The sum of \$13,314,000 appropriated or authorized in Part II of this Act for capital investment shall be expended for the projects listed below. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient, for land acquisition, design, and construction purposes; provided that the total cost of the projects thus combined shall not exceed the total of the

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sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands dollars and are to be expended by the judiciary.)

Item No.	Program and Capital Project	Program ID	M		M		Total M
			FY O	1985-86F	FY O	1986-87F	BienniumO
THE JUDICIAL SYSTEM							
Support Services							
Administrative							
Director							
Services							
		JUD 201					
1	Hilo Judiciary Complex, Hawaii						
	Land acquisition of a Judiciary Complex in Hilo to accommodate the Circuit, Family and District Courts.						
	Land Acquisition			2,034			2,034
	Total Funding			2,034C			2,034C
2	Lahaina District Court, Maui						
	Construction of a new Lahaina District Court.						
	Construction			158			158
	Total Funding			158C		C	158C
3	Judiciary Complex Garage, Oahu						
	Construction of a parking facility in the Reed Lane area of the State Judiciary Complex.						
	Construction			9,080			9,080
	Total Funding			9,080C		C	9,080C
4	Remodeling and Upgrading Judiciary Buildings, Statewide						
	Design, construction and furnishing of equipment to remodel and upgrade Judiciary buildings, statewide.						
	Design			60		60	120
	Construction			230		230	460
	Equipment			10		10	20
	Total Funding			300C		300C	600C
5	Advance Planning Judiciary						
	Advance planning for statewide Judiciary facilities planning projects.						
	Plans			20			20
	Total Funding			20C		C	20C

Item No.	Program and Capital Project	Program ID	M		M		Total M BienniumO 1985-87 F
			FY O 1985-86F		FY O 1986-87F		
6	Wahiawa District Court, Oahu Design, construction and furnishing of the Wahiawa District Courthouse						
	Design		32				32
	Construction		1,320				1,320
	Equipment		70				
	Total Funding		1,422C		C		1,422C

PART IV. ISSUANCE OF BONDS

SECTION 11. General Obligation Bonds. General obligation bonds may be issued as provided by law to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part III of this Act, provided that the sum total of the general obligation bonds so issued shall not exceed \$13,314,000.

PART V. SPECIAL PROVISIONS

SECTION 12. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital investment projects authorized in Part II and listed in Part III of this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 1985-87 which are unencumbered as of June 30, 1988 shall lapse as of that date.

SECTION 13. The judiciary is authorized to delegate to other State or County agencies the acquisition of land, planning, design, and construction of any capital improvement project when it is determined by the judiciary that it is an advantage to do so.

SECTION 14. All unrequired balances after the objectives of appropriations made in Part II for capital investment purposes from the general obligation fund and listed as projects in Part III have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 15. In the event that the amount specified for a capital investment project listed in Part III is insufficient and where the source of funding for the project is designated as the general obligation bond fund, the chief justice may make supplemental allotments from the project adjustment fund; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that a report of such supplemental allotments and transfers into the judiciary project adjustment fund as provided by section 12 for the period ending December 31 of each calendar year shall be made to the President of the Senate and the Speaker of the House of Representatives by February 1 of the following calendar year.

SECTION 16. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in Part III, the chief justice may authorize such reduction of project scope; provided that the scope of a project shall not be reduced merely because the appropriation for the project is insufficient.

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SECTION 17. The chief justice shall determine when and the manner in which the authorized projects shall be initiated. He shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for such amounts through the issuance of bonds authorized in Part IV.

PART VI. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 18. Severability. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective and intent of such appropriation to the extent possible.

SECTION 19. Manifest errors. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the chief justice is authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 20. Effective date. This Act shall take effect on July 1, 1985.

(Approved June 1, 1985.)

ACT 170

H.B. NO. 129

A Bill for an Act Relating to the Board of Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 17-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Whenever any vacancy in the membership of the board of education occurs, the vacancy shall be filled as provided in this section.] The governor shall make an appointment to fill any vacancy in the membership of the board of education for the unexpired term of that vacancy whenever a vacancy occurs and the term of that vacancy ends at the time of the next succeeding general election.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 171

H.B. NO. 134

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There is hereby appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting

(BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1985-87, all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representatives of collection bargaining units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13.

	<u>FY 1985-86</u>	<u>FY 1986-87</u>
General Funds	\$45,621,507	\$76,004,775
Special Funds	\$ 3,875,261	\$ 7,466,690
Federal Funds	\$ 1,742,643	\$ 3,410,314
Other Funds	\$ 243,212	\$ 447,979

SECTION 2. Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal year for the purposes of this Part.

PART II

SECTION 3. There is hereby appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1985-87, all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representatives of collective bargaining units 1, 2, 3, 4, 9, 10, and 13.

	<u>FY 1985-86</u>	<u>FY 1986-87</u>
General Funds	\$1,493,148	\$3,094,044
Special Funds	\$ 57,528	\$ 118,272
Federal Funds	0	0

SECTION 4. Funds appropriated or authorized by this Part shall be allotted by the chief justice in the respective fiscal year for the purposes of this Part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds, shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1986, and June 30, 1987, of the respective fiscal years shall lapse as of those dates.

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

(Approved June 1, 1985.)

A Bill for an Act Relating to State Officers and Employees Excluded from Collective Bargaining and Making Appropriations and Other Adjustments.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There is appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1985-87, the salary increases and other cost adjustments for state officers and employees excluded from collective bargaining and not otherwise covered by this Act, authorized by chapter 89C, Hawaii Revised Statutes:

	<u>FY 1985-86</u>	<u>FY 1986-87</u>
General Funds	\$ 4,529,590	\$ 8,030,095
Special Funds	\$ 453,364	\$ 872,024
Federal Funds	\$ 309,279	\$ 652,407
Other Funds	\$ 153,123	\$ 257,162

SECTION 2. Funds appropriated or authorized by this Part shall be expended by the director of finance in the respective fiscal years for the purposes of this Part.

PART II

SECTION 3. There is appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1985-87, the salary increases and other cost adjustments for officers and employees of the judiciary excluded from collective bargaining, authorized by chapter 89C, Hawaii Revised Statutes:

	<u>FY 1985-86</u>	<u>FY 1986-87</u>
General Funds	\$ 265,250	\$ 548,706
Special Funds	\$ 3,984	\$ 6,768
Federal Funds	0	0

SECTION 4. The sums appropriated or authorized by this Part shall be expended by the chief justice in the respective fiscal years for the purposes of this Part.

PART III

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below, the following sums, or so much thereof as may be necessary, to fund for fiscal year 1985-86, the salary increases and other cost adjustments for officers and employees in these agencies excluded from collective bargaining, authorized by chapter 89C, Hawaii Revised Statutes:

	<u>FY 1985-86</u>
Office of the:	
Legislative Auditor	\$ 51,000
Legislative Reference Bureau	\$ 32,455
Ombudsman	0
State Ethics Commission	\$ 6,564

SECTION 6. The sums appropriated by this Part shall be expended by the respective heads of the legislative agencies in the respective fiscal years for the purposes of this Part.

PART IV

SECTION 7. There is appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1985-87, the salary increases and other cost adjustments for officers and employees of the office of Hawaiian affairs excluded from collective bargaining, authorized by chapter 89C, Hawaii Revised Statutes:

	<u>FY 1985-86</u>	<u>FY 1986-87</u>
General Funds	\$ 27,722	\$ 28,606
Special Funds	\$ 27,722	\$ 28,606

SECTION 8. The sums appropriated by this part shall be expended by the office of Hawaiian affairs for the purposes of this part.

PART V

SECTION 9. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds, shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 10. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1986, and June 30, 1987, of the respective fiscal years shall lapse as of those dates.

SECTION 11. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 173

H.B. NO. 166

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 333-1, Hawaii Revised Statutes, is repealed.

SECTION 2. Part IV, chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“§321- Tests for phenylketonuria, hypothyroidism, and other metabolic diseases. (a) The department of health may specify diseases to be screened for in newborn infants and methods to be employed, to best prevent mortality and morbidity within the population of the State.

(b) The person in charge of each institution caring for newborn infants and the responsible physician attending the birth of a newborn or the person assisting the birth of a child not attended by a physician, shall ensure that every infant in the person's care be tested for phenylketonuria, hypothyroidism, and any other disease that may be specified by the department of health; provided that this section shall not apply if the parents, guardian, or other person having custody or control of the child object thereto on the grounds that the tests conflict with their religious tenets and beliefs and written objection is made a part of the infant's medical record.

(c) The department of health shall adopt rules pursuant to chapter 91, necessary for the purposes of this section, including, but not limited to:

(1) Administration of newborn screening tests;

- (2) Quality and cost control of screening tests;
- (3) Keeping of records and related data;
- (4) Reporting of positive test results;
- (5) Guidelines for care, treatment, and follow up of infants with positive test results;
- (6) Informing parents about the purposes of these tests; and
- (7) Maintaining the confidentiality of affected families.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 1986.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 174

H.B. NO. 193

A Bill for an Act Relating to Wildlife.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183-1, Hawaii Revised Statutes, is amended to read as follows:

“[]§183-1[] **Definitions.** As used in this chapter, unless the context indicates otherwise:

- [(1)] “Board” means the board of land and natural resources.
- [(2)] “Department” means the department of land and natural resources.
- [(3)] “Game” means birds and mammals designated, by law or by rule, for hunting.
- (4) “Predators” mean animals destructive of game or wildlife by nature of their predatory habits, including mongooses, cats, dogs, and rats.
- (5) “Wildlife” means any member of any non-domesticated species of the animal kingdom, whether reared in captivity or not, and includes any part, product, egg, or offspring thereof.]”

SECTION 2. Section 183-1.5, Hawaii Revised Statutes, is amended to read as follows:

“[]§183-1.5[] **Duties in general.** The department shall:

- (1) Gather[,] and compile[, tabulate, and publish from time to time,] information and statistics concerning the area, location, character, and increase and decrease of forests [and wildlife] in the State;
- (2) Gather and compile information as necessary concerning trees, plants, and shrubs [, and wildlife] recommended for planting [or release] in different localities, including the care and propagation of trees[,] and shrubs[, and wildlife] for protective, productive, and aesthetic purposes and other useful information, which the department [in its discretion may deem] deems proper;
- (3) Have the [care, custody, control, and regulation of] power to manage and regulate all lands which may be set apart as forest reservations[, public hunting areas, and wildlife sanctuaries under the terms of this title];

- (4) Devise ways and means of protecting, extending, increasing, and utilizing the forests and forest reserves, more particularly for protecting and developing the springs, streams, and sources of water supply to increase and make [such] that water supply available for use;
- (5) Devise and carry into operation, ways and means by which forests and forest reservations can, with due regard to the main [objects in] objectives of title 12, be made self-supporting in whole or in part;
- [(6) Establish, maintain, and conduct at such places within the State, wildlife propagating stations;
- (7) Pursuant to sections 187-1.2 to 187-1.4, import wildlife for propagating purposes;
- (8) Pursuant to sections 187-13 and 187-14, destroy predators deemed harmful to wildlife and game;
- (9)] (6) Formulate and from time to time recommend to the governor and legislature such additional legislation as it deems necessary or desirable for better implementing the objectives of title 12;
- [(10)] (7) [Make and publish,] Publish, at the end of each year, a report of the expenditures and proceedings of the department and of the results achieved by the department, together with such other matters as are germane to the subject matter under title 12 and which the department [may deem] deems proper.”

SECTION 3. Section 183-2, Hawaii Revised Statutes, is amended to read as follows:

“§183-2 Rules. Subject to chapter 91, the department shall [make,] adopt, amend, and repeal rules for and concerning the preservation, protection, regulation, extension, and utilization of forest reserves [wildlife sanctuaries, game management areas, and public hunting areas] designated by the department. [The department may also make, amend, and repeal rules for the purpose of protecting, conserving, propagating, and harvesting introduced and transplanted wildlife and game. The rules may include size limits, bag limits, open and closed seasons, specifications of hunting gear which may be used or possessed, and the conditions of entry into public hunting areas, game management areas, and wildlife sanctuaries. The rules may vary from county to county and may specify certain days of the week or certain hours of the day in designating open seasons.]

All rules [made as aforesaid,] shall have the force and effect of law.”

SECTION 4. Hawaii Revised Statutes is amended by adding a new chapter to be designated as chapter 183D and to read as follows:

“CHAPTER 183D WILDLIFE

PART I. GENERAL PROVISIONS

§183D-1 Definitions. As used in this chapter, unless the context indicates otherwise:

“Aquatic life” means any type of species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment, and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, and other parts thereof.

“Board” means the board of land and natural resources.

“Department” means the department of land and natural resources.

“Game” means birds and mammals designated by law or by rule for hunting.

“Game birds” means birds designated by law or by rule for hunting.

“Game mammals” means mammals designated by law or by rule for hunting.

“Predators” means animals destructive of wildlife by nature of their predatory habits, including mongooses, cats, dogs, and rats.

“Take” means to injure, hunt, shoot, wound, kill, trap, net, capture, or possess.

“Wild birds” means birds, other than game birds, living in a wild and undomesticated state, and the young and eggs of those birds.

“Wild mammals” means mammals, other than game mammals, living in a wild and undomesticated state, and the young of those mammals.

“Wildlife” means any nondomesticated member of the animal kingdom, including game, whether reared in captivity or not, and includes any part, product, egg, or offspring thereof, except aquatic life as defined in this section.

§183D-2 Powers and duties of department. The department shall:

- (1) Manage and administer the wildlife and wildlife resources of the State;
- (2) Enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction;
- (3) Establish and maintain wildlife propagating facility or facilities;
- (4) Subject to the provisions of title 12, import wildlife for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, game for the purpose of increasing the food supply of the State; provided that, when in the discretion of the department the public interest will not be materially interfered with by so doing, the department may propagate and furnish wildlife to private parties, upon such reasonable terms, conditions, and prices as the department may determine;
- (6) Ascertain, compile, and disseminate, free of charge, information and advice as to the best methods of protecting, propagating, and distributing wildlife in the State and the waters subject to its jurisdiction;
- (7) Gather and compile information and statistics concerning the area, location, character, and increase and decrease of wildlife in the State;
- (8) Gather and compile information concerning wildlife recommended for release in different localities, including the care and propagation of wildlife for protective, productive, and aesthetic purposes and other useful information, which the department deems proper;
- (9) Have the power to manage and regulate all lands which may be set apart as game management areas, public hunting areas, and wildlife sanctuaries;
- (10) Pursuant to section 183D-65 of this chapter, destroy predators deemed harmful to wildlife; and
- (11) Formulate, and from time to time recommend to the governor and legislature, such additional legislation necessary or desirable to implement the objectives of title 12.

§183D-3 Rules. Subject to chapter 91, the department shall adopt, amend, and repeal rules:

- (1) Concerning the preservation, protection, regulation, extension, and utilization of, and conditions for entry into wildlife sanctuaries, game management areas, and public hunting areas designated by the department;
- (2) Protecting, conserving, monitoring, propagating, and harvesting wildlife; and
- (3) Concerning size limits, bag limits, open and closed seasons, and specifications of hunting gear which may be used or possessed.

The rules may vary from county to county or in any part of the county and may specify certain days of the week or certain hours of the day in designating open seasons. All rules shall have the force and effect of law.

§183D-4 Game management areas, wildlife sanctuaries, public hunting areas. For the purposes of preserving, protecting, conserving, and propagating wildlife, the department may establish, maintain, manage, and operate game management areas, wildlife sanctuaries, and public hunting areas on land under its control as it deems desirable and enter into agreements for taking control of privately owned lands for those purposes.

§183D-5 Penalties. (a) Any person violating section 183D-21, 183D-22, 183D-23, 183D-24, 183D-25, 183D-33, or 183D-63 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a fine of not less than \$50 nor more than \$500, or imprisonment of not more than thirty days, or both;
- (2) For a second conviction within five years of a previous conviction, by a fine of not less than \$150 nor more than \$500, or by imprisonment of not more than thirty days, or both; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than \$300 nor more than \$500, or by imprisonment of not more than thirty days, or both.

(b) Any person violating section 183D-2, 183D-3, 183D-26, 183D-27, 183D-31, 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction by a fine of not less than \$100 nor more than \$1,000, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a fine of not less than \$250 nor more than \$1,000, or by imprisonment of not more than one year, or both; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not more than one year, or both.

(c) Any person who violates section 183D-34, 183D-35, 183D-36, 183D-37, 183D-38, 183D-39, 183D-40, 183D-41, or 183D-42 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or imprisoned not more than thirty days, or both.

(d) In addition to any other penalty imposed under this section, a fine of \$25 shall be levied for each bird illegally taken under this chapter and a fine of \$100 shall be levied for each mammal illegally taken under this chapter.

(e) Any person who is convicted of violating any of the game laws of the State shall immediately have their hunting license forfeited and any person

convicted for a second offense shall not be granted a license to hunt for a period of three years after the date of the second conviction.

§183D-6 Permits for taking wildlife for scientific, educational, or propagation purposes. (a) Notwithstanding the provisions of any other law, the department may take wildlife for scientific, educational, or propagation purposes, except as prohibited by chapter 195D.

(b) Notwithstanding the provisions of any other law, the department may issue permits to any person to take wildlife in any part of the State, for scientific, educational, or propagation purposes, except as prohibited by chapter 195D and subject to the rules adopted by the department. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) Any wildlife taken under the authority of the permit shall be accompanied by the permit while being taken or transported and shall be exempt from seizure while being transported or while in possession, in accordance with the permit.

§183D-7 Expenditures. (a) The department may expend all appropriations made for the purpose of effectuating the objectives of title 12. All expenditures by the department shall be approved and certified by the board.

(b) To further the purposes of title 12, the department may use lands set apart for its use by the governor, and may accept gifts and contributions of property or service or enter into contracts for the furtherance of the purposes of this chapter, from the State or from any county or other government or from private parties.

§183D-8 Cooperation with other governmental authorities. The department shall endeavor to secure the cooperation and assistance of and shall cooperate with the appropriate agency of the United States, or other governmental authorities having an interest in the subject matter of this chapter, in every way possible, for the promotion of the purposes of this chapter. More specifically the department may permit the appropriate agency of the United States to occupy any land or building and use any appliance, apparatus, or property held or controlled by the department, either independently or in conjunction with the department, upon such terms and conditions as the department and the agency may mutually agree.

§183D-9 Federal aid in wildlife restoration. The State assents to the provisions of the Pittman-Robertson Federal Aid in Wildlife Restoration Act (50 Stat. 917, 16 U.S.C. §669), as amended. The department shall perform those acts as may be necessary to the conduct and establishment of cooperative wildlife restoration and management projects, as defined in the Act of Congress and in compliance with the Act and rules and regulations promulgated by the Secretary of the Interior thereunder; provided that federal aid funds granted under the Act shall be used for the purposes of approved projects, and no funds accruing to the State from license fees paid by hunters shall be diverted for any purpose other than as provided for in the Act and rules and regulations promulgated pursuant thereto.

§183D-10 Disposition of revenues. All moneys collected each month as fees for hunting permits or licenses, and all other moneys collected under the provisions of any law relating to the importation, taking, catching, or killing of game, wildlife, and products thereof shall be deposited with the director of finance to the credit of the general fund. The moneys collected shall be available for expenditure only by the department in accordance with appropriations authorized by the legislature and shall be expended by the department for the

importation into, and the management, preservation, propagation, and protection of, game or wildlife in the State, and for the payment of expenses incurred in the prosecution of offenders against the game and wildlife laws of the State.

§183D-11 Informer's fee. One-half of the fine imposed and collected in all cases where the defendant has been convicted for a violation of any of the provisions of this chapter, chapter 187, or 195D shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply, if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department.

PART II. HUNTING IN GENERAL

§183D-21 Hunting licenses required. No person shall hunt, pursue, kill, or take any game bird or mammal without first procuring a hunting license; provided that, section 183D-32 to the contrary notwithstanding, no license shall be required of employees of the department or of other persons, who may be authorized in writing by the board to destroy game birds or game mammals injurious to forest growth or agriculture, or that constitute a nuisance or a health hazard.

§183D-22 Application and issuance of licenses; fees. Hunting licenses shall be issued by agents of the department upon written application in the form prescribed by the department and the payment of a fee as provided in this section. The application shall require a statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes. The fee shall be:

- (1) \$7.50 for any person who has resided in the State for one year or longer, or who is a member of the armed forces of the United States on active duty and the spouse and children thereof;
- (2) \$15 for all other persons; and
- (3) Free to all persons sixty-five years of age or older.

§183D-23 Licenses expire when. All licenses shall expire on June 30 next following the date of issuance.

§183D-24 Duplicate licenses. Duplicate licenses may be issued upon application stating under oath that the original license has been lost or destroyed and upon payment of a fee of 50 cents.

§183D-25 Licenses; display thereof. No person to whom a hunting license has been issued shall permit any other person to carry, display, or use the license in any way. Every person to whom a hunting license has been issued shall physically possess the license when hunting and shall show the license upon the demand of any officer authorized to enforce the game laws of the State. No person, upon the request of an officer, shall refuse to show the license or withhold permission to inspect the person's game bag, container, hunting coat or jacket, or carrier, or vehicle of any kind where game might be concealed.

§183D-26 Hunting on private lands prohibited. (a) No person shall enter upon any land or premises belonging to, held, or occupied by another, for the purpose of hunting or to take any kind of wildlife including game without first having obtained permission from the owner or a duly appointed agent, if the owner is the occupier or holder, or if the owner has let another occupy or hold the same, without having first obtained the permission of the occupier or holder thereof, or the duly appointed agent of the occupier or holder.

(b) No prosecution shall be brought under this section, except upon the sworn complaint of the owner, occupier, or holder of the land or premises, or a duly appointed agent, or if the owner, occupier, or holder is either a corporation

or a partnership, then the complaint shall be sworn to by an officer of the corporation or by one of the members of the partnership.

§183D-27 Night hunting on private lands; prohibition. Notwithstanding section 183D-26, no person shall take or pursue any game bird, game mammal, wild bird, or wild mammal at night on privately owned lands. For the purpose of this section, "night" means the period between one-half hour after sunset and one-half hour before sunrise.

§183D-28 Hunter safety training program. (a) The department shall establish a hunter safety training program to provide instruction in hunter safety, principles of conservation, and sportmanship. The department may establish a hunter safety officer position to administer the program, outline all phases of instruction, conduct general supervision of individual programs, and distribute information on the program, or may contract the program to a qualified organization.

(b) The department may construct, operate, and maintain public outdoor and indoor target ranges for the program.

(c) The department shall prepare reports as may be necessary to seek approval under Public Law 91-503 for federal assistance in this program of hunter safety, conservation, and sportmanship.

§183D-29 Agents to sell licenses. (a) The department may designate agents to sell hunting licenses in accordance with this section. Each agent shall be bonded by the department in a sum which shall cover the value of the licenses delivered to the agent. The bond shall secure the faithful accounting and payment to the department of the funds collected from the sale of the licenses. Agents shall report all sales of licenses to the department monthly and not later than the fifteenth day of the month following the month covered by the report. Wilful failure to make a report shall be cause for cancellation of the agency and upon such cancellation a full accounting and settlement for all licenses shall be made forthwith. All fees collected shall be remitted to the department at the same time as the report of license sales is made.

(b) Agents shall receive five per cent of the value of licenses sold and the sum shall be deducted from the total value of fees collected before remittance is made. All reports on license sales shall be made on forms supplied by the department. The duly authorized agents of the department may administer such oaths as are required in license applications. Chapter 40 shall not apply to the agents.

PART III. GAME BIRDS

§183D-31 Game birds, declaration by department. (a) The department may declare, by rule adopted pursuant to chapter 91, any bird which has been or may be introduced into the State to be propagated for hunting purposes, to be a game bird within the meaning of this chapter.

(b) Nothing in this section shall be construed as permitting the taking, stalking, pursuing, or killing of any game bird under domestication or in the legal possession or control of any person, or where otherwise prohibited by law or rule of the department.

§183D-32 Open and closed seasons and bag limits on game birds. (a) No person shall intentionally, knowingly, or recklessly take, kill, pursue, or have in possession any bird declared as a game bird by law or by rule of the department at any time, except during an open season duly established and designated by the department for taking, killing, or possessing the same, or except as provided in sections 183D-21, 183D-33 183D-34, 183D-35, 183D-36, 183D-37, 183D-38, 183D-39, 183D-40, 183D-41, or 183D-42.

(b) Nothing in this section shall be construed as making it unlawful for any person to possess under refrigeration, a number of game birds, legally killed, greater than that fixed as a bag limit by any rule of the department, but not in excess of the daily bag limit for five days.

§183D-33 Shooting certain pigeons prohibited. No person, other than the owner thereof, shall shoot, maim, kill, or detain any Antwerp, messenger, or homing pigeon.

§183D-34 Private and commercial shooting preserve and farmer's license. (a) For the purpose of encouraging private and commercial shooting preserves, game bird farming, and the domestication and propagation of game birds, a license authorizing the licensee to engage in the business of conducting a private and commercial shooting game preserve, or breeding and selling game birds, as limited in this section, shall be issued by the department pursuant to rules as may be adopted by the department, to any responsible resident person duly applying therefor. The licenses shall expire on June 30 of each year.

(b) The fee for the license shall be \$1; provided that the department may authorize any governmental agency to breed and sell such birds, and may authorize any person to possess lawfully obtained game birds.

§183D-35 Importation; sale of game birds. (a) Any responsible resident of good character who is a holder of the license defined in section 183D-34 may bring within the State and have the custody of, for the purpose of conducting a private and commercial shooting preserve, domestication, propagation, or selling, as provided in this chapter, any game bird, except those prohibited by section 150A-6.

(b) Any game bird brought within the State or reared in captivity within the State may be sold or transported for propagation, for food, or for other purposes, if tagged as provided in section 183D-36.

§183D-36 Carcass to be tagged. Any licensee may possess, transport, or sell any game bird brought into the State or raised in captivity within the State as set forth in this section. The carcasses of the game birds may be possessed, transported, or sold at any time, if tagged as directed by the department with an indestructible tag or seal to be supplied by the department to the licensee upon payment of the actual cost.

§183D-37 Retail dealer's license. The keeper of a hotel, restaurant, boarding house, or club, or any retail dealer in meats, may sell carcasses or parts thereof purchased or received from a licensed game bird farm, tagged and sealed, to any patron or consumer for actual consumption, after securing a license for those purposes from the county director of finance. The license shall cost \$5 a year, and shall expire on June 30 of each year.

§183D-38 Transportation. Any common carrier, at any time, may transport game birds, if the carcasses or parts thereof are tagged or sealed, but to every coop or package containing tagged or sealed game birds, there shall be affixed an additional tag or label upon which shall be plainly printed or written the name of the licensee, the name of the consignee, the name of the person by whom the same was tagged or sealed, and the number of game birds, the carcasses, or parts thereof contained therein.

§183D-39 Report by licensed private and commercial shooting preserve operator; farmer. The licensee shall make quarterly reports on the first of July, October, January, and April to the department on forms to be furnished by the department. The report shall give a correct statement of:

- (1) The total number of game birds owned, killed, transported, or sold during the period under this chapter;

- (2) The names of the persons to whom the same were transported or sold;
- (3) The names of the persons by whom the same were tagged and sealed;
- (4) The increase of all classes of game birds; and
- (5) Such other data as the department deems necessary for the proper protection of the public and observance of the game laws.

Each report shall be verified by the affidavit of the licensee.

§183D-40 Permit; authority under. After first having obtained a permit from the department, a licensee may obtain any number of game birds from any state game farm or from city park boards from another county, state, or foreign jurisdiction, or, with the consent of the department, transfer to another licensee any game bird taken or secured under this chapter. A licensee, after obtaining a permit may sell, give away, or dispose of the eggs of any game bird, lawfully in the licensee's possession, for propagation purposes only.

§183D-41 Game birds when exclusive property. Game birds maintained upon enclosed land, upon which notice has been posted that the same is a game farm or upon any land or property upon which notice has been posted that the same is a private and commercial shooting preserve, shall be the exclusive property of the licensed holder.

§183D-42 Inspection of private and commercial shooting preserve and game farm. Any member of the board or an authorized representative may enter, at any time, upon any private and commercial shooting preserve or game farm of a licensee for the purpose of inspection thereof, or for the purpose of enforcing this chapter or any game law.

PART IV. GAME MAMMALS

§183D-51 Game mammals defined; exception. (a) For the purposes of enforcing the wildlife laws of the State the following named mammals are hereby designated as game mammals when living in a wild or feral state not under domestication: deer (Family Cervidae), pronghorn (Family Antilocapridae), goat (*Capra hircus*), sheep (*Ovis aries*), cattle (*Bos taurus*), pig (*Sus scrofa*), and any other mammal that may be or has been introduced into the State and released for hunting and for which a hunting season is established by law or by rule of the department.

(b) Nothing in this section shall permit the taking, catching, pursuing, or killing of any mammal in the legal possession or control of any person, or where otherwise prohibited by law or by rule of the department.

PART V. WILD BIRDS AND OTHER WILDLIFE

§183D-61 Permits to take wild birds, game birds, and game mammals. (a) The department may adopt rules pursuant to chapter 91:

- (1) Authorizing the taking and collecting of wild birds, game birds, and game mammals for scientific and educational purposes, or for the purpose of distributing wild birds to different localities in the State pursuant to this title;
- (2) Authorizing the keeping of wild birds in captivity for the protection, treatment for injury or disease, propagation, and such other similar purposes as are consistent with the preservation, protection, and conservation of wild birds;
- (3) Authorizing the taking and destruction of those wild birds, game birds, and game mammals the department may have found after investigation to be destructive to crops or to other game birds and

game mammals or otherwise harmful to agriculture, or to constitute a nuisance or a health hazard; or

- (4) Where species of wild birds, game birds, and game mammals are generally destructive to crops or otherwise harmful to agriculture, or constitute a nuisance or a health hazard within a district, authorizing their destruction within that area without requiring permits or reports.

(b) Except as provided in subsection (a)(4), the rules shall require the person or persons seeking authority to apply for and obtain a written permit from the department. The permits may prescribe terms and conditions the department deems necessary to prevent abuse of the authority granted thereby, and may be canceled by the department, after notice and hearing, for the violation of any term or condition.

§183D-62 Taking, injuring, or destroying wild birds prohibited. Except as provided in section 183D-61, no person shall intentionally, knowingly, or recklessly take, catch, injure, kill, or destroy, or attempt to take, catch, injure, kill, or destroy, any wild bird, or to keep or have possession of any wild bird, dead or alive, or to damage or destroy a nest of any wild bird.

§183D-63 Keeping wild birds in captivity prohibited. Except as provided in section 183D-61, no person shall keep in captivity any wild bird unless the bird was lawfully imported into the State or was bred in captivity from birds lawfully imported.

§183D-64 Transportation of wild birds from the State prohibited. No person shall transport or cause to be transported by any means any wild bird from any part of the State; provided that specimens of wild birds required for scientific or educational purposes may be exported from the State only when authorized under permits issued by the department.

§183D-65 Posting; destruction of predators. (a) On any game management area, public hunting area, or forest reserve or other lands under the jurisdiction of the department, predators deemed harmful to wildlife by the department may be destroyed by any means deemed necessary by the department.

(b) Where the predators are dogs and the methods of destruction may endanger pets or hunting dogs, all major points of entrance into the area where the predators are to be destroyed shall be posted with signs indicating that a program of predator destruction in the area is in progress. Any predator may be destroyed in a posted area without claim or penalty whether or not the predator is the property of some person."

SECTION 5. Chapter 191, Hawaii Revised Statutes, is repealed.

SECTION 6. Chapter 192, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 187-13, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 187-14, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Reciprocal Enforcement of Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 576-34, Hawaii Revised Statutes, is amended to read as follows:

“§576-34 Order of support. If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order[.], and it may enforce the order to the same extent as is provided by law in any other suit or proceeding cognizable by the court.”

SECTION 2. Section 576-35.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The obligor has twenty days after the mailing of the notice of the registration in which to petition the court to vacate the registration or to provide for other relief. If the obligor does not so petition, the registered support order is confirmed. Upon the expiration of the notification period, the court may enforce the order and collection of arrears to the same extent as provided in section 571-52.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

A Bill for an Act Relating to Child Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-52, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“§571-52 Assignment by court order of future wages for payments of support. (a) Whenever any person has been ordered to pay an allowance for the support, maintenance, or education of a [minor] child, or for the support and maintenance of a spouse or former spouse, and fails or refuses to obey or perform the order and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order which shall operate as an assignment by the person to the clerk of the court where the order is entered, for the benefit of the [minor] child or spouse, of such amounts at such times as may be specified in the order, from the salary, wages, or other income due or to become due in the future to such person from [his] the person's employer or successor employers, until further order of the court. The order of assignment shall be effective immediately after service upon an employer of a true copy of the order, which service may be effected by certified or registered mail or by personal delivery. Thereafter, the employer shall for each pay period withhold from the salary, wages, or other income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court as set forth in the order, as much as may

remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change which would affect the order of assignment or the disbursement thereof. Compliance by an employer with the order of assignment shall operate as a discharge of the employer's liability to the employee for that portion of the employee's earnings withheld and transmitted to the clerk of court, whether or not the employer has withheld the correct amount. The term "employer" as used in this section includes the United States government, the State, and any political subdivision thereof.

(b) Notwithstanding the provisions of subsection (a), whenever a court has ordered any person (hereinafter "obligor") to make periodic payments toward the support of a [minor] child and, upon petition of the person to whom such payments are ordered to be made, or that person's assignee, the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one-month period under the order, judgment, or decree providing for child support, the court may order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid. Such an order shall operate as an assignment by the obligor to the clerk of the court where the order is entered, and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this subsection, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment."

SECTION 2. Section 571-52.2, Hawaii Revised Statutes, is amended to read as follows:

"[]§571-52.2[] Automatic assignment by court order of future wages for payment of child support. (a) Notwithstanding the provisions of section 571-52, the court may order an assignment of future earnings or income when:

- (1) The court has ordered any person (hereinafter the "obligor") to make periodic payments toward the support of a [minor] child pursuant to a court order, judgment, or decree; and
- (2) The court order, judgment, or decree provides for an automatic assignment of the obligor's wages upon the obligor's failure to timely pay any child support that the obligor is required to pay through the clerk of the court; and
- (3) The court or clerk of the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of

payments which would become due over a one month period under the order, judgment, or decree providing for child support.

(b) The court, on its own motion, may order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid.

(c) The court or the clerk of the court shall provide the obligor written notice at least fourteen days in advance of entering an automatic wage assignment and inform the obligor the automatic wage assignment will issue on a certain date unless the obligor files with the court or the clerk of the court a written objection to the automatic assignment and a written request for a hearing. If the obligor files the written objection and the written request, the court or the clerk of the court shall not issue the automatic assignment of future earnings or income until a hearing is held and the matter is resolved. The court shall establish and implement other notice procedures as may be necessary to adequately protect the obligor's right to procedural due process.

(d) The order for automatic assignment shall operate as an assignment by the obligor to the clerk of the court where the order is entered, and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. The assignment shall remain in effect throughout the employment of the obligor and shall be terminated when appropriate by the agency or department which initiated the assignment. In the event that the obligee retains private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment, the agency or department having secondary responsibility. If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee, the agency, or the department.

For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this section, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.

(e) Any employer who fails to comply with an order of assignment of future earnings or income, as provided for under this section, shall be liable to the obligee or the obligee's assignee for whom support was required to be paid, for the full amount of all sums ordered to be withheld and transmitted and not otherwise done so.

[(e)] (f) The provisions of [sections] section 571-52(c) and (d) shall apply to all orders for automatic assignments issued under this section."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

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H.B. NO. 267

A Bill for an Act Relating to Child Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

“§378-2 Discriminatory practices made unlawful; offenses defined. It shall be an unlawful discriminatory practice:

- (1) For [an] any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (2) For [an] any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (3) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (4) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (5) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because [he] the individual has opposed any practice forbidden by this part or [because he] has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (6) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (7) For any employer or labor organization to refuse to enter into an apprenticeship agreement, as defined in section 372-2, because of the race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record of an apprentice; provided that no apprentice shall be less than sixteen years of age;
- (8) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard[.]; or

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- (9) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 178

H.B. NO. 363

A Bill for an Act Relating to Drivers' Education Fund Underwriters' Fee.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 294-35.5, Hawaii Revised Statutes, is amended to read as follows:

"§294-35.5 Drivers' education fund underwriters' fee. (a) There is assessed and levied upon each insurer and self-insurer, as defined in section 294-2, a drivers' education fund underwriters' fee of [\$1.25] \$2 a year, on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable in full on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit these underwriters' fees into a special drivers' education fund account which shall be allocated for [the] each fiscal year [1977-78 and the fiscal years thereafter, forty per cent], fifty per cent to the commissioner which shall be expended for the operation of the driver education program provided for in section 286-128(m) and [sixty per cent] fifty per cent to the superintendent of education to support the driver education program administered by the department of education for high school students; provided that all fees received, under subsection (a), which are derived from motorcycles, motor scooters, or similar vehicles, shall be expended by the University of Hawaii community college employment training office for the operation of a driver education program for operators of motorcycles, motor scooters, or similar vehicles.

(c) The commissioner of motor vehicle insurance shall make all necessary rules and regulations for the execution of this section and the distribution of this fund."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 179

H.B. NO. 492

A Bill for an Act Relating to Bees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are two parasitic honey bee mites, the *Varroa jacobsoni* and the *Acarapis woodi*, that are presently infesting the honey bee colonies in South America and Central America. The life span of honey bees infested with the mites are significantly shortened because they become malformed or their vital systems begin functioning abnormally. Infestations of honey bee colonies have resulted in a rapid and widespread decrease in honey bee populations and a concomitant decrease in honey production. Thus far, although these mites have not reached Hawaii's shores, there is concern among Hawaii's beekeepers that the parasites can easily be transported on live or dead honey bees that are being imported to Hawaii.

The legislature finds that there is a growing demand on the mainland for Hawaii's queen bees for breeding purposes and for the honey produced by the honey bees. The honey bee industry is a growing industry that has great potential to significantly increase the contribution of the agricultural industry to the State's overall economy and it is in the public interest to take measures to ensure the continued viability of the beekeeping industry. Accordingly, it is the purpose of this Act to protect the honey bee industry by prohibiting the importation of honey bees.

SECTION 2. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

“§150A-6 Soil, snakes, injurious insects, etc., importation prohibited. All persons are prohibited from receiving for transportation, bringing, or causing to be brought to the State, for the purpose of debarkation or entry thereinto, any of the following named articles:

- (1) Soil, provided that limited quantities of soil may be imported into the State for experimental or other scientific purposes, under permit with conditions prescribed by the department.
- (2) Rocks, plants, plant products, or any commodity with soil adhering thereto.
- (3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal in any stage of development that is detrimental or potentially harmful to agriculture or horticulture or animal or public health, or natural resources including native biota, or has an adverse effect on the environment as determined by the board; provided that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purposes of exhibition in a public zoological park, but only after the board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment, and after the board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include the continuing supervision and control by the board and shall provide that the board may determine the manner in which such snakes shall be disposed of or destroyed. In case of the death of one or both snakes, the government agency may import and maintain replacements subject to the above conditions.
- (4) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing herein shall prohibit the importation of bee semen.

- (4) (5) The board shall maintain either a list of animals and plants which may be imported into the State or a list of animals and plants which are prohibited entry into the State.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 180

H.B. NO. 519

A Bill for an Act Relating to Motor and Other Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

“§290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles. (a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state where the vehicle will be towed and held. The notice shall be of such size and be placed in a location reasonably calculated to call the sign to the attention of potential parkers.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall charge no more than \$25 a tow, \$37.50 for a tow using a dolly, plus \$1.00 a mile for any towing mileage over five miles, and [3.50] \$6 for each twenty-four hour period of storage or fraction thereof. The towing company shall determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state that if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk. Where the owners have not been so notified, then the owner may recover his car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. A mail receipt signed by the registered owner is prima facie evidence of notification. A person who has been charged in excess of the charges permitted under this section may sue for damages sustained, and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of such damages and reasonable attorney's fees together with the cost of suit.

(c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company,

or his authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

(d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due him for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal or registered owner of the vehicle if he can be found. If he cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this part is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

(f) Each county by ordinance may enact additional restrictions to this section or may enact criminal sanctions in this area as required."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 181

H.B. NO. 557

A Bill for an Act Relating to Motor Vehicle Reparatons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 294-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [The commissioner shall accumulate experience data on a yearly basis for all motor vehicle accidents in the State resulting in accidental harm, and shall tabulate the amounts of benefits paid or reserved, hereinafter collectively termed "claims", for expenses specified in section 294-2(10)(A) and (B) for each of these accidents. He shall perform such actuarial evaluations of this data necessary to determine, annually, that specific figure in dollar value, below which ninety percent of all non-zero motor vehicle accident medical-rehabilitative claims arising from motor vehicle accidents occurring during the next no-fault policy term year are expected to fall. This specific figure shall be utilized annually as the medical-rehabilitative limit for all accidents occurring during the next no-fault policy term year for the purpose of section 294-6(a)(2).] The commissioner shall annually revise the medical-rehabilitative limit in the following manner. The commissioner shall determine the percentage change in the medical care category of the consumer price index for all urban consumers for the Honolulu metropolitan area as published by the bureau of labor statistics from April of the previous year to April of the current year. The medical-rehabilitative limit for the next no-fault policy term year shall be the current medical-rehabilitative limit increased or decreased by the product of the current medical-rehabilitative limit multiplied by the percentage change in the medical

care index. The medical-rehabilitative limit shall then be rounded to the nearest \$100 for actual use, but the exact value shall be used in subsequent determinations under this section. The commissioner shall use the amount of \$5,000 as the initial threshold base on which calculations shall be made in accordance with this section for the purpose of determining the medical-rehabilitative limit for the next no-fault policy term year."

SECTION 2. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of "no-fault benefits" to read as follows:

- "(10) "No-fault benefits" with respect to any accidental harm shall be subject to an aggregate limit of \$15,000 per person or his survivor and means:
- (A) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, x-ray and may include any non-medical remedial care and treatment rendered in accordance with the teachings, faith or belief of any group which depends for healing upon spiritual means through prayer;
 - (B) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
 - (C) Monthly earnings loss measured by an amount equal to the lesser of:
 - (i) [\$800 per] \$900 a month[.]; or
 - (ii) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity.
 - (D) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to, (i) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of himself or his family up to \$800 per month, (ii) funeral expenses not to exceed \$1,500, and (iii) attorney's fees and costs to the extent provided in section 294-30(a);
provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section 294-24(b)(2), shall not include benefits under subparagraphs (A), (B), and (C) for any person receiving public assistance benefits."

SECTION 3. Section 294-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to be a no-fault policy, an insurance policy covering a motor vehicle shall provide, in addition to the coverage specified in section 294-4, insurance to pay on behalf of the owner or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others, except property owned by, being transported by, or in the charge of the insured, which arise out of the ownership, operation, maintenance, or use of the motor vehicle:

- (1) Liability coverage of not less than [\$25,000] \$35,000 for all damages arising out of accidental harm sustained by any one person as a

- result of any one accident applicable to each person sustaining accidental harm arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle.”

SECTION 4. Section 431-448, Hawaii Revised Statutes, is amended to read as follows:

“§431-448 Automobile liability; coverage for damage by uninsured or underinsured motor vehicle. (a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered, issued for delivery, or renewed in this State, with respect to any motor vehicle registered or principally garaged in this State, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 287-7, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom, provided[, however,] that the coverage required under this section shall not [be applicable] apply where any insured named in the policy shall reject the coverage in writing.

(b) Each insurer shall offer to each policyholder or applicant for a motor vehicle liability policy optional additional insurance coverage for loss resulting from bodily injury or death suffered by any person legally entitled to recover damages from owners or operators of underinsured motor vehicles.

(c) The term “underinsured motor vehicle,” as used in this section, means a motor vehicle with respect to the ownership, maintenance, or use of which the sum of the limits of liability of all bodily injury liability insurance coverage applicable at the time of loss to which coverage afforded by such policy or policies applies is less than the liability for damages imposed by law. A motor vehicle shall also be deemed uninsured within the meaning of this section if, after the occurrence of a loss described in this section, the owner or operator thereof is unknown.”

SECTION 5. Section 294-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All premium rates for motor vehicle insurance shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience [within this State], to catastrophe hazards, if any, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective loss experience [within the State]; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold [within the State]; past and prospective expenses in the sale and administration of motor vehicle insurance [within the

- State]; and, optionally, to past or prospective loss, sales and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates[.];
- (2) Due consideration shall be given to the investment income from reserves and unearned insurance premiums and other unearned proceeds received on account of motor vehicle insurance sold [in this State], and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates[.];
 - (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable[.];
 - (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses[.];
 - (5) Rates shall not be excessive, inadequate, or unfairly discriminatory[.];
 - (6) Rate making and regulation of rates for all insurance subject to this chapter shall be governed by chapter 431; subject[, however,] to the following:
 - (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with [the provisions of] section 431-703;
 - (B) Except as provided in subsection (j) the commissioner shall establish rates and shall consider with other relevant factors loss experience [in this State] and the investment income of the insurers, and insofar as [section] sections 431-694 and [section] 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not [be applicable herein;] apply;
 - (C) To afford all interested persons an opportunity to be heard the commissioner [shall], after notice is published pursuant to chapter 91, shall hold a public hearing whenever rates are to be increased;
 - (D) The initial rates shall be reviewed prior to September 1, 1975, and thereafter shall be reviewed at least every two years. The commissioner shall issue a public statement or an order approving the rates for the benefit of the public;
 - (E) The commissioner shall order insurers to rebate to policyholders any excessive profit realized by insurers from their operations.”

SECTION 6. This Act shall not apply to any case in which a settlement was reached or final adjudication occurred prior to its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 1986, except that section 1 shall take effect upon approval of this Act.

(Approved June 1, 1985.)

ACT 182

H.B. NO. 830

A Bill for an Act Relating to Prohibited Motor and Other Vehicle Equipment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART III. PROHIBITED EQUIPMENT

§291- Blue lights prohibited for motor vehicles, motorcycles, motor scooters, bicycles, mopeds. (a) No person shall operate, affix or cause to be affixed, knowingly display or knowingly possess any lamp, reflector, or illumination device which appears to be the color blue upon any motor vehicle, motorcycle, motor scooter, bicycle, or moped except for law enforcement vehicles authorized and approved by the chief of police of the county in which the vehicle is operated. This prohibition shall not apply to factory-installed instrument illumination.

(b) Any violation of this section shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 183

H.B. NO. 1000

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 360E, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect December 31, 1985.

(Approved June 1, 1985.)

ACT 184

H.B. NO. 1060

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding new sections to be appropriately designated and to read as follows:

“**§431- Scope.** The provisions of this Act shall apply to all domestic, foreign and alien insurers who are authorized to transact business in this State.

§431- Filing requirements. (a) Each domestic, foreign and alien insurer who is authorized to transact insurance in this State shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the NAIC.

(b) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section.

§431- Immunity. In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this Act and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

§431- Revocation of Certificate of Authority. The commissioner may suspend, revoke or refuse to renew the Certificate of Authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 185

H.B. NO. 1163

A Bill for an Act Relating to Child Victims and Witnesses; Rights and Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 621, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§621- Accompaniment of children at judicial proceedings.** A child less than fourteen years of age, involved in a judicial proceeding, including a grand jury proceeding, shall have the right to be accompanied by a parent, a victim/witness counselor, or other adult designated by the court. The accompanying person may be placed side by side with the child at the discretion of the presiding judge or court officer; provided that this position does not interfere

with the proceedings of the court. The accompanying person shall not communicate in any manner with the child unless directed by the presiding judge or court officer.”

SECTION 2. New statutory material to be added is underscored.¹

SECTION 3. This Act shall take effect upon approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 186

H.B. NO. 1393

A Bill for an Act Relating to Civil Air Patrol.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-6, Hawaii Revised Statutes, is amended to read as follows:

“**§261-6 Grant for Civil Air Patrol.** (a) [The] Beginning in fiscal year 1986-1987 and in accordance with chapter 42, the sum of \$100,000 annually or so much thereof as may be necessary [is] will be granted from the airport revenue fund to carry on the operations and defray the expenses of the Hawaii Wing, Civil Air Patrol; provided that not less than \$3,000 shall be allocated to each Hawaii based Civil Air Patrol unit that meets minimum requirements established by national headquarters.

(b) There shall be expended from the sum granted only such amounts as shall be needed to repair or replace equipment which is not repaired or replaced by the United States Government[, the United States Air Force, or any other agency]; for defraying expenses incurred in [actual] rescue work or mercy missions; for aviation and civil defense training; for upkeep, replacement or purchase of communication equipment (provided that only such sums shall be expended on communication systems as will be necessary for the procurement or replacement of equipment not otherwise obtainable by grant or gift from any other source); for the purchase of aviation [gasoline] fuels and oils solely for the use of the Civil Air Patrol; and for the cost incurred in meeting the auditing requirements of CAP Manual 173-2[.] and the department. No [sum] portion of [money] this grant shall be expended for uniforms or personal equipment of any member of the Civil Air Patrol nor shall any [sum or sums of money] portion be paid [out from funds granted] for [any] salaries except as hereinafter provided.

(c) The wing commander may employ salaried assistants, who shall not be subject to chapters 76 and 77, at a salary of not more than the SR-21 salary range. The assistants shall perform [the] administrative and fiscal duties [of adjutant] and such other duties as may be required [of him] by the wing commander.

(d) All expenditures from the amount hereinabove granted shall be upon vouchers signed by the wing commander of the Civil Air Patrol.

(e) In expending the sum granted, the Civil Air Patrol shall consult and cooperate with the department of transportation to the end that the maximum education and development in aeronautical matters may be afforded and the maximum contribution to civil defense be made.

(f) The department is specifically authorized to cooperate with the Civil Air Patrol to the end stated in subsection (e) and, in particular, to furnish accommodations, goods, and services in its discretion to the Civil Air Patrol.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

ACT 187

S.B. NO. 1198

A Bill for an Act Relating to the Industrial Loan Company Guaranty Act.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to eliminate, upon the occurrence of certain events, the requirement that an industrial loan company pay to Thrift Guaranty Corporation of Hawaii the membership assessments provided in sections 408A-9 and 408A-10, Hawaii Revised Statutes. This Act also authorizes a loan by the State of Hawaii to Thrift Guaranty Corporation of Hawaii in order to permit a prompt payment to account holders of industrial loan companies presently in bankruptcy.

SECTION 2. Section 408A-5, Hawaii Revised Statutes, is amended to read as follows:

“§408A-5 Voting rights of members[.]; and election of directors. Any other law to the contrary notwithstanding, any action by the members of the guaranty corporation, including the election of a board of directors, shall be taken after a vote of the members in accordance with this section. Each member company shall be entitled to one vote plus an additional vote for each [\$1,000 of assessments, rounded to the nearest \$1,000, which such member shall have actually paid to the guaranty fund in accordance with section 408A-10; provided that no member shall be entitled to more votes than is represented by fifteen per cent of the aggregate assessments. For purposes of any actions taken prior to the initial assessment required by section 408A-10(1), including the initial election of the board, voting rights of members shall be calculated as if each member had paid the initial assessment required by section 408A-10(1).] \$1,000,000 of the member’s outstanding thrift account obligations, rounded to the nearest \$1,000,000, but no member shall be entitled to more than one representative on the board of directors of the corporation.”

SECTION 3. Section 408A-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Receivers [or], liquidators, or trustees and debtors in possession under the Bankruptcy Code of members shall be entitled to offer the assets of such members for sale to the guaranty corporation or as security for loans from the guaranty corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such members. The guaranty corporation with the approval of the bank examiner may make loans on the security of or may purchase and liquidate or sell any part of the assets of a member which [may hereafter be] has been placed in receivership or [adjudicated bankrupt,] made subject to a case under the Bankruptcy Code, but in any case in which the

guaranty corporation is acting as receiver of a member, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.”

SECTION 4. Section 408A-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

“(a) [When] If a member has [been adjudicated bankrupt] sought relief under the Bankruptcy Code or has been or is in receivership, the bank examiner shall either:

- (1) Direct the guaranty corporation to forthwith pay to each thrift account holder of the member up to \$10,000 as specified in section 408A-9; or
- (2) Withhold any direction to the guaranty corporation until it has been determined that the proceeds of the receivership or bankruptcy are insufficient to pay up to \$10,000 of each thrift account obligation as specified in section 408A-9; upon such determination the bank examiner shall direct the guaranty corporation to pay each such deficiency.”

2. Subsection (c) is amended to read as follows:

“(c) Whenever the guaranty corporation makes payments in accordance with section 408A-14(a), it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment. The guaranty corporation may waive, release, or modify in any way its right to such repayment from the estate of the member with the approval of the bank examiner.”

SECTION 5. The sum of \$10,500,000, or so much thereof as may be necessary for fiscal years 1985-1986 and 1986-1987, is appropriated or authorized from the general revenues of the State of Hawaii, or from the issuance of general obligation bonds, or any combination thereof deemed in the best interest of the State. The sums appropriated shall be expended, and the bonds authorized shall be issued by the department of budget and finance for the purposes of this Act.

When requested by the bank examiner, the director of finance shall issue such general obligation bonds as provided by law, the proceeds of which shall be used, together with any general revenues of the State, to make loans to Thrift Guaranty Corporation of Hawaii (the “guaranty corporation”), without interest and to be repaid over a term not to exceed twenty years. The loans may be made, as and when necessary, only to make payments pursuant to a plan of reorganization or liquidation that has been confirmed by the court in the bankruptcy proceedings involving Manoa Finance Company, Inc. (“Manoa Finance”), Great Hawaiian Financial Corporation (“Great Hawaiian”), and Commercial Finance, Limited (“Commercial Finance”); provided that up to \$1,000,000 of the amount herein appropriated shall be used only to make payment to thrift account holders of Commercial Finance of up to the guaranty amount provided by section 408A-9, Hawaii Revised Statutes, should a majority of those account holders so request; and provided further that the bank examiner is satisfied that the following conditions have been met:

- (1) Such plan of reorganization or liquidation must provide that:
 - (A) The amount that each thrift account holder of such member company will receive out of the debtor’s estate, when added to any guaranty payments to be made by the guaranty corpora-

- tion, shall be at least equal to the full guaranty amount required by section 408A-9(a), Hawaii Revised Statutes, less any advance or other payment previously received by such account holder from the guaranty corporation, receiver, trustee in bankruptcy, or debtor in possession; and
- (B) Any payments made by the guaranty corporation under the plan of reorganization or liquidation shall be limited to the aggregate of: (i) the amount appropriated under this section; (ii) amounts loaned by member companies specifically for the plan; and (iii) not more than \$2,000,000 of other funds belonging to the guaranty corporation.
- (2) Such plan must be confirmed within a reasonable time, not to exceed one year following the effective date of this Act, and if any such order of confirmation shall be appealed, such appeal shall have been dismissed not later than sixty days after the end of such one-year period.
- (3) Payment to the account holders must commence within a reasonable time, not to exceed ninety days after court confirmation of the plan.
- (4) Assets of the guaranty corporation and assets acquired by the guaranty corporation from Manoa Finance or Great Hawaiian shall secure the loans made by the State pursuant to this Act and any loans made by the member companies specifically for the plans of reorganization contemplated by this Act, in the following manner: The bank examiner and the member companies shall mutually designate separate and identifiable pools of such assets. The State shall have a lien, immediately senior to the lien of the member companies, in one such pool of assets, the fair estimated value of which shall not be less than the amount of loans made by the State pursuant to this Act. The member companies shall have a lien, immediately senior to the lien of the State, in the remaining pool of assets; provided that the pool of assets designated for the member companies shall include, at the minimum, the real estate owned by Manoa Finance. The State and member companies shall each have a junior lien position in the pool of assets in which the other party holds the more senior lien position. If Commercial Finance participates in a plan of reorganization pursuant to this section, the assets of Commercial Finance acquired by the guaranty corporation shall be divided into two pools of assets and shall secure the respective loans of the State and the member companies in the foregoing manner. The guaranty corporation shall sell, collect, or liquidate all assets so acquired and divided as soon as prudently and economically feasible; provided that the terms and conditions of all such sales shall be subject to the prior approval of the bank examiner. The assets of the guaranty corporation not acquired from Manoa Finance and Great Hawaiian shall not be used to pay any of the expenses of such sales, collections, or liquidations; and the net proceeds or recoveries from such sales, collections, or liquidations shall not be used to pay any expenses of the guaranty corporation, except those in connection with such sales, collections, or liquidations. Until substantial completion of the sale, collection, or liquidation of such assets, and based upon the most recent data available, the bank examiner shall provide to the legislature by

February 1 of each year a status report regarding such sales, collections, or liquidation.

- (5) The guaranty corporation, the State of Hawaii and their officers, agents, directors, and employees, shall have received a full and complete release and discharge, in a manner and form satisfactory to all parties, from or binding upon all the thrift account holders of each company for which such a plan is confirmed, releasing the aforesaid parties from any and all liability with respect to any and all claims directly or indirectly arising out of or in connection with the account holder's thrift account at such member company or the guaranty of such account. Any and all lawsuits pending against any of the aforesaid parties by thrift account holders shall have been dismissed with prejudice.
- (6) The member companies shall have paid when due their annual assessments to be levied in 1985, in accordance with sections 408A-9 and 408A-10, Hawaii Revised Statutes.

Pending the receipt of the funds from the issuance and sale of general obligation bonds, the amount required for any such loan shall be advanced from the general fund of the State. Upon the receipt of the proceeds of the general obligation bonds funds, the general fund shall be reimbursed. The issuance of general obligation bonds in accordance with the authorization of this Act and for purposes of making loans to the guaranty corporation is found and determined to be for a public purpose.

SECTION 6. The obligation of members to pay the annual assessments required under sections 408A-9 and 408A-10, Hawaii Revised Statutes, shall permanently terminate if the bank examiner determines that the conditions have been met for making the loans described in Section 5. The guaranty corporation or any member of the guaranty corporation may apply to the bank examiner for a determination that such conditions have been met and for an order terminating liability for assessment, at any time. The bank examiner shall make an order terminating the assessment or denying such application within thirty days. The guaranty corporation or any member deeming itself aggrieved by the order of the bank examiner under this section, may apply to the Circuit Court of the First Circuit for an order requiring the bank examiner to terminate the member's obligation to pay assessments if the conditions set forth in Section 5 have been met. The court, after citing the bank examiner to show cause why such order should not be issued, and after a hearing and a determination of whether the conditions set forth in Section 5 have been met, may dismiss such application, order the bank examiner to issue an order terminating assessment liability, or make such further order as may be just. If the bank examiner enters an order terminating the assessment liability of the members, whether voluntarily or pursuant to court order, the termination shall be effective as of the earlier of the date of the application by the guaranty corporation or a member, as the case may be, or the date of the bank examiner's order. Any levy of assessment made after the effective date shall be rendered void, and any amounts paid on account of the levy shall be returned to the paying member.

SECTION 7. The assets of the guaranty corporation, including assets of Manoa Finance, Great Hawaiian, and Commercial Finance, if Commercial Finance participates in a plan of reorganization pursuant to Section 5, shall be available, after satisfaction of the respective liens of the State and the member companies provided pursuant to Section 5, for repayment of the loans made by the State to the guaranty corporation in the years 1977 to 1983, which shall not

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be discharged by this Act; provided that assets of the guaranty corporation may be used to pay the full guaranteed amount to the account holders of Commercial Finance under sections 408A-9 and 408A-14, Hawaii Revised Statutes, if Commercial Finance does not participate in a plan of reorganization pursuant to Section 5.

SECTION 8. Any loan made by any member company of the guaranty corporation to the guaranty corporation specifically for the plan of reorganization or liquidation described in Section 5 shall be deemed to constitute a loan complying with the requirements of sections 408-14.5, 408-14.6, and 408-14.7, Hawaii Revised Statutes, or any other provision of state law relating to limitations or requirements on loans by industrial loan companies.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 188

S.B. NO. 1287

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-8, Hawaii Revised Statutes, is amended to read as follows:

“§304-8 Appropriations; accounts; reports. Moneys appropriated by the legislature for the university shall be payable by the director of finance, upon vouchers approved by the board of regents or by any officer elected or appointed by the board under section 304-4 and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or in behalf of the board of the university shall be deposited with the director of finance, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature and moneys in trust or revolving funds administered by the university may be deposited in depositories other than the state treasury. Income from fees for tuition and similar charges against students and income derived from sale of goods or services shall be deposited to the credit of the general fund of the State; provided that income from university projects as defined and described in sections 306-1 to 306-12, may be credited to special or other funds; and provided further that upon the recommendation of the director of finance, the comptroller may establish such other separate accounts or special funds for other designated revenues as may be deemed in the best interests of the university and the State.

The university shall annually provide the legislature at least twenty days prior to the convening of the regular session with an itemized account of the income to and the expenditure from each university special and revolving fund during the previous fiscal year.”

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§304- University of Hawaii at Manoa malpractice special fund. There is established a special fund to be known as the University of Hawaii at Manoa malpractice special fund, which shall be used for costs arising from the defense and settlement of claims against the university, its students, or its faculty for professional malpractice in programs which provide professional services, including but not limited to clinical medicine, nursing, and law; provided that this fund shall not be used to fund settlements funded through professional liability insurance or through special appropriations of the legislature.

The university may establish appropriate charges and fees to individuals who are provided professional liability coverage under this section, the proceeds of which shall be deposited in accounts and credited to the University of Hawaii at Manoa malpractice special fund.

§304- University of Hawaii at Manoa intercollegiate athletics revolving fund and University of Hawaii at Hilo intercollegiate athletics revolving fund. Notwithstanding any other law to the contrary, there are established revolving funds for the intercollegiate athletic programs of the University of Hawaii at Manoa and the University of Hawaii at Hilo, which shall be used to receive, deposit, disburse, and account for funds from the activities of the intercollegiate athletic programs. The university may establish appropriate charges for activities related to its athletic programs and the use of its athletic facilities, the proceeds from which shall be deposited into these revolving funds.

The university shall maintain the financial integrity and viability of these revolving funds, including the maintenance of an adequate reserve to cope with the various factors that impact the revenue structure of an intercollegiate athletic program.

§304- Systemwide computer services special fund. There is established a special fund for systemwide computer services, which shall be used to receive, deposit, disburse, and account for revenues and expenditures of the university's computer operations. Revenues collected from users shall be deposited in this fund and expenditures made shall be in support of computer services, including personnel, current expense, and equipment costs.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon approval.

(Approved June 3, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to extend the expiration date of the special fund created pursuant to section 416-97, Hawaii Revised Statutes, within the department of commerce and consumer affairs. In the past, due to the heavy workload of the business registration division, it was not possible to accommodate the special needs of businesses that, for whatever reasons, needed

to have their documents expeditiously reviewed. In 1983, the legislature created a special fund which derives its money from businesses that are assessed special handling fees for expedited document processing services. The fund is utilized to hire at least two temporary business registration assistants, thus enabling the business registration division to keep abreast of the special needs of various businesses.

It is not foreseeable that the demand for governmental services will decrease in the near future. However, due to fiscal constraints, two full-time temporary general fund positions have been frozen for the last biennium. Current fiscal policies do not allow for the conversion of existing special funded positions to the general fund. Under these circumstances, it is critical that the special fund scheduled to terminate on July 1, 1985 be extended.

In addition, this Act allows for the assessment of special handling fees for partnerships, trade names, trademarks, and foreign corporations.

SECTION 2. Section 416-97, Hawaii Revised Statutes, is amended to read as follows:

“§416-97 [Fees; amount.] Services; fees; amount. The following fees shall be paid to the director of commerce and consumer affairs upon the filing of the corporate documents:

- (1) Articles of incorporation and affidavit of incorporation, 20 cents per \$1,000 authorized capital, \$50 minimum, \$1,000 maximum;
- (2) Certificate of increase of authorized capital stock, 20 cents per \$1,000 authorized capital increase, \$20 minimum, \$1,000 maximum;
- (3) Certificate of renewal or extension of corporate existence, same as the filing of articles of incorporation;
- (4) Certificate of reduction of capital stock, \$15;
- (5) Certificate of amendment of articles of incorporation, \$10;
- (6) Agreement of merger or consolidation, \$50;
- (7) Annual corporation exhibit of domestic and foreign corporations organized for profit, \$10;
- (8) Certificate of dissolution, \$5;
- (9) Resolution of issuance of preferred stock, \$10;
- (10) Certification, 10 cents per page or any portion thereof;
- (11) Petition and charter of incorporation of nonprofit corporation, \$10;
- (12) Certificate of amendment and renewal or extension of charter of nonprofit corporation, \$5;
- (13) Articles of incorporation of agricultural and fishing cooperatives without capital stock, \$15;
- (14) Restated articles of incorporation: corporations with an authorized capital of less than \$500,000, \$20; corporations with an authorized capital of \$500,000 or more, \$100;
- (15) Annual exhibit of nonprofit domestic and foreign corporations, \$1;
- (16) Agreement of merger or consolidation of nonprofit corporations, \$5;
- (17) Special handling fee for review of corporation documents, excluding agreement of merger or consolidation, \$40;
- (18) Special handling fee for review of agreement of merger or consolidation, \$100;
- (19) Special handling fee for certificates issued by the department, \$10 per certificate;
- (20) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistants I's shall be paid out of the special fund. This special fund shall be repealed effective July 1, [1985.] 1988."

SECTION 3. Section 6, Act 153, Session Laws of Hawaii 1983, amended by Act 6, Session Laws of Hawaii 1984, is amended to read as follows:

"SECTION 6. Provisions relating to the deposit of a portion of fees into the special fund authorized by section 416-97, Hawaii Revised Statutes, shall terminate on [June 30, 1985,] July 1, 1988, at which time the entire amount of the fees shall be deposited [to] into the general fund."

SECTION 4. Section 418-7, Hawaii Revised Statutes, is amended to read as follows:

"**§418-7 Powers and liabilities; fees.** Every foreign corporation other than nonprofit, on complying with section 418-1 and paying to the director of commerce and consumer affairs a fee of \$50 shall, subject to section 418-9 and 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on corporations constituted under the laws of the State, and shall, for the purposes for which it is constituted, have full power to hold, take, and convey by way of sale, mortgage, or otherwise, real, personal, and mixed estate in the State; provided that the purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State. Nothing herein shall be construed to give any corporation any of the special powers conferred by law upon railroad or banking corporations constituted under the laws of the State. [A special handling fee of \$40, credited to the special fund authorized by section 416-97 may be charged to expedite the processing of the foreign corporation declaration required to be filed by section 418-1.] Special handling fees, credited to the special fund authorized by section 416-97 may be charged to expedite the processing of the following foreign corporation documents: foreign corporation declaration, \$40; application for certificate of withdrawal, \$10; certificate of good standing, \$10; certification of documents, \$1 a page."

SECTION 5. Section 418-8, Hawaii Revised Statutes, is amended to read as follows:

"**§418-8 Powers and liabilities; foreign nonprofit corporation.** Every foreign nonprofit corporation on complying with section 418-2 and paying to the director of commerce and consumer affairs a fee of \$10 shall, subject to section 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on nonprofit corporations constituted under the laws of the State, and shall, for the purposes for which it is constituted, have full power to hold, take, and convey by way of sale, mortgage, or otherwise real, personal, and mixed estate in the State; provided[,] that the purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State. Special handling fees, credited to the special fund authorized by section 416-97 may be charged to expedite the processing of the following foreign nonprofit corporation documents: foreign nonprofit corporation declaration, \$40; application for certificate of withdrawal, \$10; certificate of good standing, \$10; certification of documents, \$1 a page."

SECTION 6. Act 167, Session Laws of Hawaii 1983, section 1, is amended by amending section -128 to read as follows:

“§ -128 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

- (a) Articles of incorporation and affidavit of incorporation, 20 cents per \$1,000 authorized capital, \$50 minimum, \$1,000 maximum;
- (b) Certificate of increase of authorized capital stock, 20 cents per \$1,000 authorized capital increase, \$20 minimum, \$1,000 maximum;
- (c) Certificate of renewal or extension of corporate existence, same as the filing of articles of incorporation;
- (d) Certificate of reduction of capital stock, \$15;
- (e) Certificate of amendment of articles of incorporation, \$10;
- (f) Agreement of merger or consolidation, \$50;
- (g) Annual corporation exhibit of domestic and foreign corporations organized for profit, \$10;
- (h) Certificate of dissolution, \$5;
- (i) Resolution of issuance of preferred stock, \$10;
- (j) Certification, 10 cents per page or any portion thereof;
- (k) Restated articles of incorporation: corporations with an authorized capital of less than \$500,000, \$20; corporations with an authorized capital of \$500,000 or more, \$100;
- (l) Good standing certificate, \$10;
- (m) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$25;
- (n) Special handling fee for review of corporation documents, excluding agreement of merger or consolidation, \$40;
- (o) Special handling fee for review of agreement of merger or consolidation, \$100;
- (p) Special handling fee for certificates issued by the department, \$10 per certificate;
- (q) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to [a] the special fund [which may be] established pursuant to section 416-97 for use by the department in expediting the processing of documents.”

SECTION 7. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

“§425-12 Fee for recording. (a) The director of commerce and consumer affairs shall collect the following fees:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$1.50 per partner;
- (2) For each admission, withdrawal, or death statement filed, a fee of \$1.50 per partner involved;
- (3) For each name recorded as aforesaid, a fee of \$1;
- (4) For each annual statement filed, a fee of \$3; and
- (5) For each general partnership registered, a fee of \$3 for each partner.

(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

- (1) For limited partnerships: certificate of amendment, \$40; certificate of cancellation, \$10; annual statement, \$10; certificate of limited partnership, \$1 a page; certificate of good standing, \$10;
- (2) For general partnerships: registration statement, \$10; change of name statement, \$10; partnership dissolution statement, \$10; annual

statement, \$10; certification of general partnership, \$1 a page; certificate of good standing, \$10;

- (3) For foreign general and foreign limited partnerships: registration statement of foreign general partnership, \$10; registration statement of foreign limited partnership, \$40; withdrawal application, \$10; annual statement, \$10; certification of foreign general or foreign limited partnership, \$1 a page; certificate of good standing, \$10.

All special handling fees shall be credited to the special fund authorized by section 416-97."

SECTION 8. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before any person may receive a certificate of registration of a print, label, or trademark, he shall file in the office of the director of commerce and consumer affairs an application for the registration of such print, label, or trademark, with a declaration, certified by the applicant, stating that he is the sole and original proprietor or the assign of such proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, he shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that he is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 416-97, and the balance deposited to the general fund of the State. A special handling fee of \$10 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the special fund authorized by section 416-97.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 190

H.B. NO. 104

A Bill for an Act Relating to Names.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 574-6, Hawaii Revised Statutes, is amended to read:

“§574-6 Effect of change. (a) The change of name provided for [herein] by order of the lieutenant governor shall be effective upon the date of publication of the notice of change of name.

(b) In all cases of change of name by order of the lieutenant governor, except as otherwise provided by law, the order [or decree] shall be [recorded in

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the bureau of conveyances and reported to the registrar of births within sixty days after the signing of the order.] filed as follows:

- (1) For persons born in this State, the order shall be both recorded in the bureau of conveyances and reported to the state registrar within sixty days after the signing of the order, and
- (2) For persons born outside of this State, the order shall be recorded in the bureau of conveyances within sixty days after the signing of the order.

(c) All changes of names made by decree of any governor, or by the president of the Republic of Hawaii, or by the president of the Provisional Government of Hawaii, or by any king or queen of the Hawaiian Islands, are ratified and confirmed.

(d) The lieutenant governor shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter."

SECTION 2. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) The filing fee of [\$5] \$10 shall accompany the petition when submitted and shall not be refundable."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 191

H.B. NO. 311

A Bill for an Act Relating to Motor Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 271-8.5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§271-8.5~~] Advertising, ~~aiding and abetting; misdemeanor~~. (a) It [shall be unlawful] is a misdemeanor for any person, including a person who is exempt by section 271-5, to advertise as a motor carrier of passengers or property, unless such person holds a valid certificate or permit [under] required by this chapter [issued by the public utilities commission.] in the classification so advertised. The term "advertise", as used in this section, includes but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or motor vehicle, or advertising in any newspaper or magazine, or advertising other than in-column listings in any directory [under a listing of motor common or contract carrier], or commercial broadcasting by airwave transmission, with or without any limiting qualification.

(b) A licensee may advertise in print or broadcast medium as defined in subsection (a) only if the licensee includes in the advertisement the licensee's applicable and current certificate or permit number and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement for a licensee who does not provide proof

of a current certificate or permit and who does not include a currently valid certificate or permit number in the advertisement.

(c) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b).

[(b) It shall be unlawful for any person to aid or abet an unlicensed or non-certificated motor carrier to evade this chapter or knowingly to combine or conspire with an unlicensed or non-certificated person, or to allow one's certificate or permit to be used by an unlicensed or non-certificated person, or to act as agent or partner or associate, or otherwise, of an unlicensed or non-certificated person, with the intent to evade this chapter.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor.]”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect November 1, 1985.

(Approved June 3, 1985.)

ACT 192

H.B. NO. 333

A Bill for an Act Relating to Disposition of Defendants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

“§706-625 [Modification of conditions.] Revocation of suspension of sentence or probation, modification of conditions or imposition of further requirements. (a) During a period of probation or suspension of sentence, the court, on application of a probation officer, the prosecuting attorney, [or of] the defendant, or on its own motion, after a hearing, may revoke the suspension of sentence or probation, modify the requirements imposed on the defendant, or [add] impose further requirements authorized by section 706-624.

(b) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii Rules of Evidence, except for the rules pertaining to privileges.

(c) The court shall revoke the suspension of sentence or probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(d) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(e) When the court revokes a suspension of sentence or probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted.

SECTION 2. Section 706-627, Hawaii Revised Statutes, is amended to read as follows:

“§706-627 [Notice and hearing on revocation of suspension of sentence or probation, or increasing the conditions thereof; tolling] Tolling of suspension of sentence or probation. [(1) The court shall not revoke a probation or suspension of sentence or increase the requirements imposed thereby on the defendant except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense, and to be represented by counsel.

(2)] (1) Upon the filing of a motion to revoke a probation or suspension of sentence or a motion to increase the requirements imposed thereby, the period of probation or suspension of sentence shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion through and including the filing date of the written decision of the court concerning the motion for purposes of computation of the remaining period of probation or suspension of sentence, if any. In the event the court fails to file a written decision upon the motion, the period shall be computed by reference to the date the court makes a decision upon the motion in open court. During the period of tolling of the probation or suspension of sentence, the defendant shall remain subject to all terms and conditions of the probation or suspension of sentence except as otherwise provided by this chapter.

[(3)] (2) In the event the court, following hearing, refuses to revoke the probation or suspension of sentence or grant the requested increases in requirements thereof because the defendant's failure to comply therewith was excusable, the defendant may be granted the period of tolling of the probation or suspension of sentence for purposes of computation of the remaining probation or suspension of sentence, if any.”

SECTION 3. Section 706-628, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval, provided that this Act shall not affect any rights or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved June 3, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

SECTION 1. The purpose of this Act is to appropriate moneys to the Office of Hawaiian Affairs.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the Office of Hawaiian Affairs (OHA) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

A General fund

B Special fund

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the Office of Hawaiian Affairs for the fiscal biennium beginning July 1, 1985 and ending June 30, 1987. The total expenditures and the number of permanent established positions in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

Item No.	Program	Program ID	M		Total M
			FY O 1985-86 F	FY O 1986-87 F	Biennium O 1985-87 F
	Office of Hawaiian Affairs				
1	Office of the Administrator	OHA 100	3.00* 109,669A 130,673B	3.00* 112,414A 133,418B	222,083A 264,091B
2	Administrative Services	OHA 101	6.00* 153,427A 172,150B	6.00* 156,557A 175,280B	309,984A 347,430B
3	Public Information	OHA 102	2.50* 82,096A 91,689B	2.50* 83,258A 92,851B	165,354A 184,540B
4	Human Resources	OHA 103	2.50* 23,010A 30,833B	2.50* 23,010A 30,833B	46,020A 61,666B
5	Planning and Development	OHA 104	3.50* 36,691A 49,166B	3.50* 36,691A 49,166B	73,382A 98,332B
6	Culture	OHA 105	2.50* 28,599A 38,323B	2.50* 28,599A 38,323B	57,198A 76,646B
7	Government Affairs	OHA 106	8.50* 81,104A 106,289B	8.50* 80,754A 105,939B	161,858A 212,228B
8	Land and Natural Resources	OHA 107	4.50* 409,314B	4.50* 409,314B	818,628B

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9	Economic Development	OHA 108	2.50* 27,026A 36,215B	2.50* 27,026A 36,215B	54,052A 72,430B
10	Education	OHA 109	2.00* 19,966A 26,754B	2.00* 19,966A 26,754B	39,932A 53,508B

SECTION 4. Whenever the need arises, the chairperson of the trustees for the Office of Hawaiian Affairs is authorized to transfer sufficient funds and positions between programs for research and development and operating purposes; provided that a report for all such transfers shall be made to the legislature by the beginning of each regular legislative session.

SECTION 5. The sums appropriated in Section 3 include a protocol fund of \$5,000; provided that in expending the general funds appropriated in this Act, expenditures shall be matched by the special funds of the Office of Hawaiian Affairs.

SECTION 6. The Office of Hawaiian Affairs and the State of Hawaii shall share equally in the costs of fringe benefits paid for employees of the Office of Hawaiian Affairs. Fringe benefits shall be defined as benefits received by public employees, including hospital, medical, and dental care under the public employees health fund, temporary disability insurance, unemployment insurance, life and long term disability insurance, workers compensation, social security, and retirement benefits.

SECTION 7. This Act shall take effect on July 1, 1985.

(Approved June 3, 1985.)

ACT 194

H.B. NO. 453

A Bill for an Act Relating to the Metropolitan Planning Organization.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 279E-3, Hawaii Revised Statutes, is amended to read as follows:

“[[§279E-3[]] **Metropolitan Planning Organization Membership.** The MPO shall consist of a policy committee and appropriate staff. The MPO policy committee shall consist of [nineteen] thirteen members. These members shall include: [nine] five members of the legislative body of the appropriate county; [five] three members of the state senate [who are residents of the county and who are], one of whom shall be chairperson of the senate committee with primary responsibility for transportation issues, and the other two of whom shall be appointed by the senate president; and [five] three members of the state house of representatives [who are residents of the county and who are], one of whom shall be the chairperson of the committee of the house of representatives with primary responsibility for transportation issues, and the other two of whom shall be appointed by the speaker of the house[.]; one member appointed by the governor; and one member appointed by the mayor of the city and county of Honolulu.

Each member of the MPO policy committee who is a member of the state legislature or the legislative body of the county shall serve for the same term as the term of office for which [he] the member is elected. There shall be no

remuneration for this service. [Each member shall be appointed or selected within sixty days of the effective date of this chapter.]

Vacancies in the MPO policy committee which occur shall be filled in the same manner in which the original member was appointed.”

SECTION 2. Section 279E-4, Hawaii Revised Statutes, is amended to read as follows:

“[[]§279E-4[]] **Chairperson: function and term of office.** The members of the MPO policy committee shall elect annually a chairperson on a rotating basis[. No member shall serve as chairperson for more than one year per term of appointment.] between the members of the state legislature and the legislative body of the appropriate county.

The chairperson shall place on the agenda for full hearing any issue, project, or subject matter relating to transportation which is requested by at least [five] three members of the MPO policy committee.”

SECTION 3. Section 279E-6, Hawaii Revised Statutes, is amended to read as follows:

“[[]§279E-6[]] **Meetings.** [The MPO policy committee shall meet no less than twice a quarter.] Notice of MPO policy committee meetings shall be published in a newspaper of general circulation at least forty-eight hours in advance and such meetings shall be open to the public.

Where the MPO makes a decision concerning input to any of its advisory plans or procedures or any other matter, then there shall be at least [seven legislative members and five city or county council members of the] six members of the MPO policy committee present [and the], of whom at least three shall be legislative members and at least three shall be county members. The decision [must] shall be made by a majority vote of the [entire membership of the MPO.] members present.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 1986.

(Approved June 3, 1985.)

ACT 195

H.B. NO. 509

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 287, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated, and to read as follows:

“§287- **Certificate of insurance as proof; mandatory, when.** Any person required to show proof of financial responsibility pursuant to section 287-20(a)(3) shall show proof by filing a certificate of insurance pursuant to section 287-22, or, if the person is a nonresident, section 287-23.”

SECTION 2. Section 287-20, Hawaii Revised Statutes, is amended to read as follows:

“§287-20 **Proof of financial responsibility required upon conviction of certain offenses.** (a) Whenever a driver’s license has been suspended or revoked

pursuant to section 286-155, or upon a conviction of any offense pursuant to law, or in the case of minors, suspended or revoked pursuant to part V of chapter 571, the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility. Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses [hereinafter named,] listed in this section, under the laws of the State or ordinances of any political subdivision, a court of competent jurisdiction has discretion to revoke or suspend a driver's license but does not revoke or suspend the license, the administrator shall nevertheless after the expiration of thirty days from the date of conviction or adjudication suspend the license and shall keep the same suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

- (1) Reckless or inattentive driving, driving while under the influence of intoxicating liquor, driving while under the influence of drugs and driving while that person's license has been suspended or revoked;
- (2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of \$300 and there are reasonable grounds for the administrator to believe that the defendant is at fault[.];
- (3) Failure to have an effective no-fault insurance policy [required by section 294-8(a)].

(b) If any person, at any time of [his] conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses [hereinabove named,] in subsection (a), does not hold a valid driver's license, no [such] license shall at any time thereafter be issued to the person unless and until [he] the person furnishes and thereafter maintains proof of financial responsibility.”

SECTION 3. Section 294-39, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person subject to [the provisions of] this chapter in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this chapter, shall be subject to citation for [such] the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit. Notwithstanding any provision of the Hawaii Penal Code, each violation shall be deemed a separate offense and shall be subject to a fine not less than \$100 nor more than \$1,000 and [such] the fine shall not be suspended[.]; provided if the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine for the first offense shall be \$100, with a minimum of \$400 for each additional offense. Any operator of a motor vehicle owned by another person shall not be considered in violation of this section if the operator's own insurance covers such driving.

In the case of multiple violations the court shall in addition to any other penalty, impose the following penalties:

- (1) Imprisonment of not more than thirty days; [or]

- (2) Suspension or revocation of driver's license of the driver and of the registered owner; [or]
- (3) Suspension or revocation of the motor vehicle registration plates of the vehicle involved; [or]
- (4) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle; or any other cost involved pursuant to section 294-10; or
- (5) Any combination of such penalties."

SECTION 4. This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 196

H.B. NO. 697

A Bill for an Act Relating to Reporting of Penal Code Offenses Occurring in Public Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 296-71, Hawaii Revised Statutes, is amended to read as follows:

"[[§296-71]] Reporting of [violent] crime-related incidents. The board of education shall, prior to January 1, 1982,] adopt rules pursuant to chapter 91 to:

- (1) Require [the reporting to appropriate authorities of any incident in which a student, officer, or employee of the department is threatened, assaulted or extorted within the meaning of sections 707-715 to 707-717 relating to terroristic threatening, 707-710 to 707-712 relating to assault, and 707-764 to 707-768 relating to extortion, respectively;] a report to appropriate authorities from a teacher, official, or other employee of the department who knows or has reason to believe that an act has been committed or will be committed which:
 - (a) Occurred or will occur on school property during school hours or during activities supervised by the school; and
 - (b) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft, or trespass;
- (2) Establish procedures for disposing of any incident reported; and
- (3) Impose, in addition to any other powers or authority the department of education may have to discipline [officers or employees,] school officials, appropriate disciplinary action for failure to report

such incidents, including probation, suspension, demotion, and discharge of such [officers or employees.] school officials.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 197

H.B. NO. 755

A Bill for an Act Relating to Osteopathic Examiners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 327C-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as provided in subsection (b) [of this section], a person shall be considered dead if, in the announced opinion of a physician licensed under part I of chapter 453 [or, physician and surgeon licensed under chapter 460, or physician excepted from licensure by section 453-2(3), based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory functions. Death will have occurred at the time when the irreversible cessation of the functions first coincided.

(b) In the event that artificial means of support preclude a determination that respiratory and circulatory functions have ceased, a person shall be considered dead if, in the opinion of an attending physician licensed under part I of chapter 453 [or, attending physician and surgeon licensed under chapter 460, or attending physician excepted from licensure by section 453-2(3), and of a consulting physician licensed under part I of chapter 453 [or, consulting physician and surgeon licensed under chapter 460, or consulting physician excepted from licensure by section 453-2(3), based on ordinary standards of current medical practice, the person has experienced irreversible cessation of all functions of the entire brain, including the brain stem. The opinions of the physicians shall be evidenced by signed statements. Death will have occurred at the time when the irreversible cessation of all functions of the entire brain, including the brain stem, first occurred. Death shall be pronounced before artificial means of support are withdrawn and before any vital organ is removed for purposes of transplantation.”

SECTION 2. Section 330-6, Hawaii Revised Statutes, is amended to read as follows:

“§330-6 Definition of “out-of-state practitioner”. The term “out-of-state practitioner” as used in this chapter, includes a physician, surgeon, osteopathic physician[,] and surgeon, dentist, podiatrist, veterinarian, or any other person who is authorized to prescribe drugs to patients under the applicable laws of any state of the United States.”

SECTION 3. Section 460-1, Hawaii Revised Statutes, is amended to read as follows:

“§460-1 License to practice. No person shall practice as an [osteopathic physician or] osteopathic physician and surgeon either gratuitously or for pay,

or shall offer to so practice, or shall advertise or announce, either publicly or privately, that the person is prepared or qualified to so practice, or shall append the letters "Dr." or the letters "D.O." to the person's name, with the intent thereby to imply that the person is a practitioner as an [osteopathic physician or] osteopathic physician and surgeon, without having a valid unrevoked license, obtained from the board of osteopathic examiners, in form and manner substantially as hereinafter set forth.

Nothing herein shall:

- (1) [applies] Apply to any [osteopathic physician or] osteopathic physician and surgeon from another state who is in actual consultation with a licensed physician of this State if the physician from another state is licensed to practice in the state in which the physician resides; provided[,] that the physician from another state shall not open an office, or administer treatment to any patient except in actual temporary consultation with a resident licensed physician of [the] this State.; or
- (2) Prohibit services rendered by any physician's assistant when such services are rendered under the direction and control of an osteopathic physician and surgeon licensed in this State. Such direction and control shall not be construed in every case to require the personal presence of the supervising and controlling osteopathic physician and surgeon. Any osteopathic physician and surgeon who employs or directs a physician's assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such physician's assistant."

SECTION 4. Section 460-3, Hawaii Revised Statutes, is amended to read as follows:

"§460-3 Board of osteopathic examiners. No person shall be licensed by the board of osteopathic examiners to practice as an [osteopathic physician or as an] osteopathic physician and surgeon unless the applicant has been duly examined and found to be possessed of the necessary qualifications, or found to be otherwise qualified as herein provided."

SECTION 5. Section 460-4, Hawaii Revised Statutes, is amended to read as follows:

"§460-4 Board; appointment, powers and duties. The governor shall appoint and may remove in the manner prescribed in section 26-34 a board of osteopathic examiners, consisting of five persons, three of whom shall be [osteopathic physicians or] osteopathic physicians and surgeons licensed under the laws of [the] this State and two of whom shall be public members.

The board [may] shall examine all applicants for licenses to practice as [osteopathic physicians or as] osteopathic physicians and surgeons. [Examinations shall be held quarterly at a time and a place to be fixed by the board, of which examinations all applicants shall be notified in writing.] In lieu of the board's written examination, the board will accept the national board of examiners for osteopathic physicians and surgeons (NBEOPS) with scores deemed satisfactory by the board and who otherwise meets the requirements of the laws of this State. Subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, the board may make, amend, and repeal all necessary rules relating to the enforcement of this chapter and not inconsistent therewith. The members of the board shall serve without pay."

SECTION 6. Section 460-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) No applicant for a license to practice as an [osteopathic physician or as an] osteopathic physician or¹ surgeon shall be examined until the applicant has paid to the board of osteopathic examiners application and examination fees.

(b) Section 460-2 and any other provisions of this chapter to the contrary notwithstanding, there shall be paid to the board by every person licensed to practice as an [osteopathic physician or an] osteopathic physician and surgeon, biennially in each even-numbered year on or before June 30, a renewal fee. Failure of any licensee to pay any renewal fee shall work a forfeiture of the license. Licenses forfeited by this section shall be reissued upon payment of a penalty fee and all fees which the licensee would have paid if the licensee had continuously renewed the license.”

SECTION 7. Section 460-6, Hawaii Revised Statutes, is amended to read as follows:

“**§460-6 Application for license.** Each applicant for a license provided for in this chapter shall comply with the following requirements:

- (1) Make application on blank forms prepared and furnished by the board of osteopathic examiners;
- (2) Submit evidence verified on oath and satisfactory to the board that the applicant [is eighteen years of age, or over, is of good moral character, and] is a graduate of a school or college of osteopathy which is approved by the American Osteopathic Association; and
- (3) [Designate on the application whether the applicant desires to practice as an osteopathic physician or as an osteopathic physician and surgeon.] Submit satisfactory evidence to the board that the applicant has served an internship of at least one year in a hospital approved by the American Osteopathic Association and the American College of Osteopathic Surgeons, or the equivalent of the requirement as determined by the board, if the applicant graduated prior to 1943.”

SECTION 8. Section 460-8, Hawaii Revised Statutes, is amended to read as follows:

“**§460-8 License issued.** Each applicant who successfully passes the examination shall pay a license fee[. The following kinds of license shall be issued:

- (1) To] to practice as an osteopathic physician and surgeon in accordance with the teachings of legally chartered and approved colleges of osteopathy in good standing, with the following rights, among others, to wit: to practice obstetrics; to practice surgery [other than major surgery]; and to administer anesthetics, antiseptics, germicides, parasiticides, biologicals, narcotics, and antidotes[; or
- (2) To practice as an osteopathic physician and surgeon. This license confers unlimited surgical rights, as well as the right to practice in all other respects as an osteopathic physician].”

SECTION 9. Section 460-9, Hawaii Revised Statutes, is amended by amending subsections (a), (c) and (d) to read as follows:

“(a) The board of osteopathic examiners, in its discretion, may issue a license, without examination, to a practitioner who has been licensed in any country, state, territory, or province[, upon the following conditions:

- (1) That the applicant is of good moral character;
- (2) That the applicant shall designate in the application whether the applicant desires to practice as an osteopathic physician, or as an osteopathic physician and surgeon;
- (3) That the requirements for a license in the country, state, territory, or province in which the applicant is licensed, are deemed by the board of osteopathic examiners to have been practically equivalent to the requirements for a license in force in the State at the date of the license; and
- (4) That the applicant has practiced the profession as an osteopathic physician for three years prior to the date of the application.]; provided the requirements for a license in the country, state, territory, or province in which the applicant is licensed, are deemed by the board of osteopathic examiners to have been practically equivalent to the requirements for a license in force in this State at the date of the license.

(c) The board, in its discretion, may issue a license, without examination, to an osteopathic physician and surgeon who is a graduate of an approved osteopathic college in good standing and who has passed an examination for admission into the medical corps of the United States Army, Navy, or Public Health Service.

(d) The board, in its discretion, may accept the federation licensing examination (FLEX).

[(d)] (e) The application and license fees for the licenses shall be paid to the board at the time of application. In case the application is not approved by the board the license fee shall be returned to the applicant.”

SECTION 10. Section 460-11, Hawaii Revised Statutes, is amended to read as follows:

“**§460-11 Privileges and obligations.** Osteopathic physicians and [osteopathic physicians and] surgeons shall observe and be subject to all state and [municipal] county regulations relative to reporting births and deaths and all matters pertaining to the public health, with equal rights and obligations as physicians of other schools of medicine.

In public institutions, osteopathic physicians and [osteopathic physicians and] surgeons licensed hereunder shall have the same privileges and the same rights to practice their profession in the treatment of cases and the same right to hold office as are accorded to physicians and surgeons of other schools.”

SECTION 11. Section 460-14, Hawaii Revised Statutes, is amended to read as follows:

“**§460-14 Notice of charges, hearing.** (a) In any proceedings before the board of osteopathic examiners for the revocation or suspension of a license under this chapter, upon any of the grounds listed in section 460-12, the person whose license is sought to be revoked or suspended shall be given, pursuant to chapter 91, reasonable written notice of the charge or charges upon which the proceeding is based and of the time and place where a hearing will be held and shall be given reasonable opportunity to be heard and present evidence in the person’s defense.

In the proceeding, the board may subpoena, administer oaths to, and examine witnesses on any relevant matter in the proceeding. The person whose license is sought in the proceeding to be revoked or suspended shall be entitled to require the board or any member thereof to subpoena and to administer oaths to any witness or witnesses who may be able to present evidence relevant in the proceeding, and shall be entitled to examine the witness and any other witness in the proceeding. The circuit court of the circuit in which the proceeding is held shall have power to enforce by proper proceeding the attendance and testimony of witnesses in the proceeding.

(b) If any person called before the board as a witness in the proceeding, whether under subpoena or otherwise, except as privileged by law, refuses to answer any question which is relevant to the proceeding and is put to the person by the board, a member thereof, or the person whose license is sought to be revoked or suspended in the proceeding, or disobeys any order of the circuit court relating to the proceeding, the board shall report the matter in writing to any judge of the circuit court of the circuit in which the proceeding is held and the person shall be cited to appear before the circuit judge to show cause why the person should not be punished for contempt of court [under section 710-1077].

(c) Any person who wilfully and knowingly makes, under oath, any false statement in connection with any proceeding before the board shall be [guilty of perjury and shall be] subject to [the penalty prescribed by law for perjury.] chapter 710, part V. Whenever the board is satisfied that a witness has [committed perjury] violated chapter 710, part V in any proceeding before the board, it shall report the same to the prosecuting officer of the county in which [the perjury] such violation took place, who shall prosecute the witness [for perjury].”

SECTION 12. Section 460-17, Hawaii Revised Statutes, is amended to read as follows:

“**§460-17 Records.** The board of osteopathic examiners shall keep a record which shall be open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of licenses to practice [osteopathy or] osteopathy and surgery. This record shall also contain the name, known place of business and residence, and the date and number of the license of every registered [osteopath.] osteopathic physician and surgeon.”

SECTION 13. Section 460-7, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 460-12, Hawaii Revised Statutes, is amended to read as follows:

“**§460-12 Refusal, suspension, and revocation of license.** The board may refuse to issue a license, or may suspend or revoke any license at any time in a proceeding before the board upon any one or more of the following grounds:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing [what are popularly known as “cappers” or “steerers”]; any person to solicit patients for one’s self;
- [(3) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4)] (3) Wilfully betraying a professional secret;
- [(5) Making any untruthful and improbable statement in advertising one’s practice or business under this chapter;
- (6) False, fraudulent, or deceptive advertising;

- (7) Advertising any medicine or any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (8) Being habitually intemperate;
- (9) Habitual use of any habit-forming drug such as opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) Procuring a license through fraud, misrepresentation, or deceit;
- (11) Professional misconduct, gross carelessness and manifest incapacity in the practice of osteopathy.]
- (4) Engaging in false, fraudulent, or deceptive advertising, including, but not limited to:
 - (A) Making excessive claims of expertise in one or more medical specialty fields;
 - (B) Assuring a permanent cure for an incurable disease; or
 - (C) Making any untruthful and improbable statement in advertising one's osteopathic practice or business;
- (5) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (6) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (7) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (8) Professional misconduct, gross carelessness, or manifest incapacity in the practice of osteopathy;
- (9) Negligence or incompetence, including, but not limited to, the consistent use of medical service in osteopathy which is inappropriate or unnecessary;
- (10) Conduct or practice contrary to recognized standards of ethics of the osteopathic profession as adopted by the American Osteopathic Association;
- (11) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of an osteopathic physician and surgeon, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, uniform controlled substance act, or any regulation adopted thereunder; or
- (14) Failure to report disciplinary action taken against the licensee in another jurisdiction."

SECTION 15. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§460- Practice of osteopathy defined. Osteopathic medicine and surgery is a separate, complete, and independent school of medicine and surgery utilizing full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administration of drugs and biologicals of all kinds, operative surgery, obstetrics, radiological, and other

electromagnetic emissions, and placing special emphasis on the interrelation of the neuro-musculoskeletal system to all other body systems, and the amelioration of disturbed structure-function relationships by the clinical application of the osteopathic diagnostic and therapeutic skills for the maintenance of health and treatment of disease.”

SECTION 16. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§460- Voluntary limitation of license.** A licensee may request, in writing, that the board limit the individual’s license to practice. The board may grant the request and may impose conditions on the limited license. The board shall determine whether and when such limitation shall be removed.”

SECTION 17. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§460- Disciplinary action.** In disciplining a licensee in a proceeding under section 460-12, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed osteopathic physicians and surgeons;
- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings;
- (6) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or
- (7) Require further education or training or require proof of performance competency.”

SECTION 18. Section 329-44, Hawaii Revised Statutes, is amended to read as follows:

“**§329-44 Notice of conviction to be sent to licensing board, department of commerce and consumer affairs.** On the conviction of any physician, osteopathic physician and surgeon, dentist, podiatrist, veterinarian, practitioner, apothecary, manufacturer, wholesaler, or producer, of the wilful violation of this chapter, a copy of the sentence and of the opinion of the court or district judge, if any is filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed to practice his profession or to carry on his business; and if the convicted defendant is a physician[,] or osteopathic physician and surgeon, a copy of the sentence and of the opinion, if any, shall be sent to the department of commerce and consumer affairs.”

SECTION 19. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§460- Reporting requirements.** (a) Every osteopathic physician and surgeon licensed pursuant to this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or

action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to the department of commerce and consumer affairs within thirty days after any written settlement agreement has been reduced to writing and signed by all the parties thereto or thirty days after service of the arbitration award on the parties.

(b) Failure of an osteopathic physician and surgeon to comply with the provisions of this section is an offense punishable by a fine of not less than \$100 for the first offense, \$250 to \$500 for the second offense, and \$500 to \$1,000 for subsequent offenses.

(c) The clerks of the respective courts of this State shall report to the department any judgment or other determination of the court which adjudges or finds that an osteopathic physician and surgeon is liable criminally or civilly for any death or personal injury caused by professional negligence, error, or omission in the practice of the osteopathic physician and surgeon's profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after the judgment is entered by the court.

(d) The department shall prescribe forms for the submission of reports required by this section."

SECTION 20. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§460- Review of complaints and information by department. (a) The department of commerce and consumer affairs shall review each complaint and information received under sections 92-17, 329-44, 460- , 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information if it appears that the osteopathic physician and surgeon who is the subject of the complaint or information has violated this chapter. If the department determines that the osteopathic physician and surgeon has violated this chapter, the department shall present the results of its investigation to the board of osteopathic examiners for appropriate disciplinary proceedings.

(b) Reports of adverse decisions of peer review committees transmitted to the department under section 663-1.7 shall not be available to public inspection or subject to discovery and shall be held confidential by the department; provided that:

- (1) A written affirmative or negative reply may be given to a written inquiry by a hospital or health care facility as to whether a report of an adverse decision is on file with the department; and
- (2) A subpoenaed report shall be subject to the requirements under section 460- ."

SECTION 21. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§460- Subpoena of peer review adverse decision report. In connection with an investigation under section 460- , the director of commerce and consumer affairs may issue subpoenas, pursuant to section 26-9(i), compelling the production of hospital records of patients whose cases were reviewed by a peer review committee that filed a report pursuant to section 663-1.7, notwithstanding section 624-25.5. A medical society, hospital, or health care facility shall expunge from the documents specific patient identifiers. Information for investigation which was obtained through a subpoena shall be for the sole use by the department of commerce and consumer affairs to carry out its responsibilities and functions and shall be held confidential by the department,

unless the information is admissible evidence at a hearing held under section 460-14. This investigation shall be deemed a sensitive matter related to public safety under section 92-5.”

SECTION 22. Section 671-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The insurance commissioner shall forward the name of every health care provider, except a hospital or physician licensed under chapter 453[,] or an osteopathic physician and surgeon licensed under chapter 460, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice his profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician licensed under chapter 453[,] or an osteopathic physician and surgeon licensed under chapter 460.”

SECTION 23. Section 671-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider’s liability insurance carrier authorized to act for such carrier, and the board of osteopathic examiners, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician or surgeon licensed under chapter 453[,] or an osteopathic physician and surgeon licensed under chapter 460. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: “We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant”; or “We find the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider”.

SECTION 24. Any license issued under Chapter 460, Hawaii Revised Statutes, prior to the effective date of this Act, shall remain in effect and subsequent renewal of such licenses shall be in accordance with sections 3 through 17 of this Act.

SECTION 25. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. [(a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

(b)] (a) The following chapters are hereby repealed effective December 31, 1985:

[(1) Chapter 460 (Board of Osteopathic Examiners)

(2)] (1) Chapter 461 (Board of Pharmacy)

[(3)] (2) Chapter 455 (Board of Examiners in Naturopathy)

[(4)] (3) Chapter 463E (Podiatry)

[(5)] (4) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

- [(6)] (5) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- [(7)] (6) Chapter 448H (Elevator Mechanics Licensing Board)
- [(8)] (7) Chapter 462A (Board of Pilot Commissioners)
- 31, 1986: [(c)] (b) The following chapters are hereby repealed effective December
- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
 - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
 - (3) Chapter 440 (Boxing Commission)
 - (4) Chapter 460J (Pest Control Board)
 - (5) Chapter 438 (Board of Barbers)
 - (6) Chapter 439 (Board of Cosmetology)
- 31, 1987: [(d)] (c) The following chapters are hereby repealed effective December
- (1) Chapter 458 (Board of Dispensing Opticians)
 - (2) Chapter 459 (Board of Examiners in Optometry)
 - (3) Chapter 452 (Board of Massage)
 - (4) Chapter 471 (Board of Veterinary Examiners)
 - (5) Chapter 441 (Cemeteries and Mortuaries)
 - (6) Chapter 463 (Board of Detectives and Guards)
- 31, 1988: [(e)] (d) The following chapters are hereby repealed effective December
- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
 - (2) Chapter 468E (Board of Speech Pathology and Audiology)
 - (3) Chapter 359L (Factory Built Housing Advisory Board)
 - (4) Chapter 468B (Solar Energy Device Dealers)
 - (5) Chapter 468K (Travel Agencies)
 - (6) Chapter 373 (Commercial Employment Agencies)
 - (7) Chapter 442 (Board of Chiropractic Examiners)
 - (8) Chapter 448 (Board of Dental Examiners)
- 31, 1989: [(f)] (e) The following chapters are hereby repealed effective December
- (1) Chapter 444 (Contractors License Board)
 - (2) Chapter 448E (Board of Electricians and Plumbers)
 - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
 - (4) Chapter 466 (Board of Public Accountancy)
 - (5) Chapter 467 (Real Estate Commission)
- 31, 1990: [(g)] (f) The following chapters are hereby repealed effective December
- (1) Chapter 447 (Dental Hygienists)
 - (2) Chapter 453 (Board of Medical Examiners)
 - (3) Chapter 457 (Board of Nursing)[.]
- 1991: [(h)] (g) The following chapter is hereby repealed effective December 31,
- (1) Chapter 460 (Board of Osteopathic Examiners)."

SECTION 26. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 27. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Notes

1. Prior to amendment, "or" read "and".
2. Edited pursuant to HRS §23G-16.5.

ACT 198

H.B. NO. 757

A Bill for an Act Relating to Elevator Mechanics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. [(a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

31, 1985: (b) (a) The following chapters are hereby repealed effective December

(1) Chapter 460 (Board of Osteopathic Examiners)

(2) Chapter 461 (Board of Pharmacy)

(3) Chapter 455 (Board of Examiners in Naturopathy)

(4) Chapter 463E (Podiatry)

(5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(6) Chapter 457B (Board of Examiners of Nursing Home Administrators)

[(7) Chapter 448H (Elevator Mechanics Licensing Board)

(8)] (7) Chapter 462A (Board of Pilot Commissioners)

31, 1986: [(c)] (b) The following chapters are hereby repealed effective December

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

31, 1987: [(d)] (c) The following chapters are hereby repealed effective December

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

(4) Chapter 471 (Board of Veterinary Examiners)

(5) Chapter 441 (Cemeteries and Mortuaries)

(6) Chapter 463 (Board of Detectives and Guards)

31, 1988: [(e)] (d) The following chapters are hereby repealed effective December

(1) Chapter 465 (Board of Certification for Practicing Psychologists)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 359L (Factory Built Housing Advisory Board)

(4) Chapter 468B (Solar Energy Device Dealers)

(5) Chapter 468K (Travel Agencies)

(6) Chapter 373 (Commercial Employment Agencies)

(7) Chapter 442 (Board of Chiropractic Examiners)

(8) Chapter 448 (Board of Dental Examiners)

- 31, 1989: [(f)] (e) The following chapters are hereby repealed effective December 31, 1989:
- (1) Chapter 444 (Contractors License Board)
 - (2) Chapter 448E (Board of Electricians and Plumbers)
 - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
 - (4) Chapter 466 (Board of Public Accountancy)
 - (5) Chapter 467 (Real Estate Commission)

- 31, 1990: [(g)] (f) The following chapters are hereby repealed effective December 31, 1990:
- (1) Chapter 447 (Dental Hygienists)
 - (2) Chapter 453 (Board of Medical Examiners)
 - (3) Chapter 457 (Board of Nursing)
 - (g) The following chapter is hereby repealed effective December 31, 1991:
 - (1) Chapter 448H (Elevator Mechanics Licensing Board)."

SECTION 2. Section 448H-5, Hawaii Revised Statutes, is amended to read as follows:

"§448H-5 Powers and duties of the board. The board shall:

- (1) Adopt rules [and regulations] in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Develop, apply, review and upgrade appropriate techniques, including examinations and investigations for determining whether a person meets the requirements of this chapter and standards to insure that elevator mechanics will be persons qualified to serve as such;
- (3) Prescribe, at a minimum, that a nationally recognized examination, augmented with locally developed material, be used in testing for licensure, the passing grade for the examination to be not less than seventy per cent;
- [(3)] (4) Issue licenses to persons determined, after application of such techniques, to have met such qualifications and revoke or suspend licenses, previously issued by the board pursuant to hearings held in accordance with chapter 91, in any case where the individual holding any such license is determined substantially to have failed to conform to such qualifications, this chapter, or the rules [and regulations] of the board;
- [(4)] (5) Establish and carry out procedures designed to insure that persons licensed as elevator mechanics will, during any period they serve as such, comply with the requirements of this chapter, the rules [and regulations] of the board, and chapter 397 and the rules [and regulations] promulgated thereunder;
- [(5)] (6) Receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as an elevator mechanic has failed to comply with the requirements of this chapter regarding any complaint regarding job performance by mechanics, the rules [and regulations] of the board, or chapter 397 and the rules [and regulations] promulgated thereunder;
- [(6)] (7) Register apprentice elevator mechanics;
- [(7)] (8) Maintain a record of its proceedings;
- [(8)] (9) Assist and advise the department of labor and industrial relations in the promulgation of rules [and regulations] relating to

- the conditions of work for elevator mechanics including requirements related to equipment or facilities essential for the safe installation, repair, maintenance, or alteration of any elevator, dumbwaiter, escalator, moving walk or ramp, and manlift; and
- [(9)] (10) Notify the department of labor and industrial relations of any fact or situation that, in the opinion of the board, constitutes a violation of chapter 397 or of any rule [or regulation] promulgated thereunder.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 199

H.B. NO. 761

A Bill for an Act Relating to Nursing Home Administrators.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 457B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§457B- Conditions concerning qualifications for licensure examination.

(a) The rules of the board regarding the experience required of an applicant for licensure shall provide that:

- (1) A master of public health, master of business administration or a master of hospital administration degree, with a specialization in health services administration from an accredited institution of higher education shall be substitutable for one year of practical experience required of an applicant; and
- (2) One year of administrative experience in a health related area shall be accepted as equivalent to any requirement for one year of administrative experience in nursing home administration.

(b) The rules of the board regarding the education required of an applicant for licensure shall:

- (1) Require a baccalaureate degree from an accredited institution of higher education; provided that the board shall seek the advice of the University of Hawaii, office of admissions, regarding the college or University’s accreditation, and that the board shall approve any degree recognized by the University of Hawaii.
- (2) The board may exempt an applicant from completing the currently approved nursing home administrator’s correspondence course if the board determines that the applicant’s baccalaureate or post-baccalaureate formal education has imparted the knowledge and skills taught in the course; and

(c) The board, as qualifications for taking the licensure examination, shall not require an applicant to furnish evidence of absence of physical or mental impairments.”

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

(b) The following chapters are hereby repealed effective December 31, 1985:

(1) Chapter 460 (Board of Osteopathic Examiners)

(2) Chapter 461 (Board of Pharmacy)

(3) Chapter 455 (Board of Examiners in Naturopathy)

(4) Chapter 463E (Podiatry)

(5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

[(6) Chapter 457B (Board of Examiners of Nursing Home Administrators)]

(7) (6) Chapter 448H (Elevator Mechanics Licensing Board)

[(8) (7) Chapter 462A (Board of Pilot Commissioners)]

(c) The following chapters are hereby repealed effective December 31, 1986:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

(d) The following chapters are hereby repealed effective December 31, 1987:

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

(4) Chapter 471 (Board of Veterinary Examiners)

(5) Chapter 441 (Cemeteries and Mortuaries)

(6) Chapter 463 (Board of Detectives and Guards)

(e) The following chapters are hereby repealed effective December 31, 1988:

(1) Chapter 465 (Board of Certification for Practicing Psychologists)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 359L (Factory Built Housing Advisory Board)

(4) Chapter 468B (Solar Energy Device Dealers)

(5) Chapter 468K (Travel Agencies)

(6) Chapter 373 (Commercial Employment Agencies)

(7) Chapter 442 (Board of Chiropractic Examiners)

(8) Chapter 448 (Board of Dental Examiners)

(f) The following chapters are hereby repealed effective December 31, 1989:

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(g) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(h) The following chapter is hereby repealed effective December 31, 1991:

- (1) Chapter 457B (Board of Examiners of Nursing Home Administrators)."

SECTION 3. Section 457B-6, Hawaii Revised Statutes, is amended to read as follows:

"§457B-6 Powers and duties. The board shall:

- (1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets the board's standards;
- (3) Issue licenses to individuals determined, after the application of appropriate techniques, to meet the board's standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding a license is determined substantially to have failed to conform to the requirements of the board's standards;
- (4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators shall, during any period that they serve as such, comply with the requirements of the board's standards[.]. The board shall also initiate and maintain cooperative arrangements with the long-term care ombudsman, the department of social services and housing and department of health for the sharing of information on the performance of administrators;
- (5) Receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of the board's standards;
- (6) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of administrators of nursing homes and of procedures and methods for the enforcement of licensing standards with respect to administrators of nursing homes who have been licensed;
- (7) Adopt in accordance with chapter 91 rules as may be necessary for the purposes of this chapter; and
- (8) Maintain a record of all its proceedings."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Making an Appropriation for the State's Rental Assistance Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There exists in the State a grave shortage of decent and safe rental housing accommodations which are affordable to individuals and families of low and moderate incomes. The waiting list of applicants for Hawaii Housing Authority's public housing has grown in excess of 6,000 families. The plight of the beach people and other stories of the homeless have made headlines in our local news media. The lack of suitable accommodations for elderly tenants who are forced to vacate their present units has caused them emotional distress. Moreover, as fewer and fewer new rental projects are developed, and as the existing stock ages and deteriorates, the problem can only be expected to worsen.

Increasing development, construction, and maintenance costs are a few key factors prohibiting the development of new rental housing accommodations. And with key federal subsidy programs no longer being funded for new construction, other alternatives must be sought.

The private sector cannot be expected to increase our rental housing inventory without some form of government assistance or subsidy because development of unassisted rental projects is simply not economically feasible. Therefore, it becomes incumbent upon the State to subsidize the development of affordable rental units.

The State's Rental Assistance Program created under chapter 356, part III, Hawaii Revised Statutes, provides an alternative to assist in reducing the cost of rental housing accommodations to the people of the State. Under this program, qualified owners of rental projects are assisted in maintaining rentals on all or a portion of the units in an eligible rental project at affordable levels.

In order to provide eligible projects with rental assistance payments, there is established under the program a Rental Assistance Revolving Fund. The interest earnings on investments of the principal sums in the fund (and amounts recovered by the Authority upon the termination of rental assistance contracts) may be applied to fund rental assistance payments to eligible projects.

The purpose of this Act is to provide additional funds for the Rental Assistance Revolving Fund so that affordable rental housing can be expanded to accommodate the many eligible tenants on the waiting list.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 for fiscal year 1985-1986 to be paid into the Rental Assistance Revolving Fund.

SECTION 3. The sum appropriated shall be expended by the Hawaii Housing Authority for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1985.

(Approved June 3, 1985.)

A Bill for an Act Relating to Public Utilities.

ACT 202

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 46-76, Hawaii Revised Statutes, is amended to read as follows:

“[[]§46-76[]] Location of utility facilities in improvement districts. Notwithstanding any provision of law to the contrary, whenever any public improvement is established, constructed, improved, or altered pursuant to the improvement by assessment statutes or ordinances, and in conjunction therewith it is necessary to provide for the installation or require the removal, relocation, replacement, or reconstruction of public utility facilities that are privately owned, the respective legislative bodies of the counties shall determine whether the whole or a portion of such utility facilities shall be located overhead or underground. Where it is decided that the whole or a portion of the utility facilities shall be [located] relocated, replaced or reconstructed [underground], which installation [underground] shall constitute a public improvement, the respective legislative bodies of the counties shall determine what portion of the costs of the installation or the removal, relocation, replacement, or reconstruction of the utility facilities required [to go underground] shall be borne by the utility companies, the counties and the properties specially benefited within the improvement district; provided that such costs borne by the counties and the utility companies shall be paid in a lump sum, that the portion of the costs to be borne by the utility companies shall be the same percentage of the total relocation cost for each utility company required to remove, relocate, replace or reconstruct its facilities within the improvement district and the costs that are allocated against the properties specially benefited in the improvement district shall be assessed and paid for in accordance with the provisions of the improvement by assessment statutes or ordinances; provided, further, that the counties may issue bonds under any applicable laws to pay their share of such costs and the costs allocated against the properties specially benefited may be financed under any applicable laws as are other special assessments against specially benefited property.

The foregoing provisions shall not be applicable to the subdivision of lands which require the installation of utility facilities in new streets established by the subdivision and which subdivision is initiated, created or made by a private developer.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 202

H.B. NO. 1056

A Bill for an Act Relating to Examinations of Insurers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431- Insurance examiners’ revolving fund. (a) The insurance commissioner may establish a separate fund designated as the insurance examiners’ revolving fund.

(b) The fund shall be used to compensate independent contractor examiners. Independent contractor examiners may be reimbursed or compensated for:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the insurance commissioner.
- (2) A reasonable living expense allowance at a rate customary for such expenses and approved by the insurance commissioner.
- (3) Per diem compensation at a rate customary for such compensation as approved by the insurance commissioner.

(c) All persons receiving any reimbursement or compensation from the insurance examiners' revolving fund shall submit to the insurance commissioner for approval a detailed account of all expenses and compensation necessarily incurred on account of an examination. Persons shall not receive or accept any additional emolument on account of an examination. Any reimbursement or compensation made by the fund and approved by the insurance commissioner shall be charged to the person being examined by the insurance commissioner and all receipts shall be credited to the fund.

(d) Moneys in the insurance examiners' revolving fund shall not revert to the general fund.

(e) Each authorized insurer shall deposit at a time determined by the insurance commissioner the sum of \$200 with the insurance commissioner to be credited to the insurance examiners' revolving fund."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 203

H.B. NO. 1257

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-18, Hawaii Revised Statutes, is amended to read as follows:

"§11-18 Transfer of registration on removal from one precinct to another in same county. A registered voter who changes [his] residence from one precinct to another shall notify the clerk and change [his] the registration to the proper precinct; provided[,], that no [such] change of registration shall be allowed or required after the close of registration for an election. The change of registration due to a change of residence may be challenged as provided in section 11-25."

SECTION 2. Section 11-21, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) No person shall be prevented from voting at the election in the precinct in which the person's name appears on the voters list due to a change of name, change of registration, or other correction made under this section. However, any voter registered in the wrong precinct who shall refuse to make

the correction of registration may be challenged in accordance with [law.] section 11-25.”

SECTION 3. Section 11-25, Hawaii Revised Statutes, is amended by amending subsection (b) and (c) to read as follows:

“(b) Challenging on election day. Any voter rightfully in the polling place may challenge the right to vote of any person [presenting himself] who comes to the precinct officials for voting purposes. The challenge shall be on the grounds that the voter is not the person [he] the voter alleges [himself] to be, or that the voter is not entitled to vote in that precinct; provided that only in an election of members of the board of trustees of the office of Hawaiian affairs, a person registered to vote in that election may also challenge on the grounds that the voter is not Hawaiian. No other or further challenge shall be allowed. Any person thus challenged shall first be given the opportunity to make the relevant correction pursuant to section 11-21. The challenge shall be considered and decided immediately by the precinct officials and the ruling shall be announced.

(c) If neither the challenger nor the challenged voter shall appeal the ruling of the clerk or the precinct officials, then the voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the board of registration, the challenged voter shall be allowed to vote; provided that [his] ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. The chief election officer shall [promulgate] adopt rules [and regulations] in accordance with chapter 91 to safeguard the secrecy of the challenged voter’s ballot.”

SECTION 4. Section 11-119, Hawaii Revised Statutes, is amended to read as follows:

“**§11-119 Printing; quantity.** (a) The ballots shall be printed by order of the chief election officer or the clerk in the case of county elections. In any state or county election the chief election officer on agreement with the clerk may consolidate the printing contracts for similar types of ballots where such consolidation will result in lower costs.

(b) Whenever the chief election officer is responsible for the printing of ballots, the exact wording to appear thereon, including, but not limited to, questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the sixtieth calendar day prior to the applicable election.

(c) Based upon clarity and available space, the chief election officer or the clerk in the case of county elections shall determine the style and size of type to be used in printing the ballots. The color, size, weight, shape, and thickness of the ballot shall be determined by the chief election officer.

(d) Each precinct shall receive a sufficient number of ballots based on the number of registered voters and the expected spoilage in the election concerned. A sufficient number of absentee ballots shall be delivered to each clerk not later than 4:30 p.m. on the fifteenth day prior to the date of any election.”

SECTION 5. Section 11-139, Hawaii Revised Statutes, is amended to read as follows:

“**§11-139 [Assistance of illiterate or disabled voter.] Voting assistance.** [Any voter who, by reason of illiteracy or blindness or other physical disability, is unable to mark his ballot, shall, if he so requests, receive the assistance of two precinct officials who are not of the same political party, or of any qualified voter whom he may designate, in the marking thereof.] (a) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read

or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or agent of the voter's union, or the voter may receive the assistance of two precinct officials who are not of the same political party. Before rendering assistance or permitting assistance to be rendered, the precinct officials shall be satisfied that the physical disability exists. If a voter with a physical disability finds it unduly burdensome [for him] to enter the polling place, [he] the voter may be handed a ballot outside the polling place but within one hundred feet thereof by the precinct officials and in their presence but in a secret manner, mark and return the same to the precinct officials.

(b) The precinct officials shall enter in writing in the record book the following:

- (1) The voter's name;
- (2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires [him] the voter to receive assistance; and
- (3) The name or names of the person or persons furnishing the assistance."

SECTION 6. Section 12-42, Hawaii Revised Statutes, is amended to read as follows:

"§12-42 Unopposed candidates declared elected. (a) Any candidate running for any office in the State of Hawaii in a special election or special primary election who is the sole candidate for that office shall, after the close of filing of nomination papers, be deemed and declared to be duly and legally elected to the office for which [he] the person is a candidate. The term of office for a candidate elected under this subsection shall begin respectively on the day of the special election or on the day of the immediately succeeding special general election.

(b) Any candidate running for any office in the State of Hawaii in a special general election who was only opposed by a candidate or candidates running on [his own] the same ticket in the special primary election and is not opposed by any candidate running on any other ticket, nonpartisan or otherwise, and is nominated at the special primary election shall, after the special primary, be deemed and declared to be duly and legally elected to the office for which [he] the person is a candidate at the special primary election regardless of the number of votes received [by him]. The term of office for a candidate elected under this subsection shall begin on the day of the special general election."

SECTION 7¹. Section 13D-3, Hawaii Revised Statutes, is amended to read as follows:

"[[]§13D-3[]] Qualifications of voters; registration. (a) Every person who registers as required by law shall be entitled to vote at any election of board members provided that [he] the person shall have attained the age of eighteen years at the time of the election.

(b) No person shall be eligible to register as a voter for the election of board members unless [he] the person meets the following qualifications:

- (1) The person is Hawaiian;
- (2) The person has attained the age of eighteen years or will have attained such age within one year of the date of the next election of board members; and
- (3) The person is otherwise qualified to register to vote in the State.

(c) Any person eligible to and desiring to register as a voter for the election of board members shall [present himself at] go to any location designated by the clerk of the county, then and there to be examined under oath as to [his] the person's qualifications as a voter. Each applicant shall make and subscribe to an application in the form of an affidavit as provided for under section 11-15.

(d) The clerk of each county shall register all persons in [his] the county who are eligible to and desiring to register as voters for the election of board members. The register may be maintained in conjunction with the general county register; provided that the clerk shall be able to prepare a separate list of voters for the election of board members, capable of segregation by precinct and representative district. The maintenance, reproduction, and transmittal of records and affidavits to a central file shall be in accordance with section 11-14.

(e) The clerk of each county shall amend the general county register to include therein any person, who on November 6, 1984, was registered to vote only for members of the board of trustees, to hereinafter be registered to vote in all elections held in the State."

SECTION 8. Section 15-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon receipt of the return envelope from any person voting under this chapter, the clerk or the officials of the absentee voting² place shall [time stamp the return envelope and] deposit it in the correct absentee ballot box; provided that return envelopes delivered to the regular polling places and deposited in the ballot box by a precinct official before the closing of the polls need not be time stamped]. Return envelopes which arrive after the closing of the polls shall be time stamped. The absentee ballot box shall be opened by the officials of the absentee ballot team as provided by rules adopted pursuant to chapter 91."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Notes

1. Changed to "7" by revisor.
2. Prior to amendment, the word "polling" appeared here.

ACT 204

H.B. NO. 1354

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-83.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second [at least two] business [days] day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed name and signature of the person or persons

giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.”

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Pets in apartments. (a) Whenever the bylaws do not forbid apartment owners from keeping animals as pets in their apartments, the bylaws shall not forbid the tenants of the apartment owners from keeping pets in the apartments rented or leased from the owners; provided that:

- (1) The apartment owner agrees in writing to allow the apartment owner's tenant to keep a pet in the apartment;
- (2) The tenants may keep only those types of pets which may be kept by apartment owners;
- (3) The bylaws may allow each owner or tenant to keep only one pet in the apartment;
- (4) The animals shall not include those described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6;
- (5) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property; and
- (6) The bylaws may reasonably restrict or prohibit the running of pets at large in the common areas of the property.

(b) Any amendments to the bylaws pertaining to pet restrictions or prohibitions which exempt circumstances existing prior to the adoption of the amendments shall apply equally to apartment owners and tenants.”

SECTION 3. This Act shall control and supersede any conflicting bylaws that are in existence on the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 205

H.B. NO. 1357

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-296, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An insurer other than a life insurer may own and invest or have invested in its home office and branch office buildings any of its funds in aggregate amount not to exceed twenty per cent of its admitted assets unless approved by the commissioner, or if a mutual or reciprocal insurer not to exceed twenty per cent of its admitted assets nor such amount as would reduce its surplus, exclusive of such investment, below the minimum required surplus for

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the class, or combination of classes, of insurance authorized, unless approved by the commissioner. A life insurer may own and invest or have invested in its home office building and branch office buildings any of its funds in an aggregate amount not to exceed twenty per cent of its admitted assets[, or fifty per cent of the excess of its admitted assets over its liabilities, other than capital stock if a stock life insurer, whichever is the lesser amount]. Such home office or branch office buildings may be constructed upon leasehold estates. However, if a life insurer has been licensed less than five years, a prior approval from the insurance commissioner shall be required before investment may be made in home office or branch office buildings.”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 206

H.B. NO. 1386

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Such contributions may be used after a general or special election for any fund raising [activities and] activity, for any other politically related activity sponsored by the candidate[.], for any ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state office, or for any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization, or any other organization which the commission, by rules adopted pursuant to chapter 91, deems appropriate.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 207

H.B. NO. 49

A Bill for an Act Relating to Care for the Elderly.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 192, Session Laws of Hawaii 1983, is amended by amending sections 1 to 11 to read as follows:

“SECTION 1. **Purpose.** The legislature finds and declares that the provision of comprehensive extended home services for the chronically ill and disabled residents of the State of Hawaii is a priority concern. The development of more economical methods of caring for this growing population group as an alternative to the construction of additional institutional facilities should be a primary focus of the State’s action.

[Coordinated extended home] Comprehensive services rendered to patients in their homes reduce the possibility of prolonged institutionalization or the inappropriate utilization of scarce institutional beds, as well as the concomitant high costs and other associated adverse social and medical implications of institutionalization.

The legislature intends that there be a public commitment to the appropriate provision and expansion of [extended] home services which will provide a single point of entry and access to a comprehensive and coordinated program of care in the home for Hawaii's growing aged and chronically ill population.

SECTION 2. Definitions. For the purpose of this Act:

["Advisory council" means a group of appointed community members who meet at regularly appointed times to provide advice and recommendations relative to the operation of the project.]

"Certified home health agency" means an agency licensed by the State to provide health services, such as skilled nursing, home health aides, and physical therapy in the patient's home.

"Comprehensive assessment" means the evaluation of the patient's medical, social, and environmental needs.

"Demonstration project" means the nursing home without walls demonstration project.

"[Extended] Comprehensive home services" means the provision of a broad range of services which will ensure the patient's safety and well-being at home over an indefinite period of time.

"Plan of care" means a written plan, including goals, objectives, and methodology, designed to meet the service requirements of the patient, caregiver, or both, as approved by the physician.

"Safety and well-being" means assessment of and determination that the patient's home environment is safe and that the care requirements of the patient have been determined and can be provided for in the home setting.

"Waiver" means an intentional relinquishment of certain rights or obligations.

SECTION 3. Establishment of a nursing home without walls demonstration project. (a) A nursing home [with] without walls demonstration project shall be established in the department of social services and housing, medical care administration [services,] office, to demonstrate the provision of [extended] comprehensive home services for chronically ill and disabled patients who are certified as requiring skilled nursing or intermediate level care.

(b) The provision of services of the demonstration project shall be [limited to the island of Oahu.] statewide.

(c) The duration of the demonstration project shall be from July 1, 1983, through June 30, [1985.] 1987.

(d) The number of patients who are being actively served by the demonstration project shall not surpass two hundred at any point in time during the duration of the demonstration project.

(e) A ceiling shall be placed on the demonstration project expenditures, limiting total expenditures to not more than seventy-five per cent of the Medicaid cost to maintain the demonstration project's approved number of patients at their appropriate level of institutional care[.] except that the ceiling shall be raised to one hundred per cent of the average annual statewide cost of institutional care for the counties of Hawaii, Kauai, and Maui to provide for a

two-year development phase of the project. The cost of Medicaid for institutional care which shall be the basis for the expenditure ceiling shall be determined by the department of social services and housing.

(f) A ceiling shall be placed on individual patient care expenditures so that the annual cost of patient care through the demonstration project does not exceed seventy-five per cent of the annual Medicaid cost to provide the appropriate level of care for the patient in either a skilled nursing or intermediate care facility. If there is more than one patient in a family, the expenditure ceilings of each patient shall be added together and the costs of their care combined and evaluated against the sum.

(g) If the patient does not utilize the entire funds available for the patient's care, "paper credits" shall be accrued on the patient's behalf to be utilized during a period of higher service requirements.

SECTION 4. Determination of patient eligibility for participation in the demonstration project. (a) Patients shall meet the following eligibility criteria:

- (1) They shall be certified by the department of social services and housing to be in need of skilled nursing or intermediate level institutional care;
- (2) They shall be determined by the department of social services and housing to be eligible for Medicaid assistance; and
- (3) They shall be deemed by their personal physician as able to be cared for at home with the provision of appropriate services in the home.

[(b) Patients certified as in need of skilled nursing or intermediate care shall be notified by the department of social services and housing at the time of their certification of the availability of extended home services through the demonstration project.]

[(c)] (b) Patients approved for the demonstration project shall receive a:

- (1) Comprehensive assessment of their medical, social, and environmental needs;
- (2) Written plan of care listing the types, frequency, and duration of all services which are necessary to maintain the patient at home;
- (3) Budget based on the services defined in the plan of care; and
- (4) Periodic review of their status to assure continued medical and financial eligibility for service.

SECTION 5. Provision of services. (a) Services which shall assure the safety and well-being of the patient shall be provided in the patient's home or in the home of a responsible relative or other adult.

(b) The demonstration project shall provide the services in the most economic manner feasible, either through:

- (1) Informal care providers such as family members, friends, or neighbors who regularly provide specific services without remuneration and not as a part of any organized volunteer activity;
- (2) Contracts with agency providers, such as certified home health agencies and public or private nonprofit health and social service agencies;
- (3) Contracts with individual providers, such as physicians, nurses, and therapists who privately enter into a contract to provide services for the demonstration project; or
- (4) Project personnel, such as social workers and nurses who are hired by the demonstration project to provide specific services.

[SECTION 6. **Advisory council.** The director of social services shall appoint an advisory council of qualified community members to:

- (1) Review policies and procedures pertaining to the delivery of services and recommend such policies to the Medicaid administrator;
- (2) Review patient care provided by the demonstration project and submit findings and recommendations to the demonstration project administrator;
- (3) Review the performance of the service providers and the contractual arrangements of the demonstration project and submit findings and recommendations to the demonstration project administrator;
- (4) Review recommendations and complaints received from patients of the program and their family members and recommend appropriate corrective action to the demonstration project administrator; and
- (5) Assist with other activities of the demonstration project as requested by the department.]

SECTION [7.] **6. Annual report.** The director of social services shall report to the legislature at least twenty days prior to the convening of each regular session during the period of the demonstration project. The annual report shall include a comprehensive report on the status of the demonstration project, and recommendations for amendments to the law and to the rules of the department pertaining to the demonstration project.

SECTION [8.] **7. Waiver of requirements.** The demonstration project shall not be subject to licensing or certification requirements of the department of health or the health planning and development agency.

SECTION [9.] **8. Rules.** The department of social services and housing shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, for the purpose of this Act.

SECTION [10.] **9. Personnel exempt.** Personnel employed for the demonstration project shall not be subject to the provisions of chapters 76 and 77, Hawaii Revised Statutes. The terms of service for these personnel shall begin on July 1, 1983, or as soon thereafter as deemed appropriate by the department of social services and housing, and shall not continue beyond June 30, [1985.] 1987.

SECTION [11.] **10.** This Act shall take effect on July 1, 1983[.] , and shall be repealed as of June 30, 1987.

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

ACT 208

H.B. NO. 776

A Bill for an Act Relating to Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The regulation of child care facilities has been the subject of much controversy. Instances of abuse of children by providers and employees

of child care has resulted in public and legislative reaction to impose strict regulation on child care facilities.

The legislature has no doubt of the need for regulation of child care facilities to protect against child abuse and other detrimental consequences from inadequate care. The legislature also recognizes, however, that child care is a necessary service in Hawaii, the supply of which does not meet the demand, because of the increase in two-earner families. Overly strict regulation of child care facilities lessens the availability of the service, and has the effect of increasing unregulated providers who are not subject to state supervision. Both effects are not in the public interest.

The legislative auditor has conducted a study of the regulation of child care facilities in Hawaii and, among other things, recommended less strict and more appropriate, regulation of family child care homes, which provide care to not more than five children. The legislature finds that the recommendation of the legislative auditor has merit.

The purpose of this Act is to require the mandatory registration, not licensure of family child care homes, by the department of social services and housing. Although some may perceive no difference between mandatory licensure and mandatory registration, the legislature intends that mandatory registration means regulation less restrictive than mandatory licensure and this Act fulfills and expresses such an intent.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CHILD CARE FACILITIES

A. GENERAL

§346- Definitions. For the purposes of this part:

“Care” refers to those situations where a person or organization has agreed to assume and has been entrusted with the responsibility for the child’s supervision, development, safety, and protection apart from the parent or guardian.

“Child care facility” means a place maintained by any individual, organization, or agency for the purpose of providing care for three or more children with or without charging a fee during any part of a twenty-four hour day. It includes a family child care home, group child care home, and group child care center.

“Criminal history record check” means an examination of an individual’s criminal history record through fingerprint analysis or name inquiry into state and national criminal history record files.

“Family child care home” means a private home at which care is provided for three to five children.

“Group child care center” means a facility, other than a private home, at which care is provided.

“Group child care home” means a facility, which may be an extended or modified private home, at which care is provided for six to twelve children.

“Provider” means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in a child care facility.

§346- Exclusions. Nothing in this part shall be construed to include:

- (1) An individual person caring for a related child;

- (2) A neighbor or friend caring for no more than two children, if the person provides care for less than three hours a day but not more than two times a week;
- (3) A kindergarten, school, or program licensed by another department;
- (4) A program which provides exclusively for a specialized training or skill of eligible pupils in public and private schools through age seventeen, including but not limited to programs providing such activities as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multi-service organization or community association duly incorporated under the laws of the State which operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through age seventeen.

§346- Records of deficiencies and complaints; release to public. For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part. Notwithstanding any other law to the contrary, such records shall be available for inspection in the manner set forth in section 92-51; provided that with respect to records of family child care homes and group child care homes, sensitive personal information or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint for which an investigation is being conducted for not more than ten working days following the date of filing of the complaint; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release.

§346- Criminal history record checks. (a) The department shall develop standards to assure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include, but not be limited to, criminal history record checks.

(b) An applicant to operate a child care facility shall submit to the department statements signed under penalty of perjury by the applicant and prospective employees of the applicant indicating whether the applicant or any of the prospective employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing consent to the department to conduct a check and to obtain criminal history record information for verification. The applicant and prospective employee of the applicant shall also be fingerprinted.

A provider shall submit to the department a statement signed under penalty of perjury by any employee hired after the initial licensure or registration indicating whether the employee has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing

consent to the department to conduct a check and obtain criminal history record information for verification. The employee shall also be fingerprinted.

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant and any prospective employee of the applicant, including any new employee after the applicant is issued a registration or license under this part. The Hawaii criminal justice data center may assess the applicant, prospective employee, or new employee a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations.

(d) The department may deny an application for a license or registration to operate a child care facility if the applicant or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record of that applicant or prospective employee may pose a risk to the health, safety, or well-being of children.

The department may request the provider to terminate the employment of a new employee or may suspend the license or registration of the provider who employs a new employee if the employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record of the new employee may pose a risk to the health, safety, or well-being of children.

§346- Rules. Rules adopted pursuant to this part shall be adopted in accordance with chapter 91.

§346- Penalty. Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined not more than \$500.

B. GROUP CHILD CARE HOME AND GROUP CHILD CARE CENTER LICENSURE.

§346- License for group child care home, group child care center required. No person shall operate, maintain, or conduct a group child care home or group child care center unless licensed to do so by the department of social services and housing under this subpart.

§346- Rules; minimum standards. The department of social services and housing, after consultation with the department of health, the department of education, and the fire chiefs of the respective counties, shall make, prescribe, and publish such rules as are deemed necessary to protect the best interests of minor children who are provided care in a group child care home or group child care center and to carry out the purposes of this subpart.

§346- Licenses and temporary permits. If satisfied that the applicant meets the minimum standards established pursuant to section 346- and subject to the criminal history record checks of section 346- , the department of social services and housing shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for one year unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of social services and housing.

A temporary permit may be issued for a period of six months at the department of social services and housing's discretion to any applicant who is temporarily unable to conform to all of the minimum standards. Renewal of the temporary permit shall be left to the department of social services and housing's

discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twelve months. Licenses and permits shall be conspicuously posted on the licensed premises.

§346- Suspension and revocation of licenses and permits; reissuance. Any license or temporary permit issued under this subpart may be suspended or revoked by the department of social services and housing after due notice and hearing, the provisions for which shall be made in the rules. However, upon a determination by the department that conditions exist which constitute an imminent danger to the health, welfare, or safety of the children cared for, a license or temporary permit may be immediately suspended pending a hearing by the department as herein provided. The department, in its discretion, may reissue a license or temporary permit which has been suspended or revoked upon satisfying itself that minimum standards have been or will be met.

§346- Visitation and inspection of group child care home, group child care facility. The department of social services and housing shall visit and inspect each group child care home and group child care center as frequently as it deems necessary for the proper operation, sanitation, and safety of the home or center, as the case may be. The visits and inspections shall be made at least once annually. Every group child care home and group child care center licensed under this subpart shall be open to visitation and inspection by representatives of the department of social services and housing, the department of education, and the department of health, and by designated representatives of the respective county fire departments at all times.

§346- Records. Every group child care home and group child care center shall keep such records and shall file with the department of social services and housing such reports as required by rules adopted by the department. All records and all information obtained concerning children or their parents or relatives shall be kept confidential by the provider and by members of any department herein named.

C. FAMILY CHILD CARE HOME REGISTRATION.

§346- Registration for family child care home required. No person shall operate or maintain a family child care home unless registered to do so by the department of social services and housing under this subpart.

§346- Rules for registration. (a) The department shall adopt rules establishing minimum requirements to ensure the health and safety of children provided care in a family child care home. The rules may specify, but shall not be limited to, minimum requirements concerning:

- (1) The number of children which may be cared for at one time and the ratio of adult to children;
 - (2) The health of the provider and children;
 - (3) Fire and sanitation standards;
 - (4) The supervision and allowable types of discipline of children; and
 - (5) Protection of children who are provided care from abuse.
- (b) It is the intent of the legislature that the:
- (1) Minimum requirements established under this section be less strict than the minimum standards established under section 346- for group child care homes and group child care centers;
 - (2) Minimum requirements be as simple and clear as possible;
 - (3) Minimum requirements be germane to the provision of care to children in a private home as opposed to a nonresidential facility or institution, require as little recordkeeping by the provider as possible, and require information and reports if deemed necessary,

from the provider which the department intends to scrutinize carefully and not cursorily; and

- (4) Department establish minimum requirements, the compliance with which can be assessed easily and objectively by officers and employees of the department, providers, and parents and legal guardians of children.

§346- Procedure for registration. A person desiring to have the person's home registered as a family child care home shall make application to the department. Upon receipt of the application, the department shall conduct a study of the applicant's qualifications, home, and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes the applicant to operate a family child care home if the department is satisfied that the premises and proposed operation will be in compliance with the minimum requirements established under section 346- and subject to the criminal history record checks under section 346- .

The provider shall operate and maintain the premises of the family child care home in accordance with the minimum requirements established under section 346- so long as registered.

§346- Informing parent and legal guardian of children and general public.

(a) The department shall maintain a registry of registered family child care homes and make the information in the registry available to the general public upon request. The department may also provide for the publication and dissemination of the registry through the news media or other means.

(b) The provider of child care in a family child care home shall give to each parent or legal guardian of a child a copy of the provider's certificate of registration upon request.

§346- Visitation and inspection of family child care home; revocation of registration. (a) The department shall visit and inspect the premises and operation of a family child care home to determine compliance with the minimum requirements established under section 346- :

- (1) At least once in each calendar year; and
- (2) Upon receipt of a complaint that the premises or operation of the home is in violation of the minimum requirements established under section 346- .

(b) If the visitation and inspection reveal that the premises or operation of the home is in violation of a minimum requirement, the department shall immediately suspend or revoke the registration. Upon suspension or revocation, the home shall no longer be a registered family child care home and the department shall notify the parents or legal guardian of each child who is provided care in the home of the revocation.

A person whose registration has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation. If an appeal is made under chapter 91, the appeal of the suspension or revocation, and not the suspension or revocation itself, shall be deemed the contested case.

The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and the violation does not warrant a revocation of the registration. The department shall revoke the registration if the provider has violated any minimum requirement or requirements to such an extent or of a nature that the provider is unfit to be trusted with the care of children or operation of a family child care home or if the provider has had the provider's registration suspended at least once previously.

(c) The department may reinstate a suspended registration or restore a revoked registration if it deems that the person is willing and able to comply with the rules adopted under section 346- . A suspended registration may be reinstated upon the department's satisfaction that the violation has been or will be corrected. A revoked registration shall be restored only after new application is made and reviewed under this subpart.

§346- Family child care system. The department shall authorize the establishment and operation of a family child care system under which a sponsoring agency contracts family child care homes to provide care and assumes administrative tasks for the homes and providers; provided that the department shall register each of the family child care homes individually in accordance with this subpart and establish no rule or requirement which jeopardizes the status of the providers of care in family child care homes as independent contractors of the sponsoring agency. The department may establish rules defining the administrative tasks which may be performed and minimum requirements, including provision of training to providers which must be complied with by the sponsoring agency, but shall not require the sponsoring agency to register or obtain a license or registration as a child care facility unless the sponsoring agency provides care to children on the sponsoring agency's premises.

§346- Program of incentive for registration. Subject to the limits of legislative appropriations, the department may establish a program to encourage the registration of persons who provide care in private homes in violation of section 346- . The program may include:

- (1) Training of providers of care;
- (2) Assistance to applicants in obtaining registration and complying with the minimum requirements;
- (3) Counseling in providing quality care;
- (4) Referrals of parents to providers;
- (5) Assistance in obtaining benefits under or participation in federal and state child care programs; and
- (6) Assistance in complying with business and tax regulations and requirements."

SECTION 3. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a child has been abused or neglected or is threatened with abuse or neglect shall promptly report the matter orally to the department of social services and housing or to the police department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services to a minor, including but not limited to physicians, psychologists, dentists, nurses, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, correctional institutions, and parole or probation offices;

- (5) [Employees] Providers of care, employees, or officers of any licensed [day care center,] or registered child care facility, foster home,¹ [group child care center,] or similar institution;
- (6) Medical examiners or coroners."

SECTION 4. Sections 346-18 to 346-25, Hawaii Revised Statutes, are repealed.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6. This Act shall take effect on July 1, 1985.

(Approved June 3, 1985.)

Notes

- 1. Formerly read "foster care home".
- 2. Edited pursuant to HRS §23G-16.5.

ACT 209

H.B. NO. 1285

A Bill for an Act Relating to Criminal Record Clearance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-16, Hawaii Revised Statutes, is amended to read as follows:

- "§346-16 Definitions.** (a) As used in this chapter:
- (1) "Child caring institution" means any institution¹ other than an institution of the State, maintained for the purpose of receiving six or more minor children for care and maintenance, not of common parents, apart from their parents or guardians on a twenty-four hour basis for monetary payment. This term shall not apply to any boarding school which is essentially and primarily engaged in educational work[;].
 - (2) "Child placing organization" means any person, agency, or organization, [excepting] except family courts and the department of social services and housing, engaged in the investigation, placement, and supervision of children in foster care[;].
 - (3) "Criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
 - (4) "Foster boarding home" means any children's boarding home in which one or more, but less than six, minor children are received for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.

(b) None of the facilities defined in subsection (a) shall be considered a special treatment facility in the sense of section 321-11(10) unless clinical treatment of mental, emotional or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility."

SECTION 2. Section 346-17, Hawaii Revised Statutes, is amended to read as follows:

"§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over and investigation of. No child placing

organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets with the standards of conditions, management, and competence set by the department of social services and housing.

No child caring institution shall be allowed to receive minor children for care and maintenance unless it meets with the standards of conditions, management, and competence to care for and train children set by the department.

No foster boarding home shall receive for care and maintenance any child unless it meets with the standards of conditions, management, and competence set by the department.

The department [may] shall make rules [and regulations] relating to (1) standards for the organization and administration of child placing organizations, (2) standards of conditions, management, and competence for the care and training of minor children in child caring institutions, and (3) standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

All rules [and regulations] of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

As a condition for a certificate of approval, any organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346- .

Upon approval of any such organization, institution, or home, the department or its authorized agents shall issue a certificate of approval which shall continue in force for one year unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain such organization, institution, or home without the certificate.

Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in such manner, place, and form as may be prescribed by the department or its authorized agents.”

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Criminal history record checks. The department shall develop standards to assure the reputable and responsible character of operators and employees of child caring institutions, child placing organizations and foster boarding homes as defined in this chapter which shall include but not be limited to criminal history record checks.

An applicant for a certificate of approval shall submit statements signed under penalty of perjury by the operators, employees and new employees of the facility, indicating whether the operators, employees or new employees were ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the facility shall be

fingerprinted for the purpose of complying with the criminal history record check. New employees of the facility shall be fingerprinted within five working days of employment for the purpose of complying with the criminal history record check.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of child care facilities subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees or new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny a certificate of approval if an operator, employee, or new employee of the facility was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety or well-being of the children in care.”

SECTION 4. Section 352-1, Hawaii Revised Statutes, is amended to read as follows:

“§352-1 Definitions. In this chapter, unless the context clearly indicates otherwise:

- “(1) “Criminal history record check” means an examination of an individual’s criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
- “(2) “Department” means that portion of the department of social services and housing concerned with matters within the purview of this chapter[;].
- “(3) “Director” means the director of social services[;].
- “(4) “Discharge” means the ending of the director of social services’ supervision of a person when the term of the person’s commitment has ended or when the director believes the purpose of the term of commitment has been achieved[;].
- “(5) “Furlough” means an authorized absence of short duration from a youth correctional facility[;].
- “(6) “Parole” means the conditional release of a person committed to a youth correctional facility whereby the person remains in the custody of the director and under the supervision of the juvenile parole office[;].
- “(7) “Term of commitment” means the time period during which family court retains jurisdiction over a person after adjudication. During the term of commitment, the family court may vest custody of the person in another person, organization, agency, facility, or other suitable entity.”

SECTION 5. Chapter 352, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§352- Criminal history record checks. The department shall develop standards to assure the reputable and responsible characters of staff members of the Hawaii youth correctional facility which shall include but not be limited to criminal history record checks. Staff members, as defined in section 352-5, including any new staff members, shall submit a statement under penalty of

perjury indicating whether the staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff members shall be fingerprinted for the purpose of complying with the criminal history record check. New staff members shall be fingerprinted within five working days of beginning employment for the purpose of complying with the criminal history record check.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff members and new staff members of the Hawaii youth correctional facility. The Hawaii criminal justice data center may assess the staff members and new staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny employment to a staff member or new staff member who was convicted of a crime other than a minor traffic violation involving fifty dollars or less and if the department finds that the criminal history record of the staff member or new staff member poses a risk to the health, safety, security or well-being of youths under supervision and confinement.”

SECTION 6. Section 571-2, Hawaii Revised Statutes, is amended to read as follows:

“§571-2 Definitions. When used in this chapter, unless the context otherwise requires:

[(6)] “Adult” means a person eighteen years of age or older.

[(4)] “Board” means the board of family court judges.

[(5)] “Child” or “minor” means a person less than eighteen years of age.

[(12)] “Commit” means to transfer legal custody.

[(1)] “Court” means one of the family courts as herein established.

“Criminal history record check” means an examination of an individual’s criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.

[(7)] “Detention” means the temporary care of children who require custody in physically secure facilities:

(A) For their immediate welfare;

(B) For the protection of the community;

(C) While awaiting transfer to another jurisdiction or

(D) Because of violation of a family court order of probation or protective supervision.

[(9)] “Guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes but shall not necessarily be limited in either number or kind to:

(A) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;

- (B) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
- (C) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution;
- (D) The authority to consent to the adoption of the minor and to make any other decision concerning him which his parents could make, when the rights of his parents, only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of his legal parents are deceased.

[(16)] "Informal adjustment" means the effort by intake officers, the courts, or others to provide a child referred to them or brought before them, and where appropriate that child's family, opportunity and aid before and in lieu of formally processing the child under this chapter. The objective of this effort is to afford opportunity and aid so that the child, and where appropriate the child's family, may realize voluntary adjustment of behavior and obtain counseling and edification so as to better allow the child's appropriate emergence into adult society.

[(2)] "Judge" means judge of the family court.

[(10)] "Legal custody" means the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.

[(13)] "Probation" means a legal status created by court order following adjudication in a case involving a violation of law whereby a minor is permitted to remain in his home or in a community residential or non-residential program subject to supervision by the court or an agency designated by the court and subject to return to the court for violation of probation at any time during the period of probation.

[(14)] "Protective supervision" means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the minor is subject to change, whereby the minor is permitted to remain in his home or in a community residential or non-residential program under the supervision of the court or an agency designated by the court and subject to return to the court during the period of protective supervision.

[(11)] "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation, consent to adoption or marriage, and the responsibility for support.

[(3)] "Senior judge" means the judge so designated, as provided in this chapter.

[(8)] "Shelter" means the temporary care of children in physically unrestricting facilities pending court disposition.

“Status offender”² means any child coming within the family court’s jurisdiction under section 571-11(2)(D), (E), or (F). Such child is distinguished from (A) a law violator under section 571-11(1) who comes into the family court upon allegations such person has committed an act which would constitute a crime if committed by an adult, and (B) a neglected or abused child under section 571-11(2)(A), (B), or (C).

- [(15)] The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.”

SECTION 7. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Criminal history record checks. The judiciary shall develop standards to assure the reputable and responsible character of employees of detention facilities defined in this chapter which shall include but not be limited to criminal history record checks. Employees of facilities established under section 571-33, including new employees shall submit a statement under penalty of perjury indicating whether the employee or new employee was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less. The statement shall provide consent to the judiciary to conduct a criminal history record check and to obtain other criminal history record information for verification. Employees shall be fingerprinted for the purpose of complying with the criminal history record check. New employees shall be fingerprinted for the purpose of complying with the criminal history record check.

The judiciary shall obtain criminal history record information through the Hawaii criminal justice data center on all employees and new employees. The Hawaii criminal justice data center may assess employees and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The judiciary may deny employment to an employee or new employee who was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the judiciary finds that the person’s criminal history record indicates that the employee or new employee poses a risk to the health, safety, security, or well-being of youths under detention.”

SECTION 8. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies[.]; provided that this section shall not apply to:

- (1) Denials by the department of social services and housing of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapter 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352; and
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33.”

SECTION 9. The Hawaii criminal justice data center shall submit a report to the legislature on the progress of implementing the criminal history

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record checks program. The report shall also contain a recommendation on the program's future including program goals, personnel needs, anticipated program activity levels, and measures of effectiveness; provided that the Hawaii criminal justice data center shall submit its findings and recommendations twenty days before the convening of the 1986 Regular Session.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,000 or so much thereof as may be necessary for fiscal year 1985-1986, for the implementation of the criminal history record checks program required under this Act.

SECTION 11. The sum appropriated shall be expended by the department of attorney general for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 13. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Notes

1. A “” is missing.
2. Numeric designation missing.
3. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 36

A Bill for an Act Relating to the Compensation of Certain Persons Under the Criminal Injuries Compensation Act and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of compensating the following, pursuant to chapter 351, Hawaii Revised Statutes, in the amounts set out opposite their respective case numbers:

Case No. 80-401		500.00
Case No. 81-303		1,800.00
Case No. 81-388		750.00
Case No. 81-422		4,910.83
Case No. 82-149		1,157.20
Case No. 82-149	(Queen's Medical Center)	403.20
Case No. 82-179		2,768.08
Case No. 82-184		2,904.00
Case No. 83-68		439.99
Case No. 83-68	(Maui Memorial Hospital)	325.65
Case No. 83-68	(Dr. Richard McDonald)	24.96
Case No. 83-68	(Dr. Charles Mitchell)	57.41
Case No. 83-68	(Maui Radiology Consultants)	102.61
Case No. 83-72		1,800.00
Case No. 83-75		363.00
Case No. 83-118		500.00
Case No. 83-120		2,561.30
Case No. 83-131		3,105.91
Case No. 83-131	(Straub Clinic & Hospital, Inc.)	707.16
Case No. 83-147		1,658.16
Case No. 83-156		2,978.02
Case No. 83-156	(Kona Hospital)	1,121.00

Case No. 83-163		500.00
Case No. 83-163	(Foster Chiropractic Clinics)	343.90
Case No. 83-163	(Leeward Chiropractic Center, Inc.)	555.00
Case No. 83-163	(Hawaii Chiropractic Clinic, Inc.)	262.39
Case No. 83-278		1,500.00
Case No. 83-289		500.00
Case No. 83-289	(Dr. Gary Blaich)	29.00
Case No. 83-289	(West Hawaii Imaging Services, Inc.)	31.00
Case No. 83-289	(Frank Huff Agency, Ltd.)	44.44
Case No. 83-299		350.00
Case No. 83-299	(Dental Center of Honolulu)	829.00
Case No. 83-309		289.96
Case No. 83-310		133.28
Case No. 83-310	(Straub Clinic & Hospital, Inc.)	147.80
Case No. 83-326		592.44
Case No. 83-334		6,500.00
Case No. 83-358		83.19
Case No. 83-363		366.89
Case No. 83-368		830.00
Case No. 83-370		1,000.00
Case No. 83-376		5,184.77
Case No. 83-398		5,500.00
Case No. 83-400		645.60
Case No. 83-411		1,000.00
Case No. 83-412		250.00
Case No. 83-413		300.00
Case No. 83-418		500.00
Case No. 83-422		250.00
Case No. 83-425		400.00
Case No. 83-433		341.49
Case No. 83-433	(Queen's Medical Center)	222.00
Case No. 83-433	(The Emergency Group, Inc.)	175.16
Case No. 83-434		50.00
Case No. 83-437		1,905.26
Case No. 83-438		750.00
Case No. 83-444		1,140.30
Case No. 83-449		700.00
Case No. 83-452		255.76
Case No. 83-457		284.37
Case No. 83-457	(Dr. Lonnie Tiner)	1,352.00
Case No. 83-458		479.95
Case No. 83-459		100.00
Case No. 83-459	(Queen's Medical Center)	73.00
Case No. 83-460		394.75
Case No. 83-460	(Queen's Medical Center)	107.20
Case No. 83-460	(State of Hawaii Emergency Ambulance Service)	125.00
Case No. 83-460	(Orthopedic Associates of Hawaii, Inc.)	71.99
Case No. 83-463		50.00
Case No. 83-464		1,030.34
Case No. 83-464	(Kuakini Medical Center)	175.00
Case No. 83-464	(Anesthesia Associates, Inc.)	380.00
Case No. 83-464	(Dr. Rolland Nakashima)	429.52
Case No. 83-465		500.00
Case No. 83-466		787.44
Case No. 83-467		1,075.00
Case No. 83-470		261.17
Case No. 83-470	(Queen's Medical Center)	309.90
Case No. 83-470	(Dr. Maurice Nicholson)	135.85
Case No. 83-470	(Dr. David Johnson)	200.00
Case No. 83-470	(Dr. Gene Doo)	89.54
Case No. 83-472		250.00
Case No. 83-473		150.00
Case No. 83-475		552.95
Case No. 83-475	(Straub Clinic & Hospital, Inc.)	3,779.47
Case No. 83-476		941.63
Case No. 83-478		414.61
Case No. 83-483		2,781.24

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Case No. 83-483	(Dr. Jack S. Annon)	494.00
Case No. 83-486	(Wahiawa General Hospital)	156.00
Case No. 83-486	(Dr. Gildo Soriano)	116.06
Case No. 83-488		100.00
Case No. 83-492		10,000.00
Case No. 83-494		570.00
Case No. 83-494	(Dr. Samuel Sakamaki)	3,120.00
Case No. 83-494	(Dr. George Wessberg)	2,100.00
Case No. 83-495		1,335.05
Case No. 83-498	(Kona Hospital)	106.35
Case No. 83-499		50.00
Case No. 83-500	(Queen's Medical Center)	895.90
Case No. 83-500	(Dr. George Nip)	453.68
Case No. 83-500	(The Emergency Group, Inc.)	101.80
Case No. 83-500	(Dr. Ronald Resnick)	77.21
Case No. 83-500	(Dr. James Marr)	74.15
Case No. 83-500	(Radiology Associates, Inc.)	17.58
Case No. 83-501		122.84
Case No. 83-502		250.00
Case No. 83-503		1,800.00
Case No. 83-504		459.65
Case No. 83-506		329.10
Case No. 83-507		157.30
Case No. 83-508		304.24
Case No. 83-509		100.00
Case No. 83-511		200.00
Case No. 83-513		250.00
Case No. 83-514		250.00
Case No. 83-516		750.00
Case No. 83-517		250.00
Case No. 83-518		100.00
Case No. 83-519		250.00
Case No. 83-520		1,500.00
Case No. 83-521		1,231.32
Case No. 83-521	(Michael Makibe-Attorney's fees)	75.00
Case No. 83-522		1,329.55
Case No. 83-523		625.00
Case No. 83-523	(Straub Clinic & Hospital, Inc.)	541.01
Case No. 83-525		1,800.00
Case No. 83-528		250.00
Case No. 83-530		1,000.00
Case No. 83-530	(Straub Clinic & Hospital, Inc.)	1,289.91
Case No. 83-534		894.79
Case No. 83-534	(Dr. George Henry)	605.00
Case No. 83-534	(Dr. Gene Doo)	100.05
Case No. 83-534	(Dr. Lonnie Tiner)	766.36
Case No. 83-534	(Castle Memorial Hospital)	197.45
Case No. 83-534	(Hawaii Emergency Physicians Associated, Inc.)	63.50
Case No. 83-535		1,203.64
Case No. 83-536		250.00
Case No. 83-537		627.19
Case No. 83-538		1,000.00
Case No. 83-539		100.00
Case No. 83-539	(Hilo Hospital)	100.30
Case No. 83-539	(Hawaii Emergency Physicians Associated, Inc.)	545.37
Case No. 83-541		750.00
Case No. 83-543		507.62
Case No. 83-543	(Kona Hospital)	146.25
Case No. 83-543	(Dr. Ernest Sakamoto)	607.38
Case No. 83-544		109.50
Case No. 83-545		989.31
Case No. 83-547		350.00
Case No. 83-547	(Kuakini Medical Center)	3,097.45
Case No. 83-547	(Anesthesia Associates, Inc.)	520.00
Case No. 83-547	(Plastic Surgery Hawaii, Ltd.)	1,841.01
Case No. 83-547	(Dr. Roy Kamada)	274.56
Case No. 83-547	(Kuakini Radiology Group, Inc.)	55.90

Case No. 83-547	(Kikawa, Terada & Matsuyama, O.D., Inc.)	43.68
Case No. 83-548		70.00
Case No. 83-548	(Kaiser Medical Center)	264.00
Case No. 83-550	(Straub Clinic & Hospital, Inc.)	9,875.00
Case No. 83-550	(State of Hawaii Emergency Ambulance Service)	125.00
Case No. 83-553		56.65
Case No. 84-3		50.00
Case No. 84-4		514.98
Case No. 84-5		50.00
Case No. 84-6		5,000.00
Case No. 84-7		368.00
Case No. 84-7	(Kona Hospital)	153.74
Case No. 84-7	(Islands Emergency Medical Service, Inc.)	41.66
Case No. 84-7	(Dr. Peter Locatelli)	18.72
Case No. 84-8		250.00
Case No. 84-9		1,509.07
Case No. 84-11		100.00
Case No. 84-12		750.00
Case No. 84-14		5,188.50
Case No. 84-15		5,000.00
Case No. 84-16		1,755.97
Case No. 84-16	(Dr. Efren Baria)	232.05
Case No. 84-18		268.00
Case No. 84-18	(Kuakini Medical Center)	1,723.10
Case No. 84-18	(Dr. Werner Grebe)	526.00
Case No. 84-18	(Kuakini Radiology Group, Inc.)	48.36
Case No. 84-18	(Kuakini Emergency Service, Inc.)	55.30
Case No. 84-18	(Radiology Associates, Inc.)	50.44
Case No. 84-19		300.00
Case No. 84-23		100.00
Case No. 84-23	(Hilo Hospital)	64.60
Case No. 84-24		825.00
Case No. 84-25		5,000.00
Case No. 84-27	(Queen's Medical Center)	2,150.00
Case No. 83-27	(Dr. Don Parsa)	1,872.00
Case No. 84-27	(Dr. Ker-Ming Chang)	424.32
Case No. 84-27	(Dimitrion and Ebisu, M.D.)	79.89
Case No. 84-27	(Radiology Associates, Inc.)	16.64
Case No. 84-29		500.00
Case No. 84-31		706.24
Case No. 84-33		355.00
Case No. 84-33	(Kauai Medical Group, Inc.)	258.23
Case No. 84-33	(G N Wilcox Memorial Hospital & Health Center)	163.69
Case No. 84-36		587.56
Case No. 84-36	(Queen's Medical Center)	87.00
Case No. 84-37		100.00
Case No. 84-38		500.00
Case No. 84-38	(Queen's Medical Center)	327.00
Case No. 84-39		250.00
Case No. 84-39	(Wahiawa General Hospital)	50.00
Case No. 84-39	(Hawaii Emergency Physicians Associated, Inc.)	78.12
Case No. 84-41		1,000.00
Case No. 84-42		150.00
Case No. 84-44		250.00
Case No. 84-45	(Kaiser Medical Center)	1,802.00
Case No. 84-47		50.00
Case No. 84-48		250.00
Case No. 84-49		44.06
Case No. 84-50		100.00
Case No. 84-51		500.00
Case No. 84-53		750.00
Case No. 84-54		500.00
Case No. 84-55		250.00
Case No. 84-56		50.00
Case No. 84-61		249.75
Case No. 84-65		912.04

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Case No. 84-66		5,184.13
Case No. 84-69		500.00
Case No. 84-70		890.64
Case No. 84-74		233.12
Case No. 84-74	(Queen's Medical Center)	199.00
Case No. 84-74	(Dr. David Johnson)	386.89
Case No. 84-74	(Dr. Patrick Lai)	339.47
Case No. 84-74	(Dr. Ralph Akamine)	81.18
Case No. 84-76		1,669.00
Case No. 84-79		350.00
Case No. 84-82		788.73
Case No. 84-84		200.00
Case No. 84-86		525.58
Case No. 84-88	(Tripler Army Medical Center)	1,173.00
Case No. 84-88	(Queen's Medical Center)	13.00
Case No. 84-89		1,231.60
Case No. 84-91		250.00
Case No. 84-93		300.00
Case No. 84-94		288.29
Case No. 84-95		200.00
Case No. 84-97		250.00
Case No. 84-98		300.00
Case No. 84-100		13.40
Case No. 84-100	(Maui Memorial Hospital)	146.25
Case No. 84-100	(Queen's Medical Center)	128.00
Case No. 84-100	(Dr. Charles Mitchell)	52.10
Case No. 84-100	(Radiology Associates, Inc.)	35.36
Case No. 84-102		100.00
Case No. 84-103		100.00
Case No. 84-104		2,500.00
Case No. 84-106		1,104.60
Case No. 84-106	(Dr. Michael Dang)	1,021.37
Case No. 84-106	(Dr. Ralph Suetsugu)	198.72
Case No. 84-108		3,000.00
Case No. 84-109		1,571.30
Case No. 84-112		250.00
Case No. 84-114		500.00
Case No. 84-115		390.00
Case No. 84-116		105.39
Case No. 84-117		200.00
Case No. 84-118		1,237.37
Case No. 84-120		350.00
Case No. 84-121		290.96
Case No. 84-122	(Dr. George Atebara)	688.00
Case No. 84-123		100.00
Case No. 84-126		2,000.00
Case No. 84-128		1,000.00
Case No. 84-131		2,852.32
Case No. 84-131	(Maui Memorial Hospital)	75.23
Case No. 84-131	(Dr. James Kahoe)	262.87
Case No. 84-131	(Dr. David King)	103.85
Case No. 84-131	(Dr. Richard Rasmussen)	61.88
Case No. 84-132		5,545.36
Case No. 84-133		136.60
Case No. 84-134		1,000.00
Case No. 84-134	(G N Wilcox Memorial Hospital & Health Center)	3,503.67
Case No. 84-137		250.00
Case No. 84-138		50.00
Case No. 84-138	(Straub Clinic & Hospital, Inc.)	644.27
Case No. 84-139		626.11
Case No. 84-139	(Dr. Bruce Joseph)	1,173.70
Case No. 84-140		250.00
Case No. 84-140	(Kuakini Medical Center)	284.60
Case No. 84-140	(Dr. Kenneth Sunamoto)	30.00
Case No. 84-140	(Kuakini Emergency Physicians Service, Inc.)	249.98
Case No. 84-140	(Kuakini Radiology Group, Inc.)	29.38

Case No. 84-141		299.56
Case No. 84-142	(Kahuku Hospital)	180.00
Case No. 84-144		507.32
Case No. 84-145		1,200.00
Case No. 84-146		250.00
Case No. 84-147		8.00
Case No. 84-148		100.00
Case No. 84-149		100.00
Case No. 84-150		500.00
Case No. 84-151		918.06
Case No. 84-152		250.00
Case No. 84-153		350.00
Case No. 84-155	(Dr. Gary Bilyk)	2,152.00
Case No. 84-159		200.00
Case No. 84-162		300.00
Case No. 84-163		5,000.00
Case No. 84-163	(Kaiser Medical Center)	547.00
Case No. 84-164		1,292.50
Case No. 84-165		100.00
Case No. 84-166		200.00
Case No. 84-166	(Dr. Bernard Fogel)	220.48
Case No. 84-167		100.00
Case No. 84-168		500.00
Case No. 84-169		250.00
Case No. 84-170	(Dr. James Watson)	1,205.00
Case No. 84-172		1,423.00
Case No. 84-172	(Maui Memorial Hospital)	219.09
Case No. 84-172	(Dr. John F. Mills)	100.17
Case No. 84-174		646.79
Case No. 84-175		100.00
Case No. 84-178		1,375.00
Case No. 84-179		1,500.00
Case No. 84-183		200.00
Case No. 84-186		100.00
Case No. 84-189		1,587.93
Case No. 84-189	(Oral Surgery Group)	813.85
Case No. 84-189	(Dr. Roland F. S. Tam)	950.25
Case No. 84-189	(Dr. Mathilda Goh)	560.96
Case No. 84-189	(State of Hawaii Emergency Ambulance Service)	125.00
Case No. 84-189	(The Radiology Group, Inc.)	92.00
Case No. 84-190		786.00
Case No. 84-191		300.00
Case No. 84-191	(Kuakini Medical Center)	2,057.10
Case No. 84-191	(Wahiawa General Hospital)	288.00
Case No. 84-191	(Anesthesia Associates, Inc.)	494.00
Case No. 84-191	(Plastic Surgery Hawaii, Ltd.)	2,294.00
Case No. 84-191	(Dr. Kazuo Teruya)	138.53
Case No. 84-191	(Hawaii Emergency Physicians Associated, Inc.)	79.37
Case No. 84-191	(The Radiology Group, Inc.)	100.00
Case No. 84-191	(Kuakini Radiology Group, Inc.)	34.06
Case No. 84-191	(State of Hawaii Emergency Ambulance Service)	125.00
Case No. 84-192		468.65
Case No. 84-195		250.00
Case No. 84-198		500.00
Case No. 84-199		2,700.00
Case No. 84-200		7,407.00
Case No. 84-201		150.00
Case No. 84-203		539.60
Case No. 84-204		454.64
Case No. 84-205		260.00
Case No. 84-205	(Waianae Coast Comprehensive Health Center)	224.67
Case No. 84-206		300.00
Case No. 84-207		494.79
Case No. 84-209		709.15
Case No. 84-210		727.98
Case No. 84-212		2,000.00
Case No. 84-214		500.00

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Case No. 84-216		547.77
Case No. 84-217		250.00
Case No. 84-218		500.00
Case No. 84-219		250.00
Case No. 84-220		100.00
Case No. 84-221		300.00
Case No. 84-222		250.00
Case No. 84-224		700.00
Case No. 84-229		350.00
Case No. 84-230		5,268.19
Case No. 84-231		754.00
Case No. 84-232		100.00
Case No. 84-233		166.00
Case No. 84-236		1,000.00
Case No. 84-237		229.93
Case No. 84-237	(Queen's Medical Center)	399.80
Case No. 84-237	(Dr. David Johnson)	214.80
Case No. 84-239		638.20
Case No. 84-240		500.00
Case No. 84-241		196.00
Case No. 84-242		500.00
Case No. 84-243		500.00
Case No. 84-245		1,000.00
Case No. 84-246		1,000.00
Case No. 84-247		750.00
Case No. 84-247	(Dr. Joseph S. M. Chang)	582.00
Case No. 84-248		3,000.00
Case No. 84-250		350.00
Case No. 84-251		385.00
Case No. 84-252		250.00
Case No. 84-254		382.78
Case No. 84-256		573.00
Case No. 84-258		313.20
Case No. 84-260		250.00
Case No. 84-261		250.00
Case No. 84-262		2,100.00
Case No. 84-263		1,188.21
Case No. 84-263	(G N Wilcox Memorial Hospital & Health Center)	687.55
Case No. 84-264		500.00
Case No. 84-264	(Queen's Medical Center)	182.00
Case No. 84-264	(Honolulu Sports Medical Clinic, Inc.)	436.72
Case No. 84-264	(Kaiser Medical Center)	87.00
Case No. 84-266		818.85
Case No. 84-268		750.00
Case No. 84-269		750.00
Case No. 84-272		500.00
Case No. 84-277	(Queen's Medical Center)	193.00
Case No. 84-277	(The Emergency Group, Inc.)	164.32
Case No. 84-279		900.00
Case No. 84-280		150.00
Case No. 84-282		750.00
Case No. 84-282	(Dr. Alex Kaloi)	1,650.00
Case No. 84-283		500.00
Case No. 84-286	(Kahuku Hospital)	410.40
Case No. 84-286	(Dr. James Papayoanou)	592.80
Case No. 84-286	(Dr. Dennis Tiberi)	197.00
Case No. 84-286	(State of Hawaii Emergency Ambulance Service)	125.00
Case No. 84-287		100.00
Case No. 84-288		308.40
Case No. 84-289		5,551.59
Case No. 84-292		1,035.51
Case No. 84-293		300.00
Case No. 84-293	(Straub Clinic & Hospital, Inc.)	120.38
Case No. 84-298		70.00
Case No. 84-298	(St. Francis Hospital)	177.26
Case No. 84-299		500.00

Case No. 84-299	(Kaiser Medical Center)	746.50
Case No. 84-304		86.16
Case No. 84-305		1,571.00
Case No. 84-306		1,000.00
Case No. 84-308		2,000.00
Case No. 84-309		250.00
Case No. 84-311		1,000.00
Case No. 84-312		500.00
Case No. 84-314		3,281.15
Case No. 84-316		1,000.00
Case No. 84-317		1,500.00
Case No. 84-319		300.00
Case No. 84-319	(Dr. James Phillips)	126.86
Case No. 84-321		2,500.00
Case No. 84-324		837.26
Case No. 84-326		750.00
Case No. 84-327		500.00
Case No. 84-327	(Hilo Hospital)	139.60
Case No. 84-327	(Hawaii Emergency Physicians Associated, Inc.)	131.45
Case No. 84-327	(Hilo Radiologic Associates, Ltd.)	35.36
Case No. 84-328		350.00
Case No. 84-329		221.06
Case No. 84-330		1,097.33
Case No. 84-330	(Kuakini Medical Center)	290.80
Case No. 84-330	(Kuakini Emergency Physicians Service, Inc.)	68.75
Case No. 84-331		548.00
Case No. 84-331	(Plastic Surgery Hawaii, Ltd.)	675.10
Case No. 84-331	(Kuakini Medical Center)	202.00
Case No. 84-333		656.63
Case No. 84-337	(Maui Memorial Hospital)	175.25
Case No. 84-337	(Dr. Thomas Spallino)	208.51
Case No. 84-339		394.32
Case No. 84-342		255.00
Case No. 84-342	(Dr. Meredith Pang)	227.12
Case No. 84-342	(Dr. Jeffrey Lau)	280.80
Case No. 84-342	(Kuakini Emergency Physicians Service, Inc.)	55.20
Case No. 84-345		580.00
Case No. 84-345	(Queen's Medical Center)	97.00
Case No. 84-345	(Anesthesia Associates, Inc.)	234.00
Case No. 84-345	(The Emergency Group, Inc.)	68.64
Case No. 84-345	(Radiology Associates, Inc.)	20.80
Case No. 84-347		346.16
Case No. 84-349		250.00
Case No. 84-350		750.00
Case No. 84-351		250.00
Case No. 84-354		2,500.00
Case No. 84-356		796.90
Case No. 84-360		381.50
Case No. 84-361		1,911.50
Case No. 84-362		615.94
Case No. 84-364		1,055.00
Case No. 84-370		506.50
Case No. 84-371		380.00
Case No. 84-371	(Dr. Philip Foti)	433.68
Case No. 84-374		863.36
Case No. 84-379		300.00
Case No. 84-379	(G N Wilcox Memorial Hospital & Health Center)	204.75
Case No. 84-379	(Kauai Medical Group)	202.75
Case No. 84-280		250.00
Case No. 84-381		250.00
Case No. 84-381	(Maui Memorial Hospital)	267.29
Case No. 84-384		600.00
Case No. 84-389		93.50
Case No. 84-390		367.88
Case No. 84-391		480.00
Case No. 84-393		500.00

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Case No. 84-398	300.00
Case No. 84-408	10,000.00
Case No. 84-418	146.60
Case No. 84-446	500.00
Case No. 84-477	1,500.00
Case No. 84-498	100.00

SECTION 2. The sums appropriated in section 1 of this Act shall be deposited in the criminal injuries compensation fund to be used for payments by the criminal injuries compensation commission.

SECTION 3. All unexpended and unencumbered balances of the appropriations made by this Act as of the close of business on June 30, 1986, shall lapse into the general fund of the State.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 211

S.B. NO. 319

A Bill for an Act Relating to Chapter 237, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 103, Session Laws of Hawaii 1981, section 4, is amended to read as follows:

“SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1980 [and shall be repealed as of December 31, 1985].”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 212

S.B. NO. 588

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Audits. The association of apartment owners shall require a yearly audit of the association financial accounts and no less than one yearly unannounced audit of the association’s financial accounts by a certified public accountant; provided that the yearly audit and the yearly unannounced audit may be waived by a majority vote of all apartment owners taken at an association meeting.”

SECTION 2. Section 514A-82, Hawaii Revised Statutes, is amended to read as follows:

“§514A-82 Contents of bylaws. The bylaws shall provide for at least the following:

- (1) Board of directors:

- (A) The election of a board of directors;
 - (B) The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than seventy-five per cent of all apartment owners vote by secret written ballot to set the minimum number of directors at less than nine during an annual meeting or special meeting called for the purpose of reducing the minimum number of directors;
 - (C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;
 - (D) The powers and duties of the board;
 - (E) The compensation, if any, of the directors;
 - (F) The method of removal from office of directors; and
 - (G) Whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners and that votes allocated to any area which constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, whether or not it is so designated in the declaration.
 - (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
 - (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
 - (5) Election of a treasurer who shall keep the financial records and books of account.
 - (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
 - (7) Manner of collecting common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges.
 - (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
 - (9) Method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.
 - (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
 - (11) The bylaws may be amended at any time by the vote or written consent of not less than sixty-five per cent of all apartment owners,

but each one of the particulars set forth in this section shall always be embodied in the bylaws.

- (12) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request.
- (13) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one representative on the board of directors from any one apartment.
- (14) A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest.
- (15) No resident manager of a condominium shall serve on its board of directors.
- (16) The board of directors shall meet at least once a year.
- (17) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- (18) No resident manager, or managing agent shall solicit, for use by such manager or managing agent, any proxies from any apartment owner of the association of owners which employs him, nor shall he cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.
- (19) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.
- [(20) The members of the association of apartment owners may require, by vote at the annual meeting, a yearly audit of the association books by a certified public accountant.]
- [(21) (20) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.
- [(22) (21) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to the meeting.
- [(23) (22) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto,

method of determination of violations, and manner of enforcing such penalties, if any.”

SECTION 3. Section 514A-84, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The funds in the general operating account of the condominium association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the managing agent commingle any association funds with its own funds. [Rental operation] For purposes of this subsection, lease rent collections and rental operations shall not include either the rental or leasing of common elements that is conducted on behalf of the board of directors of the association of apartment owners[.]; or the collection of ground lease rents from individual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that the collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project; that the management contract requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor; and that the system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association of apartment owners; provided further that the managing agent shall not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.”

SECTION 4. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-85 Books of receipts and expenditures; unpaid assessments; availability for examination.** The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The manager or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of week days. The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account.”

SECTION 5. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every managing agent shall be licensed as a real estate broker in compliance with chapter 467 and the rules of the real estate commission or a corporation authorized to do business under chapter 406 and shall register with the real estate commission. The information required to be submitted shall include, but not be limited to, the name, business address, and phone number of the managing agent. The managing agent shall also show proof of bonding obtained pursuant to section 514A-84. Any person aggrieved by an act, representation, transaction, or conduct of a managing agent upon the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit court or district court of the county where the violation occurred first from the bond

required by section 514A-84, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16.”

SECTION 6. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the real estate commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514-68, 514A-69, 514A-84, and 514A-85¹ or the rules of the commission adopted pursuant thereto, it shall issue and serve upon such person a complaint stating its charges in that respect, containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on the person an order requiring the person to cease and desist from such violations. The person complained of may, within thirty days after service upon him of the report or order, obtain a review thereof in the appropriate circuit court.”

SECTION 7. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-48 Power to enjoin.** Whenever the real estate commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85 and 514A-95¹ or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter, and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.”

SECTION 8. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“**§514A-49 Penalties.**² (a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, or 514A-102 to 514A-106, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the real estate commission under sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95 or 514A-102 to 514A-106, is guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding one year, or both.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 10. This Act shall take effect upon its approval; provided that section 5 of this Act shall take effect on December 31, 1985.

(Approved June 4, 1985.)

Notes

1. Comma missing.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 213

S.B. NO. 589

A Bill for an Act Relating to Public Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 77-13.5, Hawaii Revised Statutes, is amended to read as follows:

“§77-13.5 Conversion to appropriate salary ranges. (a) Any provision of law to the contrary notwithstanding, the chief executives of the State and counties and the chief justice of the supreme court, as appropriate, may [reduce] adjust the number of steps within the salary ranges under sections 77-5 and 77-13, as provided in this section]. In no event shall the number of steps be increased, except by action] with the approval of the state legislature.

(b) For employees in positions under this chapter who are included in bargaining units under chapter 89, the conversion to the adjusted salary ranges [with fewer steps] shall be subject to negotiations, at the option of the exclusive representative of an appropriate bargaining unit, but without resort to any impasse procedure [whether by statute or agreement;] under section 89-11(d); provided the option is exercised in accordance with [subsections] subsection (c) [and (d)]. For employees in positions under this chapter who are excluded from collective bargaining units, the conversion shall be subject to chapter 89C and subsection [(e.)] (d).

(c) Each exclusive representative may exercise the option to negotiate a model conversion plan regarding [a reduction] an adjustment in the number of steps within the salary ranges under section 77-5 or 77-13, as applicable, for positions within its appropriate bargaining unit, by notifying the appropriate employers of its intent in writing. The employers and the exclusive representative shall meet for the purpose of developing a mutually agreeable conversion plan [which meets the requirements of subsection (d)]. Any such plan mutually agreed upon shall be reduced to writing and signed by the parties before [December 31, 1983.] June 30, 1987. The plan shall be binding upon the parties, except that all costs relative to the conversion shall be subject to approval and appropriations by the appropriate legislative bodies, along with negotiated pay increases and other cost items, as required under section 89-10(b). In the absence of a mutually agreed upon model conversion plan before [December 31, 1983] June 30, 1987, for any particular bargaining unit, wage negotiations for such unit shall be based on the existing salary ranges and steps as provided in section 77-5 or 77-13, as applicable.

[(d) Any model conversion plan agreed to between the employers and the exclusive representative shall contain the following:

- (1) An agreement that the objective of the conversion plan is to reduce the number of steps within each salary range under section 77-5 or

77-13, as applicable, for positions within the appropriate bargaining unit, to a specific number of steps.

- (2) An agreement that the model conversion plan shall remain in effect and shall not be modified except by written mutual agreement of the parties.
- (3) An agreement that during the fiscal year commencing July 1, 1983, and each subsequent fiscal year, at least one step shall be deleted from the salary ranges until the salary ranges are reduced to such number of steps mutually agreed upon under paragraph (1).
- (4) An agreement that all negotiations on wages, to be effective July 1, 1983 and subsequently, shall be based on the model conversion plan and that no other pay rates shall be negotiated, other than those rates for the number of steps allowable under paragraph (3) or such fewer number of steps as mutually agreed upon between the parties.
- (5) An agreement that all employees in bargaining unit positions subject to this chapter shall be paid, commencing July 1, 1983, in accordance with the rates negotiated for the steps on the revised salary schedule within their applicable salary ranges.
- (6) An agreement regarding the adjusting of employees' pay from their existing rates to those rates negotiated for the steps on the revised salary schedule within their applicable salary ranges; provided that such an agreement may contain a provision for the payment of a bonus or conversion differential if it is not to be considered as an adjustment to an employee's basic pay rate.

The parties shall not agree to a conversion plan which does not meet the requirements of this section nor agree to any amendments which would be inconsistent with this section.

(e) (d) The chief executives of the State and the counties and the chief justice of the supreme court, as applicable, may [reduce] adjust the number of steps within the salary ranges under sections 77-5 and 77-13 for positions excluded from collective bargaining coverage. Their designated representatives shall review the model conversion plans applicable to employees included in collective bargaining units before reaching a decision under section 89C-3 concerning adjustments regarding [a reduction in] the number of steps for excluded employees; provided that any [reduction] adjustment in the number of steps for excluded employees shall harmonize with the model conversion plans developed for included employees; provided further that if a model conversion plan is not developed for employees included in a collective bargaining unit, there shall be no [reduction] adjustment in the number of steps for excluded employees under the same compensation plan as the employees included in that bargaining unit. The costs of [reducing] adjusting the salary ranges [to fewer steps] and any other general pay adjustments shall be subject to approval and appropriations by the appropriate legislative bodies in accordance with section 89C-5."

SECTION 2. Chapter 297, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"§297-33.5 Conversion to appropriate salary ranges. (a) Any provision of law to the contrary notwithstanding, the board of education may adjust the number of steps within the salary ranges under section 297-32, 297-32.1, 297-33, or 297-33.1, as provided in this section with the approval of the state legislature.

(b) For employees in positions under this chapter who are included in bargaining units under chapter 89, the conversion to the adjusted salary ranges

shall be subject to negotiations, at the option of the exclusive representative of an appropriate bargaining unit, but without resort to any impasse procedure under section 89-11(d); provided the option is exercised in accordance with subsection (c). For employees in positions under this chapter who are excluded from collective bargaining units, the conversion shall be subject to chapter 89C and subsection (d).

(c) Each exclusive representative may exercise the option to negotiate a model conversion plan regarding an adjustment in the number of steps within the salary ranges under section 297-32, 297-32.1, 297-33, or 297-33.1, as applicable, for positions within its appropriate bargaining unit by notifying the board of education of its intent in writing. The board of education and the exclusive representative shall meet for the purpose of developing a mutually agreeable conversion plan. Any such plan mutually agreed upon shall be reduced to writing and signed by the parties before June 30, 1987. The plan shall be binding upon the parties, except that all costs relative to the conversion shall be subject to approval and appropriations by the state legislature, along with negotiated pay increases and other cost items, as required under section 89-10(b). In the absence of a mutually agreed upon model conversion plan before June 30, 1987, for any particular bargaining unit, wage negotiations for such unit shall be based on the existing salary ranges and steps as provided in section 297-32, 297-32.1, 297-33, or 297-33.1, as applicable.

(d) The board of education may adjust the number of steps within the salary ranges under section 297-32, 297-32.1, 297-33, or 297-33.1 for positions excluded from collective bargaining coverage. The board's designated representative shall review the model conversion plans applicable to employees included in collective bargaining units before reaching a decision under section 89C-3 concerning adjustments regarding the number of steps for excluded employees; provided that any adjustment in the number of steps for excluded employees shall harmonize with the model conversion plans developed for included employees; provided further that if a model conversion plan is not developed for employees included in a collective bargaining unit, there shall be no adjustment in the number of steps for excluded employees under the same compensation plan as the employees included in that bargaining unit. The costs of adjusting the salary ranges and any other general pay adjustments shall be subject to approval and appropriation by the state legislature in accordance with section 89C-5."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 214

S.B. NO. 665

A Bill for an Act Relating to Acupuncture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ACUPUNCTURE PRACTITIONERS**

§ -1 Declaration of necessity for regulation and control. The legislature hereby finds and declares that the practice of acupuncture is a theory and method for treatment of illness and disability and for strengthening and invigorating the body and as such affects the public health, safety, and welfare, and therefore there is a necessity that individuals practicing acupuncture be subject to regulation and control.

§ -2 Definitions. As used in this chapter:

“Acupuncture practitioner” means a person engaged in the practice of acupuncture.

“Board” means the board of acupuncture.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Earned Degree” means an academically or a clinically obtained degree (not honorary).

“Practice of acupuncture” means stimulation of a certain acupuncture point or points on the human body for the purpose of controlling and regulating the flow and balance of energy in the body. The practice includes the techniques of piercing the skin by inserting needles and point stimulation by the use of acupressure, electrical, mechanical, thermal, or traditional therapeutic means.

§ -3 License required. Except as otherwise provided by law, no person shall practice acupuncture in this State either gratuitously or for pay, or shall offer to so practice, or shall announce themselves either publicly or privately as prepared or qualified to so practice any method of acupuncture without having a valid unrevoked license from the State.

§ -4 Exemptions. (a) Any person licensed under chapters 448, 453, and 460, if certified by their respective boards as qualified to practice acupuncture by reason of formal training in acupuncture shall be exempt from this chapter.

(b) A licensed acupuncturist of another state or country for demonstrations or lectures to be given at acupuncture or medical society meetings or at acupuncture schools shall be exempt from licensing procedures set forth in this chapter.

§ -5 Qualifications for examination. (a) No person shall be licensed to practice acupuncture unless the person has passed an examination and has been found to be possessed of the necessary qualifications as prescribed in the rules adopted by the board pursuant to chapter 91.

(b) Before any applicant shall be eligible for such examination, the applicant shall furnish satisfactory proof to the board that the applicant:

- (1) Has completed a formal program of acupuncture (traditional oriental medicine) and received a certificate or diploma from an institute or private tutorship approved by the board. The training in the science of acupuncture (traditional oriental medicine) shall be for a period of not less than two academic years (not less than six hundred hours) and one clinical year in a clinical internship program supervised by a licensed acupuncturist (not less than twelve months and not less than nine hundred hours) for a total of not less than one thousand five hundred hours.
- (2) Students who have completed not less than two years of a formal course of acupuncture and have received a certificate or diploma from an approved school or a qualified private tutor approved by the board shall be required to complete not less than twelve months (not less than nine hundred hours) of practice of acupuncture on

human subjects in a clinical internship program supervised by a licensed acupuncturist prior to licensure.

- (3) Tutorships which have been approved by the board prior to December 31, 1984 shall be acceptable for examination upon their completion; provided tutorships shall no longer be an accepted status to qualify for examination for acupuncture licensure after June 30, 1987.

(c) Any person who had a valid and current license to practice acupuncture in this State on December 31, 1984, shall be issued a license under this chapter upon application and payment of a license fee not later than December 31, 1985.

(d) Students who started training prior to December 31, 1984 in a school or tutorship program approved by the board prior to December 31, 1984, and who shall complete their training by December 31, 1989:

- (1) Shall not lose their rights of continued education, earned or accumulated credits; and
- (2) For purposes of this chapter their requirements for examination and licensure will be as provided in chapter 436D and chapter 16-72, Hawaii Administrative Rules, as they existed on December 31, 1984, provided that the school or tutorship has not altered its program so as to lower the standards for completion of the program.

§ -6 Board of acupuncture. There shall be a board of acupuncture, the members of which shall be appointed by the governor in accordance with section 26-34, except as provided in this section.

The board shall consist of five persons, two of whom shall be private citizens and three shall be acupuncturists licensed in accordance with this chapter. The members of the board shall serve without pay but shall be reimbursed for actual expenses incurred in the discharge of their duties. A majority of the board shall constitute a quorum. Each person on the board shall have a two-year term and shall serve not more than two terms, consecutive or otherwise.

§ -7 Powers and duties of the board. The board shall:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter, with special emphasis on the health and safety of the public;
- (2) Develop standards for licensure;
- (3) Prepare, administer and grade examinations, provided that the board may contract with a testing agency to provide such services;
- (4) Issue, renew, suspend, and revoke licenses;
- (5) Register applicants of holders of a license;
- (6) Investigate and conduct hearings regarding any violation of this chapter and any rules of the board;
- (7) Maintain a record of its proceedings; and
- (8) Do all things necessary to carry out the functions, powers, and duties set forth in the chapter.

§ -8 Fees and expenses. No applicant shall be examined under this chapter until the appropriate fees have been paid. The department shall establish the amount for application, examination, license, restoration, and renewal fees by rules adopted pursuant to chapter 91. All fees shall be deposited with the director of finance to the credit of the general fund.

§ -9 Biennial renewal. Every person holding a license under this chapter shall register with the board and pay a biennial fee on or before June 30 of each

odd-numbered year. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of a restoration fee.

§ -10 Revocation or suspension of licenses. (a) Any license to practice acupuncture under this chapter may be revoked or suspended by the board of acupuncture at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of the license:

- (1) Obtaining a fee on the assurance that a manifestly incurable ailment can be permanently cured;
- (2) The use of false, fraudulent, or deceptive advertising and making untruthful and improbable statements;
- (3) Habitually using any habit forming controlled substance, such as opium or any of its derivatives, morphine, heroin, or cocaine;
- (4) Procuring a license through fraud, misrepresentation or deceit;
- (5) Professional misconduct or gross carelessness or manifest incapacity in the practice of acupuncture; or
- (6) Violating any rules adopted hereunder.

(b) If any license is revoked or suspended by the board for any act or condition listed in this section, the holder of the license shall be notified in writing by the board of the revocation or suspension. Any license to practice may be restored by the board as provided by rule.

§ -11 Hearings. Any proceeding before the board for the revocation or suspension of a license to practice shall be conducted in accordance with chapter 91. The board shall delegate to the department of commerce and consumer affairs the authority to receive, arbitrate, investigate, and prosecute complaints.

§ -12 Penalty. (a) Any person except a person licensed under this chapter who practices, treats, or instructs in any phase of acupuncture without a license or permit issued by the board, or uses any word or title to induce the belief that they are engaged in the practice of any type of acupuncture, shall be guilty of a misdemeanor and subject to a fine of not less than \$50 nor more than \$1,000 for each violation.

(b) Any person, except a licensed acupuncturist, who:

- (1) Practices or attempts to practice acupuncture;
- (2) Buys, sells, or fraudulently obtains any diploma or license to practice acupuncture whether recorded or not;
- (3) Uses the title "acupuncturist", "D.Ac." or "D.O.M." or any word or title to induce the belief that the person is engaged in the practice of acupuncture without complying with this chapter; or
- (4) Violates this chapter;

shall be penalized as provided in subsection (a). The department may also seek all legal and equitable remedies available to it for the enforcement of the provisions of this chapter, including seeking injunctive relief.

§ -13 Use of titles. (a) A licensee who has been awarded a license to practice acupuncture by the board of acupuncture in this State may use the title of "Licensed Acupuncturist" or designation "L.Ac." with the licensee's name in an advertisement for acupuncture or announce or append the designation to the licensee's name.

(b) A licensee who has been awarded an earned doctoral degree may use the designation "Ph.D." in an advertisement for acupuncture or announce or append the designation to the licensee's name if the degree was granted from a university or college recognized and approved by the board in recognition of

accomplishments in the study or practice of acupuncture (traditional oriental medicine).

(c) A licensee who has been awarded an earned doctoral degree from a university or college recognized and approved by the board in the study or practice of acupuncture (traditional oriental medicine), may use the word "Doctor" or the prefix "Dr." providing the word "Acupuncturist" immediately follows the licensee's name.

(d) Other titles, prefixes, or designations shall be permitted under this chapter when authorized by the board or a department of education curriculum.

§ -14 Foreign school curricula and standards. The board of acupuncture shall not recognize and approve an earned doctoral degree from a foreign university or college whose curricula and standards are not equivalent to or higher than institutions in the United States which have been recognized and approved by the board in the study or practice of acupuncture.

§ -15 Any action taken by the board which was established by chapter 436D prior to December 31, 1984 not in contravention of this Act shall remain in full force and effect."

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The following chapters are hereby repealed effective December 31, 1988:

- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 359L (Factory Built Housing Advisory Board)
- (4) Chapter 468B (Solar Energy Device Dealers)
- (5) Chapter 468K (Travel Agencies)
- (6) Chapter 373 (Commercial Employment Agencies)
- (7) Chapter 442 (Board of Chiropractic Examiners)
- (8) Chapter 448 (Board of Dental Examiners)
- (9) Chapter (Board of Acupuncture)"

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 215

S.B. NO. 1271

A Bill for an Act Relating to Contractors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

"§444-2 Exemptions. This chapter shall not apply to:

- (1) An officer or employee of the United States, the State, or any political subdivision if the project or operation is performed by employees thereof;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;

- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, and all other items is less than \$100. This exemption shall not apply in any case wherein the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts less than \$100 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in his professional capacity;
- (6) Any person who engages in the activities herein regulated as an employee with wages as [his] the person's sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial or commercial buildings or structures on such property for their own use, or for use by their grandparents, parents, siblings, or children and do not offer such buildings or structures for sale or lease. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of such structure within one year after completion is "prima facie" evidence that the construction or improvement of such structure was undertaken for the purpose of sale or lease; provided [, however,] that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1; or
- (8) Any copartnership or joint venture if all members thereof hold licenses issued under this chapter."

SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

"§444-9.1 Issuance of building permits[.]; owner-builder registration.

Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant is licensed under this chapter, giving the number of the license and stating that it is in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), [he] the applicant shall also be required to certify that the building or structure is for [his] the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; and (4) the approximate dates of construction activity. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or his duly authorized agent.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 216

S.B. NO. 1404

A Bill for an Act Relating to Fraudulent Transfers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

UNIFORM FRAUDULENT TRANSFER ACT

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Affiliate” means:

- (1) A person who directly or indirectly owns, controls, or holds with power to vote, twenty or more percent of the outstanding voting securities of the debtor, other than a person who holds the securities:
 - (A) As a fiduciary or agent without sole discretionary power to vote the securities; or
 - (B) Solely to secure a debt, if the person has not in fact exercised the power to vote;
- (2) A corporation, twenty or more percent of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person who directly or indirectly owns, controls, or holds with power to vote, twenty or more percent of the outstanding voting securities of the debtor, other than a person who holds the securities:
 - (A) As a fiduciary or agent without sole discretionary power to vote the securities; or
 - (B) Solely to secure a debt, if the person has not in fact exercised the power to vote;
- (3) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
- (4) A person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

“Asset” means property of a debtor but does not include:

- (1) Property to the extent that it is encumbered by a valid lien;
- (2) Property to the extent that it is generally exempt under nonbankruptcy law; or

- (3) An interest in property held in tenancy by the entireties to the extent that it is not subject to process by a creditor holding a claim against only one tenant.

“Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

“Creditor” means a person who has a claim against a debtor.

“Debt” means liability on a claim.

“Debtor” means a person against whom a creditor has a claim.

An “insider” includes:

- (1) If the debtor is an individual:
- (A) A relative of the debtor or of a general partner of the debtor;
 - (B) A partnership in which the debtor is a general partner;
 - (C) A general partner in a partnership described in subparagraph (B); or
 - (D) A corporation of which the debtor is a director, officer, or person in control;
- (2) If the debtor is a corporation,
- (A) A director of the debtor;
 - (B) An officer of the debtor;
 - (C) A person in control of the debtor;
 - (D) A partnership in which the debtor is a general partner;
 - (E) A general partner in a partnership described in subparagraph (D); or
 - (F) A relative of a general partner, director, officer, or person in control of the debtor;
- (3) If the debtor is a partnership,
- (A) A general partner of the debtor;
 - (B) A relative of a general partner in, of a general partner of, or of a person in control of the debtor;
 - (C) Another partnership in which the debtor is a general partner;
 - (D) A general partner in a partnership described in subparagraph (C); or
 - (E) A person in control of the debtor;
- (4) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (5) A managing agent of the debtor.

“Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, including a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

“Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

“Property” means anything that may be the subject of ownership.

“Relative” means an individual related within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

“Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes a payment of money, a release, a lease, and the creation of a lien or encumbrance.

“Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§ -2 **Insolvency.** (a) A debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets, at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all of the partnership’s assets, and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

§ -3 **Value.** (a) Value is given for a transfer or an obligation if in exchange for the transfer or obligation property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.

(b) For the purposes of section -4(a)(2) and section -5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§ -4 **Transfers fraudulent as to present and future creditors.** (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

- (1) The transfer or obligation was to an insider;
- (2) The debtor had retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was disclosed or concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor was sued or threatened with suit;

- (5) The transfer was of substantially all the debtor's assets;
- (6) The debtor had absconded;
- (7) The debtor had removed or concealed assets;
- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer had occurred shortly before or shortly after a substantial debt was incurred; and
- (11) The debtor had transferred the essential assets of the business to a lienor who had transferred the assets to an insider of the debtor.

§ -5 Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for other than a present, reasonably equivalent value, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

§ -6 When transfer is made or obligation is incurred. For the purposes of this chapter:

- (1) A transfer is made:
 - (A) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
 - (B) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;
- (2) If applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is made immediately before the commencement of the action;
- (3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee;
- (4) A transfer is not made until the debtor has acquired rights in the asset transferred;
- (5) An obligation is incurred:
 - (A) If oral, when it becomes effective between the parties; or
 - (B) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

§ -7 Remedies of creditors. (a) In any action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations provided in section -8, may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 651;
- (3) Subject to applicable principles of equity and in accordance with applicable civil rules of procedure:
 - (A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (B) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (C) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor may, if the court so orders, levy execution on the asset transferred or its proceeds.

§ -8 Defenses, liability, and protection of transferee. (a) A transfer or obligation is not voidable under section -4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section -7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (1) The first transferee of the asset or the person for whose benefit the transfer was made; or
- (2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset transferred;
- (2) Enforcement of any obligation incurred; or
- (3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section -4(a)(2) or section -5 if the transfer results from:

- (1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(f) A transfer is not voidable under section -5(b):

- (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

- (2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

§ -9 **Extinguishment of cause of action.** A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

- (1) Under section -4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under section -4(a)(2) or section -5(a), within four years after the transfer was made or the obligation was incurred; or
- (3) Under section -5(b), within one year after the transfer was made or the obligation was incurred.

§ -10 **Supplement of provisions.** Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.”

SECTION 2. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

A Bill for an Act Relating to Retention of Cashed Warrants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 40-11, Hawaii Revised Statutes, is amended to read as follows:

“§40-11 **Destruction of warrants, bonds and interest coupons.** The director of finance and comptroller may [supervise and conduct the destruction by burning, machine shredding, chemical disintegration or any other method of disposal deemed acceptable to them of] destroy all warrants of the State which have been paid and [which] bear any date [ten] three years prior to the date of destruction[.]; provided that the warrants have been microfilmed and the microfilmed copies of the warrants are maintained for ten years from the date of the warrant. Otherwise, state warrants which have been paid cannot be destroyed until ten years from the date of the warrant. The director of finance and comptroller may [also supervise and conduct the destruction by burning, machine shredding, chemical disintegration, or any other method of disposal deemed acceptable to them of state] destroy state bonds and interest coupons which have been paid and [which] bear any date two years prior to the date of destruction[, provided, that the]. The director of finance and comptroller may appoint the fiscal agent for the bond issue to supervise and conduct the destruction of state bonds and interest coupons which have been paid and

[which] bear any date two years prior to the date of destruction. The fiscal agent so appointed shall submit reports as required by the director of finance and comptroller. State warrants, bonds, and interest coupons may be destroyed by burning, machine shredding, chemical disintegration, or any other method of disposal deemed acceptable to the director of finance and comptroller."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 218

H.B. NO. 153

A Bill for an Act Relating to Members of Boards and Commissions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) For purposes of this section, "member" means any person who is appointed, [as provided by] in accordance with law, to serve on a temporary or permanent state board, council, authority, committee, or commission, established by law or elected to the board of trustees of the employees' retirement system under section 88-24, [, without compensation other than reimbursement for expenses necessary for the performance of the duties of the position to which the person was appointed]; provided that "member" shall not include any person [serving on a board or commission with land trust obligations.] elected to serve on a board or commission in accordance with chapter 11."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 219

H.B. NO. 165

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-103, Hawaii Revised Statutes, is amended to read:

"[[]§334-103[]] **Program elements.** The following shall be the program elements of the system. These shall be designed to provide, at every level, alternatives to institutional settings. Applicants in applying for funds for the program elements shall show how each of these elements works with the current programs in the community the facility will serve. Applicants may apply for funds for the following program elements:

- (1) A short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or situational crisis. The program shall be available for admissions twenty-four hours a day,

seven days a week. The primary focus of this element shall be on reduction of the crisis, stabilization, diagnostic evaluation, and assessment of the person's existing support system, including recommendations for referrals upon discharge. This service in the program shall be designed for persons who would otherwise be referred to an acute inpatient psychiatric unit.

- (2) A long-term residential treatment program for clients who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also will serve those who are referred to, and maintained in, state hospitals or nursing homes because they require long-term, intensive support. This service shall be designed to provide a rehabilitation program for the so-called "chronic" patient who needs long-term support in order to develop independent living skills. This program goes beyond maintenance to provide an active rehabilitation focus for these individuals.
- (3) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. These programs may employ a variety of staffing patterns and are for persons who are expected to move toward a more independent living setting. The clients shall be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as a whole. Residents are required to be involved in daytime activities outside of the facility which are relevant to their personal goals and conducive to their achieving more self-sufficiency.
- (4) A semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the other system elements, but, who, without some support and structure, are at risk [to return to a condition] of requiring hospitalization. [The individual apartments or houses are shared by three to five persons.] The small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings. This element is for persons who only need minimum support in order to live in the community. These units should be as normative as the general living arrangements in the communities in which they are developed."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 220

H.B. NO. 171

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The subject of the petition shall be present at all hearings unless [he] the subject waives [his] the right to be present, is unable to attend, or creates conditions which make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the [person] subject understands [his] the subject's rights and is competent to waive them, or is unable to participate. If the subject is unable to participate, the judge shall appoint a guardian ad litem or a temporary guardian as provided in Article V of chapter 560, to represent [him] the subject throughout the proceedings.”

SECTION 2. Section 334-76, Hawaii Revised Statutes, is amended to read:

“§334-76 **[[NEW]] Discharge from custody.** Subject to any special requirements of law as provided in sections 704-406, 704-411, and 706-607 or elsewhere, with respect to patients committed on court order, the administrator of a psychiatric facility [shall], pursuant to section [334-60(b)(6),] 334-60.7, shall send a notice of intent to discharge to those persons specified in the order of commitment as entitled to receive notice of intent to discharge and the administrator or [his] the deputy or the physician assuming medical responsibility for the patient shall discharge an involuntary patient when [he] the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization [[] in []] section [334-60(b)(1).] 334-60.2.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 221

H.B. NO. 194

A Bill for an Act Relating to Accretion.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 183, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§183-45 **Accreted land.** No structure, retaining wall, dredging, grading, or other use which interferes or may interfere with the future natural course of the beach, including further accretion or erosion, shall be permitted to accreted land as judicially decreed under section 501-33 or 669-1(e). This provision shall not in any way be construed to affect state or county property.

Any structure or action in violation of this provision shall be immediately removed or stopped and the property owner shall be fined in accordance with section 183-41(e). Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 2. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

“§501-33 Accretion to land. An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent. “Permanent” means that the accretion has been in existence at least twenty years. The accreted portion of the land shall be considered within the conservation district unless designated otherwise by the land use commission under chapter 205. Prohibited uses are governed by section 183-45.”

SECTION 3. Section 669-1, Hawaii Revised Statutes, is amended to read as follows:

“§669-1 Object of action. (a) Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.

(b) Action for the purpose of establishing title to a parcel of real property of five acres or less may be brought by any person who has been in adverse possession of the real property for not less than twenty years. Action for the purpose of establishing title to a parcel of real property of greater than five acres may be brought by any person who had been in adverse possession of the real property for not less than twenty years prior to November 7, 1978, or for not less than earlier applicable time periods of adverse possession. For purposes of this section, any person claiming title by adverse possession shall show that such person acted in good faith. Good faith means that, under all the facts and circumstances, a reasonable person would believe that he or she has an interest in title to the lands in question and such belief is based on inheritance, a written instrument of conveyance, or the judgment of a court of competent jurisdiction.

(c) Action brought to claim property of five acres or less on the basis of adverse possession may be asserted in good faith by any person not more than once in twenty years, after November 7, 1978.

(d) Action under subsection (a) or (b) shall be brought in the circuit court of the circuit in which the property is situated.

(e) Action may be brought by any person to quiet title to land by accretion. The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent. “Permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of land shall be considered within the conservation district unless designated otherwise by the land use commission under chapter 205. Prohibited uses are governed by section 183-45.”

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Enforcement Program of the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

“§199-7 Seizure and forfeiture of certain property. Any equipment, article, instrument, aircraft, [vehicles,] vehicle, or [vessels,] vessel, used or possessed in violation of title 12 and rules adopted thereunder, is declared to be a public nuisance and subject to seizure by any enforcement officer of the department of land and natural resources or by any police officer; and upon conviction of the person having possession or control of such equipment, article, instrument, aircraft, [vehicles,] vehicle, or [vessels,] vessel, for a violation of any provision of the laws or rules, the equipment, article, instrument, aircraft, [vehicles,] vehicle, or [vessels,] vessel, may be declared by the court to be forfeited to the State in accordance with the procedure set forth in [the Hawaii Penal Code.] section 701-119. Any [property] equipment, article, instrument, aircraft, vehicle, or vessel so forfeited shall be turned over to the department of land and natural resources and destroyed, if illegal, or [otherwise] may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the department or other state agency, shall be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and notice thereof to be published in a newspaper of general circulation within the judicial circuit at least once before the auction, the first publication to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.

The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, or vessels forfeited as provided in this section and shall publish the list in its annual report.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 223

H.B. NO. 235

A Bill for an Act Relating to Pharmacists and Pharmacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 461-5, Hawaii Revised Statutes, is amended to read as follows:

“§461-5 Qualifications for license. (a) Any applicant for a license as a pharmacist shall [be at least eighteen years of age, of good moral character and temperate habits, and a graduate of a school or college of pharmacy or department of a university, which school or college or department is recognized and approved by the American Council of Pharmaceutical Education. He shall file proof satisfactory to the board of pharmacy of a minimum of one year of practical experience in any state of the United States in a pharmacy under the supervision of a registered pharmacist, and he shall pass an examination to be given by the board. Service and experience in a pharmacy under the supervision of a registered pharmacist as required in this section shall be predominantly related to the selling of drugs, compounding prescriptions, preparing pharma-

ceutical preparations, and keeping records and making reports required under state and federal statutes.] submit evidence to the board that the applicant:

- (1) Is at least eighteen years of age.
 - (2) Holds a degree from a school or college of pharmacy or department in a university, which school or college or department is recognized and accredited by the American Council of Pharmaceutical Education.
 - (3) Has a minimum of one year practical experience in any state of the United States in a pharmacy under the supervision of a registered pharmacist. Service and experience in a pharmacy under the supervision of a registered pharmacist as required in this section shall be predominantly related to the selling of drugs, compounding prescriptions, preparing pharmaceutical preparations, keeping records and making reports required under state and federal statutes. In the event an applicant has no practical experience as required, the applicant may take the examination and upon passing the examination, shall not receive a license until after the fulfillment of the practical experience requirement.
 - (4) Has passed an examination as may be prescribed by the board.
- (b) Any registered pharmacist of any state or territory of the United States who has practiced pharmacy there for two years or more shall be eligible to take the examination [if he is of good moral character and temperate habits.]; provided that the applicant submits evidence to the board that the applicant is certified or licensed, and in good standing to practice pharmacy in another state.

[In the event an applicant has no practical experience as required, he may take the examination and upon passing the same, he shall not receive his license until after the fulfillment of the practical experience required.]

(c) Any applicant who is a graduate of a school or college of pharmacy located outside the United States, whose school or college of pharmacy has not been recognized by the board as an accredited school but who is otherwise qualified to apply for a license to practice pharmacy in this State, may be deemed to have satisfied the requirement of section 461-5(a)(2) by verification to the board of the applicant's academic record and the applicant's graduation and by meeting other requirements as the board may establish from time to time. The board shall require the applicant to successfully pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education of such applicant with qualified graduates of a school or college recognized by the board as a prerequisite to taking the licensure examination provided for in section 461-6."

SECTION 2. Section 461-7, Hawaii Revised Statutes, is amended to read as follows:

"§461-7 Temporary license. An applicant for examination who is a registered pharmacist as specified in section [461-5(2),] 461-5(b), may be granted a temporary license by the board [of pharmacy]; provided that the person shall first pass a preliminary examination with a grade of not less than seventy per cent covering state laws and public health rules relating to drugs, poisons, and devices used in the practice of pharmacy in the State. A temporary license shall not entitle the holder to a permanent license, and no permanent license shall be issued until the person has passed the regular examination set forth [under] in section 461-6. Only one temporary license shall be issued to the same applicant. A temporary license shall only remain in effect until the results of the next regular examination are announced; provided[,] that the board may extend any

temporary license, upon written application, for good and just cause. Any applicant who fails to take or to pass the next regular examination shall surrender the temporary license. The board shall receive a fee for the issuance of a temporary license.”

SECTION 3. Section 461-9, Hawaii Revised Statutes, is amended to read as follows:

“**§461-9 Pharmacist in charge.** A registered pharmacist shall be in personal and immediate charge of every pharmacy. Temporary absences of the registered pharmacist shall be unlawful except for such periods of time and under such circumstances as authorized under the rules of the board of pharmacy. During any absence of the registered pharmacist, prescriptions may not be filled, compounded, or received by telephone and no drugs shall be sold; provided[,] that this shall not preclude the sale at such times of such things as might be sold were the pharmacy a store not subject to this chapter. No person other than a registered pharmacist or an assistant under his immediate supervision shall fill or compound prescriptions.

A pharmacy technician may be employed to assist the registered pharmacist under rules adopted by the board pursuant to chapter 91 that define the qualifications and functions of such pharmacy technician and provide the procedures for their control and supervision by registered pharmacists.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 224

H.B. NO. 234

A Bill for an Act Relating to Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

“**§459-1 Optometry; practice of, defined.** The practice of optometry, for the purpose of this chapter, is defined to be the recognition and analysis of visual dysfunction of the human eye; the employment of trial frame [and] or trial lenses, and any objective or subjective means or methods, other than the use of drugs, medicine, or surgery, for the purpose of determining the refractive powers, visual [and] or muscular anomalies of human eyes; [and] or the prescribing [or employment], fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular [insufficiencies] anomalies of human eyes. Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or [holds himself out as being] claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked [certificate of registration] and unsuspended license as provided in this chapter; provided[,] that an orthoptist may give visual training, including exercises, under the supervision of [an oculist] a physician or optometrist.”

SECTION 2. Section 459-2, Hawaii Revised Statutes, is amended to read as follows:

“§459-2 Optometry; unauthorized practice, unlawful. It shall be unlawful for any person to practice optometry or to append the letters “O.D.” or any other optometric degree to a person’s name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked [certificate of registration] and unsuspended license under[,] and as provided in[,] this chapter [; provided, that this]. This chapter shall not apply to, or prohibit, a duly licensed physician [or surgeon] from practicing optometry as in this chapter defined, nor shall it prohibit a duly licensed physician [or surgeon, oculist,] or optometrist from filling prescriptions or orders, nor shall it prohibit the replacement, duplication, or repair of ophthalmic lenses, contact lenses, frames, or fittings thereof, by persons qualified to write or fill prescriptions or orders under this chapter, nor shall it prohibit or prevent [a certified] any optician licensed under chapter 458 from doing the [mere] mechanics of repairing, replacing, or duplicating of [such] any ophthalmic lenses, frames, fittings, or other optic materials, nor shall it apply to optometric service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of optometrists and of contracting on behalf of optometrists to furnish [such] services as provided in chapter 424.

Any¹ “ophthalmic lens” within the meaning of this chapter means any spectacle lens which has a spherical, cylindrical, or prismatic power or value, and is ground pursuant to a prescription.”

SECTION 3. Section 459-3, Hawaii Revised Statutes, is amended to read as follows:

“§459-3 Board of examiners; members, appointment, qualifications. There shall be a board to be known as the board of examiners in optometry, for the State. The board shall consist of five members, three of whom shall [possess sufficient knowledge of theoretical and practical optics to practice optometry and who have been residents of the State] be licensed optometrists who have actually engaged in the practice of optometry for at least [one year] five years and two of whom shall be public members. The board shall be appointed by the governor in accordance with section 26-34. No member of the board shall be a stockholder, member of the faculty, or on a board of trustees of any school of optometry.”

SECTION 4. Section 459-4, Hawaii Revised Statutes, is amended to read as follows:

“§459-4 Organization; meetings; rules [and regulations]. The members of the board of examiners in optometry shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths. At the first meeting of the board after each annual appointment, the board shall elect a [president, vice-president, and secretary-treasurer.] chairperson and vice chairperson. The board shall prescribe rules[, regulations, and bylaws,] in harmony with this chapter, [for its own proceedings and government and for the examination of applicants for the practice of optometry. The rules and regulations shall be published and furnished free of charge to and for the use and convenience of applicants for examinations.] as may be necessary to carry out its legal responsibilities and duties, to do all things necessary or incidental to the exercise of the powers and duties as established by these statutes, and to regulate the practice of optometry in the State.”

SECTION 5. Section 459-5, Hawaii Revised Statutes, is amended to read as follows:

“§459-5 Records. The department of commerce and consumer affairs on behalf of the board of examiners in optometry shall preserve a record of all [its proceedings in a book kept for that purpose, showing name, age, place, and duration of residence of each applicant, the time spent in schools of optometry, and in the study and practice of optometry, and the year and school from which degrees were granted.] applications for examination. The [register] record shall also show whether applicants were rejected or licensed, and, if rejected, the reasons therefor.”

SECTION 6. Section 459-6, Hawaii Revised Statutes, is amended to read as follows:

“§459-6 Examinations, time of. Examinations shall be held by the board of examiners in optometry at least once a year with [such] additional examinations as the board desires to hold. The time and place of any examination shall be fixed by the board at least [thirty] forty-five days prior to the date that it is to be held. [One examination shall be held during the third week of July of each year. No examination of applicants shall be held except by the full board.]”

SECTION 7. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

“§459-7 [Examination; certificate of registration.] Application; examination; reexamination; appeal; renewal; continuing education; license. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant [is at least eighteen years of age, is a graduate of a high school,] is a graduate of an American optometric college, school, or university [recognized and] approved by the board of examiners in optometry and [the American optometric association,] accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Office of Education, shall take an examination before the board upon complying with the following requirements:

- (1) Applications for examination shall be made out and filed in writing with the executive secretary of the board; and
 - (2) Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.
- (b) Each applicant shall file, in writing, with the executive secretary at least [thirty] forty-five days, but not more than one hundred eighty days, prior to the date selected by the board for the examination, the following credentials:
- (1) A copy of the applicant's diploma or certificate of graduation from an American optometric college [or], school [recognized and approved by the board;], or university approved in accordance with subsection (a); and
 - [(2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of optometric examiners, and the secretary of the state optometric association of that state; and
 - (3)] (2) An unretouched, unmounted, passport sized, recent photograph of the applicant.

(c) The applicants for examination shall be given due notice of the date and place of each examination. [No applicant who fails to obtain an average of seventy per cent in every subject upon which the applicant is examined shall be passed by the board. If an] An applicant[, because of the applicant's failure] who fails to pass an examination [is refused a license, the applicant, within one year,] on the applicant's first attempt, shall be permitted upon payment of a reexamination fee, to take a second or third examination [without additional fee. If an applicant fails the second time, the applicant shall be required to file a new application and to pay a reexamination fee. If an] covering only those parts of the examination which the applicant failed to pass. An applicant who fails to pass the examination on the third [time] attempt or any subsequent [time, the applicant] attempt shall be required in each instance to file a new application, [and to] pay the application and examination fees, and [to] take a complete examination.

An appeal to the circuit court[,] of the circuit within which the applicant resides[,] may be taken from any decision of the board by any applicant who is refused or denied a [certificate] license.

Every candidate who passes an examination shall be [registered] licensed as possessing the qualifications required by this chapter, and shall receive from the board a proper [certificate of registration] license upon payment of a [registration] license fee. [Before any certificate is issued it shall be numbered and recorded on a book kept by the secretary of the board of examiners in optometry.]

(d) Each [registered optometrist] licensee shall pay a biennial license fee [between December 1, and] to the board on or before December 31 of each odd-numbered year[, to the board] for a renewal of the [optometrist's registration certificate] license for the biennium. The failure of any [regular licensed optometrist] licensee to pay the biennial license fee [in advance] and submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year[, during the time the optometrist's license remains in force,] shall [ipso facto, work] automatically constitute a [revocation and] forfeiture of the license. Any [person whose] license which is so [revoked and] forfeited [shall pay a penalty fee for the restoration of the license, and, in addition, all delinquent biennial license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within three years, the license shall not be restored unless the regular examination for applicants is passed.] may be restored upon payment of a penalty fee and all delinquent fees as provided in rules adopted by the director pursuant to chapter 91, and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the period of time the license has been forfeited.

(e) Each [registered optometrist] licensee shall submit proof to the board of examiners that the [optometrist] licensee did, on or before December 31 of each [even-numbered] odd-numbered year, [during the time the license remains in force,] meet the requirement of continuing education in programs as set and approved by the board. The board shall adopt rules for the certification of the administration of the continuing education program."

SECTION 8. Section 459-8, Hawaii Revised Statutes, is amended to read as follows:

"§459-8 Conduct of examinations. [All examinations shall be designed to ascertain the applicant's fitness to practice the profession of optometry. The

written examination shall cover the same body of knowledge as, and be at least equal to, the examination administered by the National Board of Examiners in Optometry.] Each applicant whose application is received by the board before January 1, 1987, shall pass either the written examination given by the National Board of Examiners in Optometry or a written examination given by the board.

Each applicant whose application is received by the board on or after January 1, 1987, shall pass the written examination given by the National Board of Examiners in Optometry. If a written examination is no longer given by the National Board of Examiners in Optometry, the applicant shall pass either another national examination selected by the board, or if no other examination is selected by the board, a written examination prepared by the board.

In addition to satisfying the applicable requirement above, the applicant shall also pass any practical and any written examinations given by the board.

The board shall provide in its rules which parts of the National Board of Examiners examination and the passing scores that the board will accept. The board shall not accept the scores of any National Board of Examiners examination if the examination was taken by the applicant more than five years before the date the application is received by the board. The board shall also provide in its rules the passing scores for any examination (practical or written) given by the board."

SECTION 9. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

"§459-9 Refusal to permit examination or issue [certificate;] license; revocation and suspension of license; grounds for. The board of examiners in optometry may refuse to admit persons to its examinations or to issue [the certificates] a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or may impose a penalty as shall be established by the board, for any of the following causes:

- (1) Presentation to the board of any certificate or testimony or information which was untrue in any material respect or illegally or fraudulently obtained, or when fraud or deceit has been practiced in obtaining any license under this chapter or in passing an examination;
- (2) [Other grossly unprofessional or dishonorable conduct] Conduct of a character likely to deceive or defraud the public, or habits of intemperance[,] or drug addiction calculated to destroy the accuracy of the work of an optometrist[;], or professional misconduct, or gross carelessness or negligence, or manifest incapacity in the practice of optometry;
- (3) Advertising in the following manner:
 - (A) By any means whatsoever, directly or indirectly, to offer [lens,] ophthalmic lenses, contact lenses, glasses, or frames or fittings thereof at a discount or as a premium for the purchase of any article of merchandise;
 - (B) By means of false and deceptive statements or by statements which tend to deceive or defraud; or to claim superiority over fellow optometrists; or to publish reports of cases or certificates of same in any public advertising media;
 - (C) In conjunction with any nonlicensed person or groups of individuals by permitting the use of [his] the licensee's name, professional title, or profession;

- (4) Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked [certificate of registration as an optometrist] and unsuspended license or from any company or corporation;
- (5) Making of a house-to-house canvass either in person or through solicitors or associates for the purpose of selling, advertising, or soliciting the sale of eyeglasses, spectacles, ophthalmic lenses, contact lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, ophthalmic lenses, or contact lenses from house-to-house or on the streets or highways notwithstanding any law for the licensing of peddlers;
- (6) Renting space, subleasing departments, or otherwise occupying space to practice optometry on the premises of a commercial (mercantile) concern. Optometric practices [must] shall be under the [registered optometrist's] licensee's ownership and under [his] the licensee's exclusive control. It [must] shall not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files [must] shall be the sole property of the [optometrist.] licensee. The office [must] shall be definite and apart from the space occupied by any commercial (mercantile) concern so that all signs are separate and distinct from the commercial (mercantile) concern and all entrances to the premises [must] shall be separate and definite in character [such] so that there could be no misleading interpretation that [his] the licensee's practice is in any way associated with a commercial (mercantile) concern;
- (7) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other [such] allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any [such] intended or prospective wearer or user;
- (8) Using any name in connection with [his] the licensee's practice other than the name under which [he] the licensee is licensed to practice, or [failing to comply with the following provisions, to wit: all signs, cards, stationery, or other advertising must clearly identify the individual optometrist using or presenting the same and must be free from any ambiguity or possibility of misinterpretation as to such identity;] using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- (9) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services[.]; or
- (10) Violating this chapter or the rules promulgated by the board."

SECTION 10. Section 459-10, Hawaii Revised Statutes, is amended to read as follows:

"§459-10 [Revocation of certificate.] Advertising, contents of. [The right to practice optometry may be revoked by the board of examiners in optometry

upon proof of the violation of the law in any respect in regard thereto; or for any cause for which the board is authorized to refuse to admit persons to its examinations, as provided in section 459-9.] All advertising by a licensee which contains a price for specified ophthalmic goods or services shall contain the following information when appropriate:

- (1) Whether an advertised price includes single vision or multifocal lenses;
- (2) Whether an advertised price for contact lenses refers to soft or hard lenses;
- (3) Whether an advertised price for ophthalmic goods includes an eye examination;
- (4) Whether an advertised price for ophthalmic goods includes all dispensing fees; and
- (5) Whether an advertised price for eyeglasses includes both frames and lenses.”

SECTION 11. Section 459-14, Hawaii Revised Statutes, is amended to read as follows:

“**§459-14 Penalty.** Any person practicing optometry in violation of this chapter or any rule [shall] may be fined [not less than \$50 nor more than] up to \$500 or be imprisoned [not less than two months nor] not more than six months, or both, for each separate violation, and each day of [such] the violation shall constitute a separate offense.”

SECTION 12. Section 459-9.5, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 225

H.B. NO. 436

A Bill for an Act Relating to Personal Care Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-1, Hawaii Revised Statutes, is amended by amending the definition of “medical assistance” to read as follows:

““Medical assistance” means payment for medical care[,] or personal care services, including funds received from the federal government.”

SECTION 2. Section 346-64, Hawaii Revised Statutes, is amended to read as follows:

“[[]§346-64 []] **Personal care; payment for services.** (a) The department [may offer within the funds available personal care services to those individuals who are eligible for medical assistance and whose physical dependency requires them to have intermittent assistance with personal care services where there is no responsible relative or friend willing to volunteer such assistance.] shall

provide, subject to legislative appropriations, personal care services to medical assistance recipients:

- (1) Whose physical disabilities are of a degree that would require placement in an intermediate care facility if the personal care services were not provided; and
- (2) Who have no responsible relative or friend willing to volunteer assistance in the bathing, dressing, and feeding of the recipient, the performance of toilet and personal hygiene functions by the recipient, and other household tasks.

Personal care services provided under this section shall be funded under the medical assistance program. The department shall provide personal care services in compliance with federal laws and rules.

(b) “Personal care services” mean services to assist in [the areas of] bathing, [toileting, personal hygiene,] dressing, and feeding[.]; performance of toilet and personal hygiene functions; assistance with medications which are ordinarily self-administered; assistance with mobility and transfer activities; and other household tasks which are related to a medical need.

(c) [Payment for personal care may be made only when the cost is substantially less than the cost for the care of the individual in an alternative plan, if personal care services were not available.] The payment for personal care services for a recipient during a month shall not exceed sixty-five per cent of the average monthly medical assistance payment for a recipient in an intermediate care facility. The department or its authorized agent shall make a comprehensive assessment of and provide a written plan of care to a recipient receiving personal care services.

(d) [“Substantially less” as the term is used in this section means not more than sixty per cent of the cost of the lowest level of care in an adult family boarding home or a care home.] The department shall compute the average monthly medical assistance payment for a recipient in an intermediate care facility by rule in accordance with chapter 91.

(e) Nothing in this section shall be construed as limiting the DSSH from providing other services in programs under its jurisdiction to recipients under this section who may be eligible for such services.

(f) The department may adopt rules in accordance with chapter 91 for the purpose of this section.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

A Bill for an Act Relating to Geothermal Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-5.1, Hawaii Revised Statutes, is amended to read as follows:

“§205-5.1 Geothermal resource subzones. (a) Geothermal resource subzones may be designated within the urban, rural, agricultural, and conservation land use districts established under section 205-2. Only those areas

designated as geothermal resource subzones may be utilized for geothermal development activities in addition to those uses permitted in each land use district under this chapter. Geothermal development activities may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter. "Geothermal development activities" means the exploration, development, or production of electrical energy from geothermal resources.

(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-5.2; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before May 25, 1984 is hereby designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-5.2, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182 and 183.

(c) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by state and county statutes, ordinances, and rules not inconsistent herewith within agricultural, rural, and urban districts, except that no land use commission approval or special use permit procedures under section 205-6 shall be required for the use of such subzones. In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. "Appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council. Such uses as are permitted by county general plan and zoning ordinances, by the appropriate county authority, shall be deemed to be reasonable and to promote the effectiveness and objectives of this chapter. Chapters 177, 178, 182, 183, 205A, 226, 342, and 343 shall apply as appropriate. If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91, on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in subsection (e) for granting geothermal resource permits.

(d) If geothermal development activities are proposed within a conservation district, then, after receipt of a properly filed and completed application, the board of land and natural resources shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91 to determine whether, pursuant to board regulations, a conservation district use

permit shall be granted to authorize the geothermal development activities described in the application.

(e) If geothermal development activities are proposed within agricultural, rural, or urban districts and such proposed activities are not permitted uses pursuant to county general plan and zoning ordinances, then after receipt of a properly filed and completed application, the appropriate county authority shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91 to determine whether a geothermal resource permit shall be granted to authorize the geothermal development activities described in the application. The appropriate county authority shall grant a geothermal resource permit if it finds that applicant has demonstrated by a preponderance of the evidence that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and
- (3) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

Unless there is a mutual agreement to extend, a decision shall be made on the application by the appropriate county authority within six months of the date a complete application was filed; provided that if a contested case hearing is held, the final permit decision shall be made within nine months of the date a complete application was filed.

(f) Any other law to the contrary notwithstanding, including chapter 91, any appeal of a contested case hearing under this section shall be made upon the record directly to the supreme court for final decision; provided that for a contested case hearing under this section initiated after April 30, 1990, any appeal shall be made in conformity with chapter 91, including judicial review by the circuit court under section 91-14."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval and shall apply to any contested case hearings in process upon its effective date.

(Approved June 4, 1985.)

ACT 227

H.B. NO. 1162

A Bill for an Act Relating to Rights of Victims and Surviving Immediate Family Members to Notification of Parole or Release of a Prisoner.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-670.5, Hawaii Revised Statutes, is amended to read as follows:

"[]§706-670.5[] Notice of parole or final unconditional release. (1)

As used in this section, the following terms have the following meanings:

"Offense against the person" means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses.

"Prisoner" or "parolee" [mean] means a person who has been convicted of an offense against the person.

“Surviving immediate family member” means a person who is a surviving grandparent, parent, sibling, spouse, child, or legal guardian of a deceased victim.

“Victim” means a person who was the victim of the offense against the person for which the prisoner or parolee was convicted, [and has submitted a written request for notice of the parole or final unconditional release of the prisoner or parolee.]

(2) [Upon placing a prisoner on parole or upon the release of a parolee from parole, the] The Hawaii paroling authority shall give written notice of the parole or release from parole of a prisoner or parolee to each victim[.] who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(3) [Upon the final unconditional release from a correctional facility of a prisoner who has not been paroled or earlier discharged, the] The department of social services and housing shall give written notice of the final unconditional release of a prisoner or parolee, who has not been previously paroled or discharged, to each victim[.] who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(4) The authority or department, as the case may be, shall provide written notice to the victim or surviving immediate family member at the address given on the written request for notice or such other address as may be provided by the victim [from time to time.] or surviving immediate family member, not less than ten days prior to parole or final unconditional release. The authority or department, in its discretion, may instead give written notice to the witness or victim counselor programs in the prosecuting attorney’s office in the county where the victim or the surviving immediate family member resides.

(5) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State [or], the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 228

H.B. NO. 1166

A Bill for an Act Relating to Victim Notification Requirements of Conditional Release Centers; Furloughs for Prisoners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Additionally, whenever the department admits a prisoner who has been convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense, to a work furlough program, conditional release program, or other similar programs, it shall give written notice to each victim of the offense, or surviving immediate family member, who has made

written request for such notice, of the admission of the prisoner to the program. Notice shall be given to the victim or surviving immediate family member at the address given on the written request for notice or such address as may be provided to the department by the victim [from time to time.] or surviving immediate family member, as the case may be, thirty days prior to the commencement of the work furlough program, conditional release, or other such program. The department, in its discretion, may instead give written notice to the victim or witness counselor programs in the prosecuting attorney's office in the county where the victim or the surviving immediate family member resides. Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or the officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority.

"Surviving immediate family member" means a surviving grandparent, parent, sibling, spouse, child, and any legal guardian of a deceased victim."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

ACT 229

S.B. NO. 20

A Bill for an Act Making an Appropriation for Sugar Research and Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sugar industry is the largest agricultural industry in Hawaii, and that it is a vital component of the State's economic base. This industry occupies approximately 194,000 acres of land and employs nearly 8,000 employees with an annual payroll of over \$147 million a year. The legislature further finds that the adverse effects of losing this industry would be catastrophic to the State. The legislature also finds that the sugar industry continues to experience adverse economic conditions, and that it is in the public interest to continue the measures enacted in prior years to assist and save the sugar industry.

The purpose of this Act is to provide funds for research performed by the industry and thereby offset the costs to the industry.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,500,000, or so much thereof as may be necessary for fiscal year 1985-1986, for sugar research and development; provided that \$250,000 shall be used for research and development of alternate crops and by-products by the Hawaii Sugar Planters' Association, in cooperation with the College of Tropical Agriculture and Human Resources of the University of Hawaii at Manoa; and provided further that no funds shall be made available under this Act unless the Hawaiian Sugar Planters' Association provides a dollar-for-dollar match of funds.

SECTION 3. The sum appropriated shall be expended by the governor's agriculture coordinating committee for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1985.

(Approved June 5, 1985.)

ACT 230

S.B. NO. 149

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§205-17 Land use commission decision-making criteria. In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards; and
- (3) The impact of the proposed reclassification on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical, or natural resources;
 - (C) Maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;
 - (D) Commitment of state funds and resources;
 - (E) Provision for employment opportunities and economic development; and
 - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups.”

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§205-18 Periodic review of districts. The department of planning and economic development shall undertake a review of the classification and districting of all lands in the state, within five years from December 31, 1985, and every fifth year thereafter. The department, in its five-year boundary review, shall focus its efforts on reviewing the Hawaii state plan, county general plans, and county development and community plans. Upon completion of the five-year boundary review, the department shall submit a report of the findings to the commission. The department may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The department may seek assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review.”

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended to add a new section to read as follows:

“§205-3.1 Amendments to district boundaries. (a) District boundary amendments involving land areas greater than fifteen acres shall be processed by the land use commission pursuant to section 205-4.

(b) Any department or agency of the state, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority of the county in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the agricultural, rural, and urban districts.

(c) District boundary amendments involving land areas of fifteen acres or less, except in conservation districts, shall be determined by the appropriate county land use decision-making authority for said district and shall not require consideration by the land use commission pursuant to section 205-4. District boundary amendments involving land areas of fifteen acres or less in conservation districts shall be processed by the land use commission pursuant to section 205-4. The appropriate county land use decision-making authority may consolidate proceedings to amend state land use district boundaries pursuant to this subsection, with county proceedings to amend the general plan, development plan, zoning of the affected land or such other proceedings. Appropriate ordinances and rules to allow consolidation of such proceedings may be developed by the county land use decision-making authority.

(d) The county land use decision-making authority shall serve a copy of the application for a district boundary amendment to the land use commission and the department of planning and economic development and shall notify the commission and the department of the time and place of the hearing and the proposed amendments scheduled to be heard at the hearing. A change in the state land use district boundaries pursuant to this subsection shall become effective on the day designated by the county land use decision-making authority in its decision. Within sixty days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, the decision and the description and map of the affected property shall be transmitted to the land use commission and the department of planning and economic development by the county planning director.”

SECTION 4. Section 205-4, Hawaii Revised Statutes, is amended to read as follows:

“§205-4 Amendments to district boundaries[.] involving land areas greater than fifteen acres. (a) Any department or agency of the State, [including the land use commission,] any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section is applicable to all petitions for changes in district boundaries of lands within conservation districts and all petitions for changes in district boundaries involving lands greater than fifteen acres in the agricultural, rural, and urban districts.

(b) Upon proper filing of a petition pursuant to subsection (a) [above,] the commission shall, within not less than sixty and not more than one hundred and eighty days, conduct a hearing on the appropriate island in accordance with the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

(c) Any other provisions of law to the contrary notwithstanding, notice of the hearing together with a copy of the petition shall be served on the county planning commission and the county planning department of the county in which the land is located and all persons with a property interest in the land

[recorded at the department of taxation.] as recorded in the county's real property tax records. In addition, [such] notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further shall inform all interested persons of their rights under subsection [](e)[] of this section.

(d) Any other provisions of law to the contrary notwithstanding, prior to hearing of a petition the commission and its staff may view and inspect any land which is the subject of the petition.

(e) Any other provisions of law to the contrary notwithstanding, agencies and persons may intervene in the proceedings in accordance with this subsection.

- (1) The petitioner, the department of planning and economic development and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the commission or its hearing officer if one is appointed may deny an application to intervene when in the commission's or hearing officer's sound discretion it appears that: (A) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (B) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.
- (5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (A) the information to be set forth in any application for intervention; (B) time limits within which such applications shall be filed; and (C) reasonable filing fees to accompany such applications.

(f) Together with other witnesses that the commission may desire to hear at the hearing, it shall allow a representative of a citizen or a community group to testify who indicates a desire to express the view of such citizen or community group concerning the proposed boundary change.

(g) Within a period of not more than [one hundred and eighty and not less than forty-five] one hundred twenty days after the close of the hearing,

unless otherwise ordered by a court, the commission shall, by filing findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section [205-16.1] 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances.

(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and consistent with the [interim] policies and criteria established pursuant to [section 205-16.1,] sections 205-16 and 205-17 [or any state plan enacted by the legislature which plan shall supersede any interim guidance policies]. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.

(i) Parties to proceedings to amend land use district boundaries may obtain judicial review thereof in the manner set forth in section 91-14, provided that the court may also reverse or modify a finding of the commission if such finding appears to be contrary to the clear preponderance of the evidence.

(j) At the hearing, all parties may enter into appropriate stipulations as to findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change. The commission may but shall not be required to approve such stipulations based on the evidence adduced."

SECTION 5. Section 205-16, Hawaii Revised Statutes, is amended to read as follows:

"[[§205-16[]] Compliance with the Hawaii state plan. [Upon enactment of the state plan, no] No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawaii state plan."

SECTION 6. Section 205-16.1, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 205-16.2, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect ninety days after its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Insurance for Motor Vehicles and Other Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 294, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§294- Motorcycles and motor scooters excluded from chapter. (a) All motorcycles and motor scooters required to be registered under chapter 286 shall be exempt from chapter 294; provided that:

- (1) No person shall drive a motorcycle or motor scooter upon any public street, road, or highway of this State at any time unless such vehicle is insured at all times under a liability insurance policy as provided in this section; and
- (2) In the case of accidental harm arising out of a motorcycle or motor scooter accident to any passenger of said motorcycle or motor scooter, or any pedestrian, motorcycles and motor scooters will not be exempt from sections 294-4, 294-6, and 294-10; and
- (3) In the case of accidental harm arising out of an accident involving a motorcycle or motor scooter and a motor vehicle, the owner or operator of a motorcycle or motor scooter will not be exempt from section 294-6.

(b) The insurance policy required under this section shall provide insurance to pay on behalf of the owner or any operator of the insured vehicle sums which the owner or operator may legally be obligated to pay for injury, death, or damage to the property of others, except property owned by, being transported by, or in the charge of the insured which arise out of the ownership, operation, maintenance, or use of the vehicle:

- (1) Liability coverage of not less than \$25,000 for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm;
 - (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident.
- (c) At the option of the owner, each insurer shall:
- (1) Offer medical payment coverage up to \$15,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, and necessary ambulance, hospital, professional nursing, and funeral services; and
 - (2) Offer an income disability plan.

(d) Any person who violates this section shall be subject to a citation by the police and shall be subject to a nonsuspendable fine of not less than \$100, or more than \$1,000, or thirty days imprisonment, or a one-year driver's license suspension or any combination thereof, for each violation.”

SECTION 2. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of “Motor vehicle” to read as follows:

“ “Motor vehicle”¹ means any vehicle of a type required to be registered under chapter 286, including a [vehicle of a type with less than four wheels or a] trailer attached to such a vehicle[.], but not including motorcycles and motor scooters.²”

SECTION 3. Section 294-4, Hawaii Revised Statutes, is amended to read as follows:

“§294-4 Obligation to pay no-fault benefits. Every no-fault and self-insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 294-5(c):

- (A) In the case of injury arising out of a motor vehicle accident to any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian (including a bicyclist), or any user or operator of a moped as defined in section 249-1, but not including any operator of a motorcycle or motor scooter as defined in section 286-2, who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, the insurer shall pay, without regard to fault, to the person an amount equal to the no-fault benefits payable to the person as a result of the injury; or
 - (B) In the case of death arising out of a motor vehicle accident of any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian (including a bicyclist), or any user or driver of a moped as defined in section 249-1, but not including any operator of a motorcycle or motor scooter as defined in section 286-2, who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, the insurer shall pay, without regard to fault, to the legal representative of the person, for the benefit of the surviving spouse and any dependent, as defined in section 152 of the Internal Revenue Code of 1954, of the person, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of the person, subject, however, to the provisions of section 294-2(10).
- (2) Payment of no-fault benefits shall be made as the benefits accrue,³ except that in the case of death, payment of the benefits may, at the option of the beneficiary, be made immediately in a lump sum payment.
 - (3) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof. If the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward the claimant an itemized list of all the required documents.
 - (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
 - (5) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 294-30, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit, necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute an unlawful and unethical act for any attorney to

solicit, enter into, or knowingly accept benefits under any such contract.

- (6) Any insurer who violates the provision⁴ of this section shall be subject to the provision⁴ of subsections 294-39(b) and (c).”

SECTION 4. Section 294-5, Hawaii Revised Statutes, is amended to read as follows:

“§294-5 Payment from which insurer. (a) A claim for no-fault benefits for accidental harm of a person who is not an occupant of any motor vehicle involved in an accident may be made against the no-fault insurer of any involved vehicle[.]; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2. The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but the insurer shall thereafter be entitled to recover from the no-fault insurers of all other involved vehicles proportionate contribution for the benefits paid and the cost of processing the claim.

(b) All no-fault benefits shall be paid secondarily and net of any benefits a person is entitled to receive because of the accidental harm from workers’ compensation laws; provided that this section shall be inapplicable to benefits payable to a surviving spouse and any surviving dependent as provided under section 294-4. If the person does not collect such benefits under the workers’ compensation laws by reason of the contest of his right to so collect by the person or organization responsible for payment thereof, the injured person, if otherwise eligible, shall, nevertheless, be entitled to receive no-fault benefits and upon payment thereof the no-fault insurer shall be subrogated to the injured person’s rights to collect such benefits.

(c) No payment of no-fault benefits may be made to the occupants of a motor vehicle other than the insured motor vehicle, or to the operator or user of a motor vehicle engaging in criminal conduct which causes any loss[.], or to the operator of a motorcycle or motor scooter as defined in section 286-2.

(d) The no-fault insurance applicable on a primary basis to accidental harm to which this chapter applies is the insurance on the vehicle occupied by the injured person at the time of the accident, or, if the injured person is a pedestrian (including a bicyclist), the insurance on the vehicle which caused accidental harm to the pedestrian (including a bicyclist)[.]; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2.

If there is no insurance on the vehicle, any other no-fault insurance applicable to the injured person shall apply[.]; except that no such other applicable no-fault insurance shall apply to any operator of a motorcycle or motor scooter as defined in section 286-2.

No person shall recover no-fault benefits from more than one insurer for accidental harm as a result of the same accident.”

SECTION 5. Section 294-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to the no-fault coverages described in section 294-10 every insurer issuing a no-fault policy shall make available to the insured the following optional insurance under the following conditions:

- (1) At the option of the insured, every insurer shall offer provisions covering loss resulting from damage to the insured’s motor vehicle with such deductibles including \$250, as the commissioner, by regulation, shall provide.

- (2) At the option of the insured, every insurer shall offer to compensate for damage, not covered by no-fault benefits, to the insured, his spouse, any dependents, or any occupants of the insured's vehicle.
- (3) Additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or loss from operation of a motor vehicle. An insurer may provide for aggregate limits with respect to such additional coverage so long as the basic liability coverages provided are not less than those required by section 294-10(a)(1) and (2).
- (4) Terms, conditions, exclusions, and deductible clauses consistent with the required provisions of such policy and approved by the commissioner who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.
- (5) At appropriately reduced premium rates, no-fault insurers shall offer [each of the following] deductibles, applicable only to claims of no-fault insureds and, in case of death of a no-fault insured, of his survivors,[:
 - (A) Deductibles] in the amounts of \$100, \$300, and \$500 from all no-fault benefits otherwise payable, except that if two or more no-fault insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them]; and
 - (B) Deductibles in the amounts of \$500, \$1,500 and \$3,000 per accident from all no-fault benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a motor vehicle with less than four wheels].”

SECTION 6. Section 294-13, Hawaii Revised Statutes, is amended by deleting subsections (m), (n), and (o) as follows:

“(m) Notwithstanding subsection (j) all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels shall provide a ten per cent reduction off the regular premium each insurer assesses for such policy, to the operator purchasing a no-fault policy who has successfully completed a safe driving course approved by the director of transportation.

(n) Notwithstanding subsection (j) at the option of each insurer all premium rates on a no-fault policy for any motorcycle, motor scooter, or vehicle with less than four wheels may provide a discount of not more than ten per cent to the operator purchasing a no-fault policy when the operator submits an affidavit to the insurer that he will wear a safety helmet that is approved by the director of transportation during the operation of the insured vehicle; provided that if the insurer provides for a discount the insurer may provide for a surcharge of an amount equal to the discount for those operators who do not submit an affidavit that they will wear an approved safety helmet during the operation of the insured vehicle.

No insured shall operate a vehicle insured under a no-fault policy under this section which provides for a discount for the use of a safety helmet, unless the insured is wearing an approved safety helmet.

(o) Notwithstanding subsection (j), all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels may provide a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a renewal no-fault policy, and a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a no-fault policy when the operator purchases insurance for more than one vehicle of the type described in this subsection.]”

SECTION 7. Section 294-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan shall provide all no-fault benefits and services, and tort liability coverage, to the limits and coverages specified in part I for all classes of persons, motor vehicles, and motor vehicle uses specified in this section upon the payment of premiums as provided in section 294-24, as follows:

- (1) The plan shall provide no-fault benefits and policies for each of the following classes, and each class shall be able to secure a no-fault and tort liability policy through the plan:
 - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner,⁵ by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of his examination of the motor vehicle insurers’ business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk automobile driver.
 - (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving,
 - (ii) Driving while license suspended or revoked,
 - (iii) Leaving the scene of an accident,
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle,
 - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marijuana, as provided in section 291-7.
 - (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuitously.
 - (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes.
 - [E) All motorcycles, motor scooters, and vehicles with less than four wheels required to be registered under chapter 286.]
- (2) The plan shall provide no-fault benefits and policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under section 294-24, at the options of the owners, for the following classes, which the commissioner, by rules shall further define and regulate:
 - (A) All licensed drivers receiving public assistance benefits consisting of medical services or direct cash payments through

the department of social services and housing, or benefits from the supplemental security income program under the Social Security Administration; provided that the licensed drivers are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this chapter unless extra vehicles are approved by the department of social services and housing as being necessary for medical or employment purposes.

- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver-owner under subparagraph (A) or (B) may secure no-fault coverage through the plan at the individual's option, provided any previous no-fault policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid coverage under any no-fault policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible, under rules adopted by the commissioner, under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of social services and housing indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid no-fault insurance identification card pursuant to section 294-8.5.

- (3) Under the joint underwriting plan, all basic no-fault coverages, including the basic no-fault policy, the mandatory \$25,000 public liability, and the \$10,000 property damage policies shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, optional additional coverages shall be offered by every insurer in conformance with section 294-11, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 8. Section 294-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person, or his legal representative, shall be disqualified from receiving benefits through the plan, if:

- (1) Such person is disqualified for criminal conduct under section 294-5(c) from receiving the no-fault benefits, or
- (2) Such person was:
 - (A) The owner or registrant of an uninsured or insured motor vehicle at the time of its involvement in the accident out of which such person's accidental harm arose, or
 - (B) The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle[.], or
 - (C) The owner or operator of a motorcycle or motor scooter as defined in section 286-2."

SECTION 9. Section 294-24, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner shall periodically set rate schedules, but not less frequently than annually, for all classes, in accordance with this part and the following criteria, so that the total premium income, from all plan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all joint underwriting plan classes, the joint underwriting assigned claims plan, and the administration of the plans. The commissioner shall establish rates for the following classes within the restrictions stated:

- [(1) Motorcycles and motor scooters shall be assessed a premium rate not in excess of that assessed the same driver for automobile coverage; with provisions for deductible no-fault policies of \$500, \$1,500 and \$3,000;
- (2)] (1) For the licensed public assistance driver, as defined at section 294-22(b)(2)(A), no premium shall be assessed for the basic no-fault, the mandatory public liability, or the mandatory property damage policies; and all policies shall conform to the provisions of section 294-22(b)(2); and
- [(3)] (2) For the physically limited driver defined at section 294-22(b)(2)(B), no rate shall be set higher than that assessed a comparable driver without limitation, except that a higher rate may be surcharged under any applicable standard conforming with section 294-24(a)(2).

The commissioner shall set various systems and schedules of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses, for each of the enumerated classes except the classes limited under [paragraphs (2) and (3).] paragraph (2).”

SECTION 10. Section 294-34, Hawaii Revised Statutes, is amended to read as follows:

“§294-34 Equitable allocation of burdens among insurers. [(a) Insurers and self-insurers paying no-fault or optional additional benefits are entitled to proportionate reimbursement from other insurers and self-insurers to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Insurers paying no-fault benefits for loss arising from injury to persons, and self-insurers, including those who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from insurers or self-insurers of other involved vehicles.

(b) Insurers shall maintain in accordance with regulations of the commissioner statistical records from which can be determined the propensities of different vehicles to affect probability and severity of injury to persons.

(c) When the commissioner determines that adequate supporting information is available, he may establish by regulation and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all insurers and self-insurers, or (2) all insurers and self-insurers except those who are parties to an agreement entered into under this subsection and approved by the commissioner. Two or more insurers or self-insurers, with approval of the commissioner, may enter into an agreement for

settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by- case reimbursement.

(d) The commissioner may not approve or establish case-by- case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry ten or fewer passengers.

(e) All claims for case-by-case proportionate reimbursement between insurers including self-insurers, if not settled by agreement, may be settled through arbitration or litigation.

(f) In order further to reduce the incidence of tort liability arising under this chapter, and to stabilize the numbers and amounts of claims arising under the joint underwriting assigned claims plan, in the event any insurer becomes unable fully to meet and fund its obligations under this part, or becomes insolvent, all other no-fault insurers shall guarantee the outstanding policies and claims obligations of the defaulting insurer, in an equitable distribution of such policies and claims based upon the amount of premium revenue or the value of policies written, including both no-fault, mandatory, and optional-additional insurance policies written that year, as the commissioner shall, by regulation, provide. This guaranty shall be effected without increase in any rate for any such policy being guaranteed, and without requiring duplicate payment of any premium by any insured.”

SECTION 11. Section 294-35, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.⁶

SECTION 13. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Notes

1. “(8)” designation missing.
2. The period should be underscored.
3. The comma should be underscored.
4. Formerly read “provisions”.
5. Formerly read “commissioner”.
6. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-27.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be exempted from and excluded from the measure of the taxes imposed by this chapter all of the gross proceeds arising from the sale of gasohol for consumption or use by the purchaser and not for resale from July 1, 1980, to [July 1, 1985. Starting July 1, 1985, the exemption is extended to] June 30, 1992[, exclusively for gasohol which is derived from alcohol produced within the State from biomass].”

SECTION 2. Section 235-12, Hawaii Revised Statutes, is amended to read as follows:

“§235-12 Solar or wind energy devices and heat pumps; income tax credit. (a) Each individual and corporate resident taxpayer who files an individual or corporate net income tax return for a taxable year, may claim a tax credit under this section against the Hawaii State individual or corporate net income tax. The tax credit may be claimed for any solar or wind energy device or heat pump in an amount not to exceed ten per cent of the total cost of the device or heat pump; provided that [after May 29, 1980,] the tax credit shall apply only to the actual cost of the solar or wind energy device or the heat pump, their accessories, and installation and shall not include the cost of consumer incentive premiums unrelated to the operation of the solar or wind energy device or the heat pump offered with the sale of the solar or wind energy device or the heat pump. The credit shall be claimed against net income tax liability for the year in which the solar or wind energy device or the heat pump was purchased and placed in use; provided the tax credit shall be applicable only with respect to solar devices which are erected and placed in service after December 12,¹ 1974 but before December 31, [1985;] 1992; provided further that in the case of wind energy devices and heat pumps, the tax credit shall be applicable only with respect to wind energy devices and heat pumps which are installed and placed in service after December 31, 1980 but before December 31, [1985.] 1992. Tax credits which exceed the taxpayer's income tax liability may be used as a credit against his income tax liability in subsequent years until exhausted. If federal energy tax credits are not extended beyond December 31, 1985, the state tax credit shall be increased to fifteen per cent of the total cost from the time of expiration of the federal tax credit to December 31, 1992.

(b) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. He may also require the taxpayer to furnish reasonable information in order that he may ascertain the validity of the claim for credit made under this section and he may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(c) As used in this section “solar or wind energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar or wind energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for their generation. “Heat pump” means and refers to an electric powered compression heating system which utilizes warm ambient air or heated gas to assist in the production of hot water.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved June 5, 1985.)

Note

1. Prior to amendment, “31,” appeared here.

ACT 233

S.B. NO. 961

A Bill for an Act Relating to Banks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§403- Prohibition on acquisition and control of certain limited service banking institutions. (a) For the purposes of this section:

“Company” means any corporation, partnership, business trust, association or similar organization.

“Banking institution” means any institution organized under this chapter or under chapter 2 of title 12 of the United States Code (12 U.S.C. § 21 et. seq.).

“Bank holding company” means any company which has control over any banking institution.

“Control” means that (1) any company directly or indirectly or acting through one or more persons owns, controls, or has power to vote twenty-five per cent or more of the voting securities of the banking institution; or (2) the company controls in any manner the election of a majority of the directors, managers or trustees of the banking institution.

(b) Notwithstanding any other provisions of law, no bank holding company or any other company may acquire or control any banking institution located in this State that does not both (1) accept deposits that the depositor has a legal right to withdraw on demand and (2) engage in the business of making commercial loans.

(c) This section shall not prohibit the continued control of a bank by a company or bank holding company which controlled the bank on June 30, 1983, and has continuously controlled the bank since that date.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Interest.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 408-15, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Advance interest on section 408-3 loans. A licensee may charge, contract for, and receive in advance interest at any rate which does not exceed the maximum rate allowed by this subsection, for the particular period and type of contract set forth in this subsection, computed in any manner permitted by section 408-3, at the inception of the contract:

- (1) Where interest is paid or deducted in advance upon a contract, it shall not exceed an amount computed in the manner set forth in section 408-3, as follows: twelve per cent a year for the first eighteen months (or portion thereof), plus nine per cent a year for the next twelve months (or portion thereof), plus six per cent a year for the next twelve months (or portion thereof), plus three per cent a year for the next six months (or portion thereof), of such period, as the case may be.

Interest shall not be paid or deducted in advance on section 408-3 loans for more than four years.

(For example: upon a contract, the principal amount of which is \$120, payable in twenty-four months, in monthly installments of \$5, the maximum amount of interest which may be paid or deducted in advance under this subsection is computed as follows:

12 per cent a year of \$120 for the first 18 months	\$21.60
9 per cent a year of \$120 for the next 6 months	\$5.40
Total interest paid or deducted in advance.....	\$27.00)

For loans made or committed to after May 31, 1980, [and prior to July 1, 1985,] the maximum rates of interest specified in this subsection shall be as follows: A maximum rate of interest specified as twelve per cent a year shall be fourteen per cent a year, a maximum rate of interest specified as nine per cent a year shall be ten and one-half per cent a year, a maximum rate of interest specified as six per cent a year shall be seven per cent a year, and a maximum rate of interest specified as three per cent a year shall be four per cent a year. This paragraph shall not apply to loans made or committed to before May 31, 1980.

- (2) After maturity interest charges. Upon maturity of the contract, the rate of interest when computed under this subsection on the unpaid principal balance of the loan shall be twenty-four per cent a year unless a lesser rate is specified in the contract as an after-maturity interest rate.
- (3) Refunds; prepayment. On a contract for a section 408-3 loan on which interest has been collected or deducted in advance, and which then is paid (including refinancing) or on which judgment then is obtained, before maturity, the borrower shall be entitled to a refund of unearned interest in an amount computed on that portion of the principal amount which has not yet matured, at the same rate of interest as was charged at the time the contract was made, for the term of the contract remaining after the date of the payment or after the date of the judgment; provided that no refund less than \$1 need be made and the licensee shall not be required to refund any portion of the unearned interest which results in a minimum interest retained on the contract of less than \$15; and provided that checks issued to refund interest which are not presented for payment within three years from the date of issue may be declared canceled and the sum thereof retained as earnings of the licensee. Each licensee shall permit any borrower from it to pay partially or wholly any contract or installment on a contract before the due date if the contract has been in effect for a period of at least three months.

(c) Simple interest loans. As an alternative to the interest authorized by subsections (b) and (d):

- (1) A licensee may contract for, charge, and receive interest computed at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract whether or not the interest rate under the contract is a fixed or variable rate; provided that for loans committed to and made after July 1, 1985, the maximum rate of interest permitted by this

subsection shall be eighteen per cent a year]. Upon maturity[,] of a loan committed to or made after May 31, 1980, the rate of interest on the unpaid principal balance of the loan shall be twenty-four per cent a year, unless a lesser rate is specified in the contract as an after-maturity interest rate, or in the case of any extension or deferral[,] of such a loan, the rate of interest permitted [shall be that permitted by this subsection] on the amount extended or deferred[,] shall be twenty-four per cent a year.

- (2) For loans made or committed to before May 31, 1980, and extended or deferred at maturity after May 31, 1980, the maximum rate of interest permitted by this subsection shall be twenty-four per cent a year. This paragraph shall not apply to loans made or committed to before May 31, 1980, except loans made or committed before May 31, 1980, and extended or deferred as provided in this paragraph.
- (3) On all loans where the interest rate is computed in accordance with this subsection, a licensee shall have the right to charge, contract for, and receive discount, points, loan fees, and loan origination charges; provided that on consumer loans where the interest rate is computed in accordance with this subsection, such discount, points, loan fees, and loan origination charges shall be permitted only if the loan is secured by an interest in real property. Except for open-end loans, such discount, points, loan fees, and loan origination charges shall be included as interest for purposes of determining compliance of the loan with the interest rate limits provided in this subsection when the contract is made. Such discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan is made and shall not be subject to refund upon prepayment of the loan."

SECTION 2. Section 478-8, Hawaii Revised Statutes, is amended to read as follows:

"§478-8 Exemptions from usury. (a) There shall not be interposed the defense or statement of a claim of usury in any action on a contract or promissory note, the principal amount of which exceeds the sum of \$750,000.

Section 478-6 shall not apply to parties to contracts or holders of promissory notes where the principal amount of such contracts or notes exceeds the sum of \$750,000.

(b) Small business investment companies and development companies shall be exempt from this chapter. The maximum rate of interest charged by such small business investment companies and development companies on any loan shall be the maximum rate of interest permitted, without reference to state law, by the federal Small Business Administration pursuant to the Small Business Investment Act of 1958, as amended.

As used in this subsection "small business investment company" and "development company" mean a company approved by the federal Small Business Administration to operate under the provisions of the federal Small Business Investment Act of 1958, Public Law 699, as amended.

(c) This chapter shall not apply to any mortgage loan wholly or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code.

(d) This chapter shall not apply to any mortgage loan wholly or partially secured by an alternative mortgage instrument as approved by the bank examiner in section 402-18.

(e) The provisions of this chapter expressly limiting the rate or amount of interest, discount, charges, or other consideration which may be directly or indirectly taken, received, or reserved shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, or by a first lien on stock in a residential cooperative housing corporation, and is agreed to or incurred after May 30, 1980; provided that for the purposes of this section a wraparound lien wherein the wraparound lender has committed to loan sufficient funds to pay off the principal amount of all prior liens shall be considered a first lien; or
- (2) Agreement of sale made after May 30, 1980 under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest is clearly stated[.]; provided that upon extension at maturity or renegotiation of any agreement of sale made on or after the effective date of this Act, the maximum rate of interest charged thereafter shall not be more than four percentage points above the weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board at the time of extension or renegotiation. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made [during the period from [June 18, 1982] to midnight on June 30, 1985.] on or after the effective date of this Act; or
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after [[June 18, 1982]]; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction [made during the period from [June 18, 1982] to midnight on June 30, 1985].

(f) The provisions of this chapter shall not apply to a loan made by an employee welfare benefit trust plan or an employee pension benefit plan approved by the Internal Revenue Service pursuant to the Employee Retirement Income Security Act of 1974 and by the United States Department of Labor or a loan made by the Employees' Retirement System of the State of Hawaii.

(g) The provisions of this chapter shall not apply to farm or livestock credit corporations which are authorized by federal law to borrow directly from Federal Intermediate Credit Banks for their lending activities.

(h) The provisions of this chapter shall not apply to transactions of merchants. The maximum rate of interest charged by merchants in such transactions shall be eighteen per cent [per annum made during the period from [June 18, 1982] to midnight on June 30, 1985.] a year.

For purposes of this chapter, the term, "merchant" shall be as defined in section 490:2-104. This subsection shall not apply to any transactions regulated by chapters 403, 406, 407, 408, 409, 410, and 431.

(i) [Subsections (f) and (g) shall expire at the close of June 30, 1985 except that they shall continue to apply to any loan for the duration of such loan

if it is made prior to the close of June 30, 1985 or if it is made during the two year period beginning July 1, 1985 and ending June 30, 1987 pursuant to a commitment issued prior to the close of June 30, 1985.]¹”

SECTION 3. Section 478-11, Hawaii Revised Statutes, is amended to read as follows:

“§478-11 Interest; credit cards. Notwithstanding any other provision to the contrary, the maximum rate of interest chargeable on indebtedness incurred under a credit card agreement shall not exceed eighteen per cent per year. For purposes of this section:

- (1) Credit card means any card, plate, coupon book, or other single credit device, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, from time to time, on credit[, and].
- (2) Credit card agreement means any agreement that provides primarily for the extension of credit pursuant to a cardholder’s use of a credit card. An agreement providing for an overdraft line of credit does not, because a cardholder can access it through the use of a credit card, become a credit card agreement for purposes of this section.

[This section shall remain in effect until June 30, 1985.]”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1985.

(Approved June 5, 1985.)

Note

- 1. A closing bracket is missing.

A Bill for an Act Relating to Traffic Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291- Mandatory use of seat belts, when, penalty. (a) Except as otherwise provided by law, no person:

- (1) Shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and any passengers in the front seat of the motor vehicle are restrained by a seat belt

assembly if between the ages of four and fifteen or are restrained pursuant to section 291-11.5 if under the age of four;

- (2) If fifteen years of age or more shall be a passenger in the front seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly.

As used in this section "seat belt assembly" means the seat belt assembly required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor Vehicle Safety Act of 1966, as amended.

(b) The passengers of the following motor vehicles shall be exempt from the requirements of this section: emergency, commercial, for hire, and mass transit vehicles, and type I school buses. Further exemptions from this section may be established by rules adopted by the department of transportation pursuant to chapter 91.

(c) No person shall be guilty of violating this section if:

- (1) The person is in a motor vehicle which is not required to be equipped with a seat belt assembly under any federal motor vehicle safety standard unless the vehicle is in fact equipped with a seat belt assembly;
- (2) The person not restrained by a seat belt assembly is in a vehicle in which the number of persons exceeds the number of seat belt assemblies available in the vehicle or the number of seat belt assemblies originally installed in the vehicle, whichever is greater; provided that all available seat belt assemblies are being used to restrain passengers;
- (3) The person not restrained by a seat belt assembly has a physically disabling condition which prevents appropriate restraint by the seat belt assembly; provided such condition is duly certified by a physician who shall state the nature of the handicap, as well as the reason such restraint is inappropriate; or
- (4) Otherwise exempted by rules adopted by the department of transportation pursuant to chapter 91.

(d) This section shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident.

(e) A person who fails to comply with the requirements of this section shall be guilty of a violation and subject to a fine of \$15 for each violation."

SECTION 2. Section 294-13, Hawaii Revised Statutes, is amended to read as follows:

"§294-13 Motor vehicle insurance rates. (a) Except as otherwise provided in this chapter, all premium rates for motor vehicle insurance shall comply with the provisions of the casualty rating law contained in chapter 431.

(b) All premium rates for motor vehicle insurance shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within this State, to catastrophe hazards, if any, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective loss experience within the State; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold within the State; past and prospective expenses in the

sale and administration of motor vehicle insurance within the State; and, optionally, to past or prospective loss, sales, and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates.

- (2) Due consideration shall be given to the investment income from reserves [and], unearned insurance premiums, and other unearned proceeds received on account of motor vehicle insurance sold in this State, and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates.
- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (5) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (6) Rate making and regulation of rates for all insurance subject to this chapter shall be governed by chapter 431; subject, however, to the following:
 - (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with [the provisions of] section 431-703;
 - (B) Except as provided in subsection (j) the commissioner shall establish rates and shall consider with other relevant factors loss experience in this State and the investment income of the insurers, and insofar as section 431-694 and section 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not be applicable herein;
 - (C) To afford all interested persons an opportunity to be heard the commissioner shall, after notice is published pursuant to chapter 91, hold a public hearing whenever rates are to be increased;
 - (D) The initial rates shall be reviewed prior to September 1, 1975, and thereafter shall be reviewed at least every two years. The commissioner shall issue a public statement or an order approving the rates for the benefit of the public;
 - (E) The commissioner shall order insurers to rebate to policyholders any excessive profit realized by insurers from their operations.

(c) Except to the extent necessary to meet the provisions of [paragraph (4) of] subsection (b)(4) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(d) No manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance shall be effective unless approved by the commissioner. The commissioner may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers. The commissioner shall have the power to set rates under this chapter, pursuant to and following the procedure under chapter 91, except as specifically provided herein. The commissioner shall not set any rates without a public hearing at which all affected and interested parties have a full opportunity to examine, to comment, and to present evidence on the impact and application of the proposed establishment, or revision of rates. The commissioner shall publish a notice of the date, time, and place of the public hearing at least once in each of three successive weeks in a newspaper of general circulation.

(e) Any person aggrieved by the application as to him of any classification, rule, standard, rate, or rating plan made, followed, or adopted by an insurer may make written request to the commissioner to review such application and grant the relief requested. If the commissioner finds that probable cause for the complaint exists or that the complaint charges a violation of this chapter or any applicable provisions of the casualty rating law, he shall conduct a hearing on the complaint. The hearing shall be subject to the procedure provided in section 431-705(a).

(f) If the commissioner has good cause to believe that a classification, rule, standard, rate, rating territory, or rating plan made, followed, or adopted by an insurer does not comply with any of the requirements of this chapter or any applicable provisions of the casualty rating law, he shall, unless he has good cause to believe that such noncompliance is wilful, give notice, in writing, to each insurer stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, within which such noncompliance may be corrected. Notices under this subsection shall be confidential as between the commissioner and the parties unless a hearing is held as provided in subsection (g).

(g) If the commissioner has good cause to believe such noncompliance to be wilful, or if, within the period prescribed by the commissioner in the notice, the insurer does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or [established] establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may proceed with a hearing which shall be subject to the hearing procedure provided in section 431-705(a).

(h) If, after a hearing conducted pursuant to subsection (b) or (e), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this chapter or any applicable provisions of the casualty rating law, he shall issue an order granting the complainant's claim for relief or prohibiting the insurer from using such classification, rule, standard, rate, rating territory, or rating plan. The order shall contain the commissioner's findings of fact and conclusions of law, including, as appropriate, a specification of the respects in which a violation of this chapter or any applicable provision of the casualty rating law exists and shall specify a reasonable time period within which the insurer shall comply with the terms of the order. Any such order shall be subject to judicial review in accordance with the provisions of section 431-705(b).

(i) The commissioner shall periodically review and evaluate the motor vehicle insurance program described in this chapter, including an annual review of the premium rates, benefit payments, and insurers' loss experience.

(j) The commissioner shall be prohibited from setting, maintaining, or in any way fixing the rates charged by motor vehicle insurers for motor vehicle insurance issued in conformity with this chapter as either no-fault insurance or as optional additional insurance except as provided under section 294-23. Each firm licensed to underwrite no-fault insurance in the State shall establish its own rate schedule. The commissioner shall, however, monitor and survey the several companies' rate making methods and systems. The commissioner shall require of each insurer and of each self-insurer any and all information, data, internal memoranda, studies, and audits, he deems desirable for the purpose of evaluation, comparison, and study of the methods and schedules.

Notwithstanding this prohibition, the commissioner shall, in his discretion, intervene at any time to adjust rates, for the no-fault, mandatory, or optional-additional coverages, being assessed by any or all insurers, upon a finding that all or any rates are excessively high or unconscionably below the actual costs of provision of the coverage being assured.

In the establishment of their individual rate schedules, each insurer shall conform fully to subsection (b)(1), (2), and (4).

(k) Notwithstanding any other law to the contrary, no insurer shall agree, combine, or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11. This subsection shall not apply to advisory organizations referred to in section 431-700 which are not involved in rate making under this chapter.

(l) Notwithstanding subsection (j), commencing with September 1, 1974, the commissioner shall enforce a mandatory reduction of not less than fifteen per cent by each insurer, calculated as a percentage of the insurer's premium for a comparable combination of insurance coverage in effect on January 1, 1973, on all motor vehicle coverages, as provided in this chapter, including the basic no-fault policy. There shall be no exception to the requirements of this provision, unless the commissioner shall find that the use of the rates required herein by an insurer will be inadequate to the extent that such rates jeopardize the solvency of the insurer required to use such rates. No rate for the insurance required by this chapter shall be increased prior to September 1, 1975, unless the insurer proposing such rate increase shall show that the rates herein are inadequate as stated above.

(m) Notwithstanding subsection (j), all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels shall provide a ten per cent reduction off the regular premium each insurer assesses for such policy, to the operator purchasing a no-fault policy who has successfully completed a safe driving course approved by the director of transportation.

(n) Notwithstanding subsection (j), at the option of each insurer all premium rates on a no-fault policy for any motorcycle, motor scooter, or vehicle with less than four wheels may provide a discount of not more than ten per cent to the operator purchasing a no-fault policy when the operator submits an affidavit to the insurer that he will wear a safety helmet that is approved by the director of transportation during the operation of the insured vehicle; provided that if the insurer provides for a discount the insurer may provide for a

surcharge of an amount equal to the discount for those operators who do not submit an affidavit that they will wear an approved safety helmet during the operation of the insured vehicle.

No insured shall operate a vehicle insured under a no-fault policy under this section which provides for a discount for the use of a safety helmet, unless the insured is wearing an approved safety helmet.

(o) Notwithstanding subsection (j), all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels may provide a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a renewal no-fault policy, and a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a no-fault policy when the operator purchases insurance for more than one vehicle of the type described in this subsection.

(p) Notwithstanding subsection (j), commencing on December 16, 1985 and ending on December 31, 1988, all insurers of any motor vehicle shall provide a ten per cent reduction off premium charges each insurer assesses for each new and renewal policy for no-fault benefits and medical payment coverage for any motor vehicle which is equipped with seat belt assemblies as required under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor Vehicle Safety Act of 1966, as amended, or which is so equipped even if not required to be under any federal motor vehicle safety standard."

SECTION 3. Any law enforcement official authorized to issue traffic citations under state or county traffic codes who stops a motor vehicle in the course of official business between November 1, 1985, and December 15, 1985, may issue verbal warnings to persons who would be in violation of section 291-, Hawaii Revised Statutes, as added by this Act, as if the provisions of this Act were in effect on the date of the warning for purposes of educating the public on the requirements of this Act.

SECTION 4. The state department of transportation and the county police departments shall initiate an educational program designed to encourage compliance with seat belt assembly laws. This program shall focus on the effectiveness of restraint devices, the monetary savings and other benefits to the public, and the requirements and penalties specified in this law.

SECTION 5. The director of the state department of transportation and the state insurance commissioner jointly shall submit a report to the legislature no later than twenty days before the commencement of the regular legislative sessions of 1987, 1988, 1989, 1990, and 1991. These reports shall evaluate the effectiveness of this Act and shall include, but not be limited to, information and recommendations relating to the extent to which the public has complied with section 291-, Hawaii Revised Statutes, as added by this Act, statistics on traffic accidents and resulting injuries and fatalities, and the effect of this Act on insurance rates.

SECTION 6. This Act is intended to be compatible with support for federal safety standards requiring automatic crash protection and should not be interpreted or applied in any manner to rescind federal automatic crash protection system requirements for new motor vehicles.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on December 16, 1985, except that sections 3 and 4 of this Act shall take effect upon approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 236

H.B. NO. 184

A Bill for an Act Relating to the Aquaculture Advisory Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

AQUACULTURE ADVISORY COUNCIL

§ -1 Establishment of the Hawaii aquaculture advisory council; membership. There is established within the department of land and natural resources the Hawaii aquaculture advisory council, hereinafter referred to as the council, for the purpose of advising the board of land and natural resources on matters relating to aquaculture and the coordination of aquaculture activities among the various federal, state, and county agencies and private industry. The council shall be composed of thirteen voting members, and no more than ten nonvoting members, as follows:

- (1) Six shall be voting ex-officio members to consist of the chairperson of the board of land and natural resources, the director of planning and economic development, the chairperson of the board of agriculture, the dean of the college of tropical agriculture and human resources, the director of the sea grant college program, and the chairperson of the Hawaiian homes commission; or their designated representatives.
- (2) Six shall be voting members representing state aquaculture producers and private aquaculture consultants and appointed by the governor pursuant to section 26-34.
- (3) One shall be a voting member appointed by the governor pursuant to section 26-34 and selected from the State's aquaculture support industries such as feed manufacturing, marketing, and aquaculture equipment engineering.
- (4) There shall be no more than ten nonvoting ex-officio members to consist of the respective economic development officers or other officials as designated by the respective mayors of the city and county of Honolulu, the county of Hawaii, the county of Maui, and the county of Kauai, and may include the director of health, the director of the University of Hawaii's Hawaii institute of marine biology, the director of the aquatic resources division of the department of land and natural resources, the state marine affairs advisor, the administrator of the office of Hawaiian affairs, and such other members as deemed appropriate by the chairperson of the Hawaii aquaculture coordinating council.

The chairperson of the board of land and natural resources shall serve as the chairperson of the council. All members of the council shall serve without

compensation but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities of the council.

§ -2 **Powers and duties.** The council shall advise the board of land and natural resources on matters relating to aquaculture development to include:

- (1) Proposing and preparing programmatic aquaculture development plans and policies which, upon approval of the board, shall serve as a guide for aquaculture development in the State;
- (2) Coordinating, evaluating and monitoring all state aquaculture activities as they relate to the federal and county governments, public and private organizations and commercial enterprises, and the implementation of state aquaculture policies and plans;
- (3) Monitoring and supporting, as appropriate, state agency and private sector requests for federal grants and technical assistance;
- (4) Promoting communication between private industry and government agencies, including consideration of problems, permit requirements, land availability, and availability of technical and financial assistance;
- (5) Developing programs and projects to promote optimal development of aquaculture, including the development of criteria to measure program effectiveness;
- (6) Performing such other services as may be required by the governor, the legislature, and the board.

§ -3 **Annual report.** The Hawaii aquaculture advisory council shall submit an annual report on its implementation of this chapter to the governor, the board of land and natural resources, and the legislature prior to each regular session.

§ -4 **Personnel.** The department of land and natural resources shall provide staff support for the council to perform its duties and responsibilities.

§ -5 **State and county agency cooperation.** The council may request and shall receive from any department, division, board, bureau, commission, or agency of the State or any political subdivision thereof such assistance and data as it deems necessary or desirable to carry out its powers and duties."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 237

H.B. NO. 206

A Bill for an Act Relating to the Facilitation of Permit Processing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Short title.** This Act shall be known and may be cited as the "Permit Process Facilitation Act of 1985".

SECTION 2. **Findings.** A large number of federal, state, and county agencies and authorities have jurisdiction and may grant or deny their approval and issue or withhold permits for projects in the State. Agencies may disagree as to the requirements to be imposed on each applicant; hearings and data requirements may overlap or duplicate each other; and some agencies may prefer not to act until others take action first.

In 1977, central coordinating agencies were established in each of the four counties. Their operation improved the permit and approval process by providing a central source of information on county permit and approval requirements. Based on the county experience, improvements can be made in state permit and approval processes. There are also opportunities to further facilitate the regulatory process for projects that require permits and approvals from different levels of government. The legislature finds that it would be beneficial to designate a lead agency for permit process facilitation and the development of opportunities for streamlining the permit process.

SECTION 3. Purpose. The purpose of this Act is to authorize the department of planning and economic development to facilitate, expedite, and coordinate state agency and inter-governmental permit processes. The agency may facilitate the permit process through a consolidated application procedure, through information services, and through efforts to streamline the permit process. It is the further purpose of this Act to authorize and establish procedures by which federal, state, and county agencies and authorities may consolidate their review and action on permit applications for projects in the State. These procedures for state agencies and authorities are mandatory, and for federal and county agencies voluntary.

SECTION 4. Chapter 201, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . FACILITATION OF PERMIT PROCESSING

§201- Definitions. As used in this part, unless the context otherwise requires:

“Department” means the department of planning and economic development.

“Permit” means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State, and which is required prior to constructing or operating a project.

“Project” means any land or water use activity or any construction or operation which requires permits from one or more state agencies or permits from a state agency and a county or federal agency. Construction or operation of an activity may include, but need not be limited to housing, industrial, and commercial operations and developments.

§201- Consolidated application process. State agencies are required and county agencies are authorized and encouraged to participate in the consolidated application process set forth herein. The department shall serve as a lead agency for the consolidated application procedure. The procedure shall be as follows:

- (1) The applicant for two or more state permits may apply in writing to the department requesting a consolidated application process for the consideration of his application. The written request shall include sufficient data about the proposed project for the department to determine which other agencies or authorities may have jurisdiction.
- (2) Upon receiving a written request for the consolidated application process, the department shall notify all federal, state, and county agencies or authorities which the department determines may have

jurisdiction over part or all of the proposed project, and require those state agencies or authorities and invite those county and federal agencies or authorities to participate in the consolidated application process.

- (3) The applicant and each agency or authority required or agreeing to participate in the consolidated application process shall designate a representative to serve on the consolidated application review team.
- (4) Any state agency or authority designated by the department as a party to an application review that is not able to participate, shall submit an explanation, in writing, to the department as to the reasons and circumstances for non-compliance.
- (5) The representatives of the agencies, authorities, and the applicant may develop and sign a joint agreement among themselves identifying the members of the consolidated application review team, specifying the regulatory and review responsibilities of each government agency and setting forth the responsibilities of the applicant, and establishing a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement if necessary, and other actions required to minimize duplication and coordinate the activities of the applicant, agencies, and authorities.
- (6) Each agency or authority shall issue its own permit or approval based upon its own jurisdiction. The consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law.
- (7) The applicant must apply directly to each federal or county agency which does not participate in the consolidated application process.

§201- Information services. The department shall:

- (1) Operate a permit information and coordination center for public use during normal working hours, which provides guidance in regard to the permits and procedures that may apply to specific projects; and
- (2) Maintain and update a repository of the laws, rules and regulations, procedures, permit requirements, and criteria of federal, state, and county agencies having control or regulatory power over land and water use for development or the control or regulatory power over natural, cultural, or environmental resources.

§201- Streamlining activities. The department may:

- (1) Monitor permits on an ongoing basis to determine the source of inefficiencies, delays, and duplications and the status of permits in progress;
- (2) Pursue the implementation of streamlining measures including, but not necessarily limited to, those measures defined in consultation with affected state agencies, county central coordinating agencies, and members of the public; and
- (3) Design applications, checklists, and other forms essential to the implementation of approved streamlining measures in coordination with involved state and county regulatory agencies, and members of the public.

§201- Reporting. The department shall report biennially to the legislature on actions taken, problems encountered, and legislative actions that may be needed to further implement the intent of this part.”

SECTION 5. This Act shall take effect upon its approval and shall be repealed on June 30, 1987.

(Approved June 5, 1985.)

ACT 238

H.B. NO. 233

A Bill for an Act Relating to the Practice of Nursing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 457-2, Hawaii Revised Statutes, is amended to read as follows:

“§457-2 Definitions. As used in this chapter unless the content otherwise requires:

- [(1) “Board” means the State board of nursing.
- (2) “The practice of nursing as a registered nurse” means the performance for compensation of any act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist, requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social sciences. The foregoing shall not include acts of medical diagnosis or prescription of therapeutic or corrective measures.
- (3) “The practice of nursing as a licensed practical nurse” means the performance for compensation of selected acts in the care of the ill, injured, or infirm under the direction of a registered nurse or a licensed physician or a licensed dentist, and not requiring the substantial specialized skill, judgment, and knowledge required in the practice of a registered nurse.]

“Board” means the State board of nursing.

“The practice of nursing as a licensed practical nurse” means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, implementation of basic nursing procedures in the plan of care; or observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, medical doctor, registered nurse, osteopath, or podiatrist licensed in accordance with chapter 448, 453, 457, 460, or 463E; or administration of treatment and medication as prescribed; or promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

“The practice of nursing as a registered nurse” means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, observation,

assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; or administration, supervision, coordination, delegation, and evaluation of nursing practice; or provisions of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or utilization of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, medical doctor, osteopath, or podiatrist licensed in accordance with chapter 448, 453, 460, or 463E."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 239

H.B. NO. 281

A Bill for an Act Relating to the State Highway Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

"§237-31 Remittances. All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefore to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that from July 1, 1981, to June 30, [1987,] 1991, all taxes derived from the sale of liquid fuel under section 237-16, sold or used for operating motor vehicles upon the public highways of the State, shall be deposited into the state treasury to the credit of the state highway fund.

The director of taxation with the approval of the governor shall establish by July 1 of [1984, 1985, and 1986] each year from 1984 through 1990, a formula that will equitably establish the amount of taxes collected under section 237-16 in each fiscal year that are derived from the sale of liquid fuel sold or used for operating motor vehicles upon the public highways of the State which are to be deposited into the state treasury to the credit of the state highway fund."

SECTION 2. Section 249-31, Hawaii Revised Statutes, is amended to read as follows:

"§249-31 State registration fee. All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-3 [through] to 249-6 shall be subject to a [\$1] \$10 annual vehicle registration fee. The fee shall become due and payable on January 1, and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state registration for that county shall likewise be staggered so that

the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State to be paid into the state highway fund.”

SECTION 3. Section 249-33, Hawaii Revised Statutes, is amended to read as follows:

“§249-33 State vehicle weight tax, exemptions. (a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-3 [through] to 249-6, in addition to all other fees and taxes levied by this chapter, shall be subject to an annual state vehicle weight tax. The tax shall be levied by the county director of finance at the rate of [0.45] .50 cents a pound according to the net weight of each vehicle as the “net weight” is defined in section 249-1 up to [6,000] and including 4,000 pounds net weight; vehicles over [6,000] 4,000 pounds and up to [9,000] and including 7,000 pounds net weight shall be taxed [§27;] at the rate of .55 cents a pound; vehicles over [9,000] 7,000 pounds and up to and including [14,000] 10,000 pounds net weight shall be taxed [§31.50;] at the rate of .60 cents a pound; vehicles over [14,000] 10,000 pounds net weight shall be taxed at a flat rate of [§36; provided that in no case shall the tax assessed and collected be less than \$2 nor more than a maximum of \$36.] §65.

(b) The tax shall become due and payable on January 1 and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state vehicle weight tax shall likewise be staggered so that the state vehicle weight tax is collected together with the county fee. The state vehicle weight tax shall be deemed delinquent if not paid with the county registration fee. The tax shall be paid by the owner of each vehicle to the director of finance of the county in which the vehicle is registered and shall be collected by the director of finance of such county together with all other fees and taxes levied by this chapter from the owner of each vehicle and motor vehicle registered in the county.

By the fifteenth day of the month following the month in which taxes under this section are collected, the director of finance of each county shall transmit the taxes collected to the state director of finance for deposit into the state highway fund.

(c) The exemptions provided by sections 249-3 to 249-6 shall apply to this section. The provisions for refunds, and taxes for fraction of years for vehicles removed from or brought into the State and for junked vehicles, contained in sections 249-3 and 249-5 shall apply to the tax levied by this section.

(d) If it is shown to the satisfaction of the department of transportation of the State, based upon proper records and from such other evidence as the department of transportation may require, that any vehicle with a net vehicle weight of 6,000 pounds or over is used for agricultural purposes the owner thereof may obtain a refund of all taxes thereon imposed by this section. The department of transportation shall prescribe rules [and regulations] to administer such refunds.

(e) The counties shall be reimbursed the incremental costs incurred in the collection and administration of taxes and fees imposed under section 249-31

and this section; the amount of reimbursement shall be determined by the director of transportation.”

SECTION 4. Section 243-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by [him] the distributor in the State or imported by the distributor, or acquired by [him] the distributor from persons not licensed distributors, and sold or used by [him] the distributor in the State. Any person who sells or uses any liquid fuel knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon shall pay [[]such[]] tax as would have applied to such sale or use by the distributor [himself]. The rates of tax hereby imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent.
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent.
- (3) For each gallon of liquid fuel other than fuel mentioned in [items] paragraphs (1) and (2), sold or used in the city and county of Honolulu, or in any county for ultimate use in the city and county of Honolulu, [8-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5.
- (4) For each gallon of liquid fuel other than fuel mentioned in [items] paragraphs (1) and (2), sold or used in the county of Hawaii, or in any county for ultimate use in the county of Hawaii, [8-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5.
- (5) For each gallon of liquid fuel other than fuel mentioned in [items] paragraphs (1) and (2), sold or used in the county of Maui, or in any county for ultimate use in the county of Maui, [8-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5.
- (6) For each gallon of liquid fuel other than fuel mentioned in [items] paragraphs (1) and (2), sold or used in the county of Kauai, or in any county for ultimate use in the county of Kauai, [8-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the “county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from such other evidence as the department may require, that liquid fuel other than fuel mentioned in [items] paragraphs (1) and (2) is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall prescribe rules [and regulations] to administer for such refunds.

(b) Every distributor of diesel oil shall, in addition to the tax required by subsection (a) of this section, pay a license tax to the department for each gallon of such diesel oil sold or used by [him] the distributor for operating a motor

vehicle or motor vehicles upon public highways of the State. The rates of the additional tax hereby imposed are as follows:

- (1) For each gallon of diesel oil so sold in the city and county of Honolulu, or in any other county for ultimate use in the city and county of Honolulu, or used in the city and county of Honolulu, [7-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5.
- (2) For each gallon of diesel oil so sold in the county of Hawaii, or in any other county for ultimate use in the county of Hawaii, or used in the county of Hawaii, [7-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5.
- (3) For each gallon of diesel oil so sold in the county of Maui, or in any other county for ultimate use in the county of Maui, or used in the county of Maui, [7-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5.
- (4) For each gallon of diesel oil so sold in the county of Kauai, or in any other county for ultimate use in the county of Kauai, or used in the county of Kauai, [7-1/2] 11 cents state tax, and in addition thereto such amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in such form as the department shall prescribe, to the distributor, or the distributor who uses diesel oil signs such certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to (4) [of this subsection] shall not be applicable. In the event a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall prescribe rules [and regulations] to administer the refunding of such taxes."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1985; provided that sections 2 and 3 of this Act shall take effect on October 1, 1985.

(Approved June 5, 1985.)

ACT 240

H.B. NO. 743

A Bill for an Act Relating to the Hawaii Insurance Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-643, Hawaii Revised Statutes, is amended to read as follows:

"§431-643 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
 - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or
 - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or
 - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy; or
 - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or
 - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or
 - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or
 - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or
 - (H) Misrepresents any insurance policy as being shares of stock; or
 - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
 - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation:
 - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or

- (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.
- (5) False financial statements:
 - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
 - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination:
 - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract; or
 - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder; or
 - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination, or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate; or

- (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination, or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate; or
 - (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subparagraph shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits; or
 - (F) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subparagraph shall not apply to accident and health insurance sold by a casualty insurer; provided further that this subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.
- (8) Rebates. Except as otherwise expressly provided by law:
- (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or
 - (B) Giving, or selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.
- (9) Nothing in paragraph (7) or paragraph (8) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:
- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;
 - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have

- continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year;
 - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this chapter.
- (10) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - (B) Failing to respond with reasonable promptness, in no case more than fifteen working days, to communications, whether received from the insurer's policyholder or any other person, or insurer of the other person, who is involved in an accident in which the insurer's policyholder is also involved, with respect to claims arising under its policies;
 - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
 - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
 - (F) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
 - (G) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
 - (H) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
 - (I) Attempting to settle claims on the basis of an application which was altered without notice, or knowledge or consent of the insured;
 - (J) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
 - (K) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
 - (L) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a

preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

- (M) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
- (N) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

The commissioner shall by certified mail notify the insurer's agent, as designated pursuant to section 431-102, of each complaint filed with the commissioner under this section.

Three or more written complaints received by the commissioner within any twelve-month period charging separate violations of this section shall constitute a rebuttable presumption of a general business practice.

Evidence as to numbers and types of complaints to the insurance commissioner against an insurer, and the insurance commissioner's complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under this section; provided no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints except as provided in the immediately preceding paragraph and the presumption is not rebutted.

If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for the purposes of section 431-17.

- (11) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431-54. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph, "complaint" shall mean any written communication primarily expressing a grievance.
- (12) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new part II to be appropriately designated and to read as follows:

“PART II. LIE DETECTOR TESTS

§378- Definitions. As used in this part:

“Department” means the department of labor and industrial relations.

“Director” means the director of labor and industrial relations.

“Employee” means any individual in the employment of an employer.

“Employer” includes any individual, partnership, association, corporation, business trust, legal representative, receiver, trustee, or successor of any of the same, or any organized group of persons, acting directly or indirectly in the interest of any employer in relation to an employee.

“Lie detector test” means a test to detect deception or to verify the truth of statements through the use of any psychophysiological measuring device, such as, but not limited to, polygraph tests and voice stress analyzers.

“Person” means one or more individuals, and includes, but is not limited to, a partnership, association, or corporation, legal representative, trustee, trustee in bankruptcy, receiver, or the State or any of its political subdivisions.

“Prospective employee” means any individual who has applied for or otherwise actively expressed interest in employment with an employer.

§378- Unlawful practices. It shall be unlawful for any employer to:

- (1) Require a prospective employee or employee to submit to a lie detector test as a condition of employment or continued employment;
- (2) Terminate or otherwise discriminate against any employee or prospective employee for refusing to submit to a lie detector test;
- (3) Ask an employee or prospective employee whether the employee or prospective employee is willing to submit to a lie detector test unless the employee or prospective employee is informed orally and in writing that the test is voluntary and the refusal to submit to the test will not result in termination of the employee or will not jeopardize the prospective employee’s chance of a job;
- (4) Subject a prospective employee to a lie detector test which includes inquiries deemed unlawful under section 378-2;
- (5) Utilize any device that intrudes into any part or cavity of the body for the purpose of truth verification; or
- (6) Discharge or otherwise discriminate against any employee or prospective employee because such person has filed a complaint, testified, or assisted in any proceeding respecting the unlawful practices prohibited under this part.

§378- Exception. Nothing in this part shall be deemed to:

- (1) Repeal or affect any law or ordinance or government rule or regulation having the force and effect of law;
- (2) Apply to lie detector tests administered by any law enforcement agency;
- (3) Apply to the United States and any subdivision thereof;
- (4) Conflict with or affect the application of security regulations in employment established by the United States or the State; or
- (5) Apply to psychological tests administered by a law enforcement agency to determine the suitability of a candidate for employment with the law enforcement agency.

§378- Enforcement jurisdiction; complaint against unlawful practice. (a) The department shall have jurisdiction over practices made unlawful by this part. Any prospective employee or employee claiming to be aggrieved by an unlawful practice may file with the department a verified complaint in writing which shall state the name and address of the prospective employer or employer alleged to have committed the unlawful practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the department. The attorney general, or the department upon its own initiative, in like manner, may make and file such a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the department, and a complaint so filed may be investigated, conciliated, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of thirty days after the date upon which the alleged unlawful practice occurred or is discovered to have occurred, whichever is later.

§378- Power of department to prevent unlawful practice. (a) After the filing of any complaint, or whenever it appears to the department that an unlawful practice may have been committed, the department shall conduct an investigation in connection therewith. At any time after the filing of a complaint, but prior to the issuance of a determination as to whether there is or is not cause to believe that this part has been violated, the parties may agree to resolve the complaint through a settlement.

(b) If the department determines after such investigation that there is cause to believe that this part has been violated, the department shall demand that the respondent cease such unlawful practice. In addition to the penalty specified in section 378- the department may order appropriate affirmative action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without back pay, as, in the judgment of the department, will effectuate the purpose of this part.

(c) The department may commence a civil action in circuit court seeking appropriate relief. In a civil action brought pursuant to this subsection:

- (1) The director may join various complainants in one cause of action;
- (2) The director shall not be required to pay the filing fee or other costs or fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such action or proceedings;
- (3) In no event shall any action be brought more than three years after the complaint was filed with the department.

(d) In any action brought pursuant to this part, if the court finds that a respondent has engaged in or is engaging in an unlawful practice as defined in this part, the court may enjoin the respondent from engaging in such unlawful practice and order such affirmative action as may be appropriate, including, but not limited to fines, reinstatement, hiring, or upgrading of employees and prospective employees, with or without back pay, or any other equitable relief as the court deems appropriate.

(e) In any action brought pursuant to this part, if any judgment obtained by the director against the respondent remains unsatisfied for a period of thirty days after such judgment is entered, the director may request the circuit court to compel the respondent to comply with the judgment, including, but not limited to, an order directing the respondent to cease doing business until the respondent has complied with the judgment.

(f) Whenever it appears to the director that an employer is engaged in any act or practice which constitutes or may constitute, now or later, a violation of this part, or any related rule, the director may bring an action in the circuit court of the circuit in which it is charged that the act or practice complained of occurred or is about to occur to enjoin the act or practice and to enforce compliance with this part or with the rule, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(g) In any action brought under this part, the court may in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of action, and reasonable attorney's fees, to be paid by the defendant.

§378- Investigation; oaths; affidavits; subpoena; witnesses; immunities.

(a) In connection with an investigation of a complaint filed under this part, or whenever it appears to the department that an unlawful practice may have been or is being committed, the director or an authorized representative shall have access to the premises of the parties or persons reasonably connected thereto, records, documents, and other material relevant to the complaint and shall have the right to examine, photograph, and copy such material, and may question such employees and make such investigation to determine whether any person has violated this part or any rule or regulation issued under this part or which may aid in the enforcement of this part.

(b) The director or an authorized representative may administer oaths and may issue subpoenas or subpoena duces tecum to compel the attendance and testimony of witnesses or the production of books, payrolls, records, correspondence, documents, or any other material relating to any matter under investigation.

(c) If a person fails to comply with a subpoena issued under this section, any circuit court, upon application of the director or the director's authorized representative, may issue an order requiring compliance.

§378- Rules. The director shall make such rules under chapter 91, not inconsistent with this part as in the judgment of the director are appropriate to carry out this part and for the efficient administration thereof.

§378- Penalties. (a) Civil. Any employer found in violation of this part shall be subject to a fine of not less than \$100 nor more than \$1,000 to be collected by the director and such fine shall not be suspended. Each violation shall constitute a separate offense. Amounts so collected by the director shall be paid into the general fund.

(b) Criminal. Whoever intentionally resists, prevents, impedes, or interferes with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who in any manner intentionally violates the law, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

(c) All criminal actions for violations of this part or any rule issued pursuant thereto, shall be prosecuted by the attorney general or public prosecutor."

SECTION 2. Chapter 378, part II, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 1985.

(Approved June 5, 1985.)

A Bill for an Act Relating to Commercial Marine License.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 187-1, Hawaii Revised Statutes, is amended by amending the definitions of "commercial purpose" and "commercial marine license" to read as follows:

- "(4) "Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood[, provided] regardless of whether the marine life is taken in or outside of the [waters of the] State [or], and where the marine life is sold [or], offered for sale, landed, or transported anywhere in the State.
- (6) "Commercial marine license" means a license issued to take marine life within [the waters] or outside of the State for commercial purpose."

SECTION 2. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

"**§189-2 Commercial marine license.** (a) [It is unlawful for any] No person [to engage in any taking of] shall take marine life for commercial purposes [in the waters of the State or to sell or offer for sale or to profit from any sale of marine life anywhere in the State] whether the marine life is caught or taken [in the waters] within or outside of the State [or outside the waters of the State], without first obtaining a commercial marine license as provided in this section. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(b) The department [of land and natural resources] shall issue commercial marine licenses to persons engaging in the activities described in subsection (a), upon payment of the prescribed fees and receipt of properly completed applications upon [such] forms [as may be] prescribed by the department[.]; provided that the department may issue a commercial marine license to a vessel with the fee determined by the number of persons on the vessel contributing to the taking of marine life for commercial purpose in or outside of the State. The applications for commercial marine licenses shall [require a statement of] state the applicant's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and [such] any other information [as the department may require.] required by the department.

(c) No commercial marine licensee shall permit any other person or fishing vessel to carry, display, or use the license for any purpose. Every commercial marine licensee shall show the license upon demand of any officer authorized to enforce the fishing laws of the State. Failure or refusal to¹ show the license shall be sufficient cause for the immediate cancellation of [such] the license by the department.

(d) All licenses issued under this section shall be in force from the date of issuance to June 30 following the date of issuance. Duplicate licenses may be issued to any person upon affidavit that [he has lost the license,] the license was lost, and upon payment of a fee of 50 cents. The fee for a commercial marine license shall be:

- (1) [\$10] \$25 for any person who has resided in the State for one year or longer, and
- (2) [\$20] \$50 for all other persons,

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except that anyone who qualifies as a "trainee" under rules prescribed by the department [of land and natural resources] shall have the fee waived for a period of not more than one hundred eighty calendar days from the date on which the license is issued.

(e) The department may revoke any license for any infraction of the terms and conditions of the license. In any proceeding for the revocation of a commercial marine license, the licensee shall be given notice and opportunity for hearing in conformity with chapter 91. Upon revoking the license, the department may specify a period of time during which the commercial licensee shall not be eligible to apply for another license; provided that the period shall not exceed one year from the date of revocation."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect on July 1, 1985.

(Approved June 5, 1985.)

Note

1. Prior to amendment, "so" appeared here.

ACT 243

S.B. NO. 342

A Bill for an Act Relating to Pesticides.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 149A-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The licensee shall pay a minimum fee of \$10 for each year, or fraction thereof, that the pesticide is licensed[.], provided that the minimum annual fee for a restricted pesticide shall be \$30. Licensing [fee] fees may be increased from time to time by regulations [but such increase shall not be in excess of \$5 for any one year.] and may vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed. The term of the license shall be for a period of three years, beginning January 1, 1982, expiring on December 31, 1984, and on December 31 of each third year thereafter. In case of renewal of license, a statement shall be required only with respect to information which is different from that furnished when the pesticide was licensed or last relicensed. All fees collected shall be deposited in the general fund of the State."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 244

S.B. NO. 384

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, section 13, of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.", the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, section 13, of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year."
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1984-1985 and estimated for each fiscal year from 1985-1986 to 1988-1989, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1981-82	1,154,765,486	
1982-83	1,218,675,016	
1983-84	1,320,280,833	
1984-85	1,430,093,000	227,779,482
1985-86	1,548,454,000	244,758,012
1986-87	1,650,707,000	265,094,383
1987-88	1,785,643,000	285,470,663
1988-89	(Not Applicable)	307,396,247

For fiscal years 1984-85, 1985-86, 1986-87, 1987-88, and 1988-89 respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1981-82, 1982-83, and 1983-84 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1984, dated November 21, 1984. The net general fund revenues for fiscal years 1984-85 to 1987-88 are estimates, based on general fund revenue estimates made as of March 15, 1985, by the council on revenues, the body assigned by Article VII, section 7, of the State Constitution to make such

estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. As certified by the director of finance in the most recent Certificate of the Debt Limit of the State of Hawaii dated March 14, 1985, the total amount of principal and interest on outstanding general obligation bonds for determining the power of the State to issue general obligation bonds within the debt limit is as follows for fiscal year 1985-86 to fiscal year 1991-92:

Fiscal Year	Principal and Interest
1985-86	199,096,748
1986-87	199,130,212
1987-88	194,861,232
1988-89	185,247,965
1989-90	174,792,018
1990-91	166,351,853
1991-92	154,238,126

The Certificate of Debt Limit as of March 14, 1985, further shows that the amount of principal and interest on outstanding bonds applicable to the debt limit continues to decline each year from fiscal year 1992-93 to fiscal year 2011-12 when the final installment of \$15,347 shall be due and payable.

- (4) Amount of authorized and unissued general obligation bonds and bonds authorized by this Act. As calculated from the state comptroller's bond fund report as of February 28, 1985, the total amount of authorized but unissued general obligation bonds is \$301,342,762. The total amount of general obligation bonds authorized by this Act is \$352,494,000. The total amount of general obligation bonds previously authorized and unissued as adjusted pursuant to the provisions of H.B. No. 1¹ and the general obligation bonds authorized by this Act is \$651,536,762.
- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1984-85, 1985-86, 1986-87, 1987-88, and 1988-89, the State proposes to issue \$75,000,000 during the remainder of fiscal year 1984-85 and \$80,000,000 semiannually in each of fiscal years 1985-86, 1986-87, 1987-88, and 1988-89. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds maturing in substantially equal installments of principal, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the remainder of fiscal year 1984-85 and in the fiscal years 1985-86, 1986-87, and 1987-88 is \$555,000,000. An additional \$160,000,000 is proposed to be issued

in fiscal year 1988-89. The total amount of \$555,000,000 which is proposed to be issued through fiscal year 1987-88 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is \$651,536,762, as reported in paragraph (4), except for \$96,536,762. It is assumed that the appropriations to which an additional \$96,536,762 in bond issuance needs to be applied will have been encumbered as of June 30, 1988. The \$160,000,000 which is proposed to be issued in fiscal year 1988-89 will be sufficient to meet the requirements of the June 30, 1988, encumbrances in the amount of \$96,536,762. The amount of assumed encumbrances as of June 30, 1988 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 1988, and the amount of June 30, 1988, encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1988-89, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
- (A) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
 - (B) While at the present time, all of the special funds which are required to make reimbursements to the general fund on bonds issued are in a condition to qualify all of the reimbursable bonds for exclusion, it cannot be stated with certainty that such a condition will continue.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, as reported in the Certificate of Debt Limit of the State of Hawaii as of March 14, 1985, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 14.34 per cent for the ten years from fiscal year 1985-86 to fiscal year 1994-95. For the purpose of this declaration, the assumption is made that ten per cent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 14 per cent through June 30, 1987, and 9.5 per cent thereafter, the maximum allowable by law, it can be determined from the following

schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, and the bonds authorized by this Act, will not cause the debt limit to be exceeded at the time of each bond issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest
Remainder FY 1984-85 \$67,500,000	\$227,779,482	\$208,580,212 (FY 1986-87)
1st half FY 1985-86 \$72,000,000	\$244,758,012	\$218,660,212 (FY 1986-87)
2nd half FY-1985-86 \$72,000,000	\$244,758,012	\$228,740,212 (FY 1986-87)
1st half FY 1986-87 \$72,000,000	\$265,094,383	\$238,304,232 (FY 1987-88)
2nd half FY 1986-87 \$72,000,000	\$265,094,383	\$248,384,232 (FY 1987-88)
1st half FY 1987-88 \$72,000,000	\$285,470,663	\$252,806,510 (FY 1988-89)
2nd half FY 1987-88 \$72,000,000	\$285,470,663	\$259,646,510 (FY 1988-89)
1st half FY 1988-89 \$72,000,000	\$307,396,247	\$262,105,968 (FY 1989-90)
2nd half FY 1988-89 \$72,000,000	\$307,396,247	\$268,945,968 (FY 1989-90)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the basis for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in H.B. No. 1, H.B. No. 99, and S.B. No. 1089¹ passed by this regular session of 1985, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of the general obligation bonds so issued shall not exceed \$352,494,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-13, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in paragraph 4 in section 1 and in section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Acts 300, 169 and 82, respectively, this volume.

ACT 245

S.B. NO. 557

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds for Health Care Facilities

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in the amounts set forth below to assist not-for-profit corporations that provide health care facilities to the general public to be used for the purpose of financing or refinancing the acquisition of equipment related to and useful in the operation of the following health care facilities:

- | | |
|---|-------------|
| 1. Queen's Medical Center, Oahu | \$5,000,000 |
| 2. Wahiawa General Hospital, Oahu | \$3,000,000 |
| 3. G.N. Wilcox Memorial Hospital, Kauai | \$3,000,000 |

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued in one or more issues or series of issues pursuant to one or more project agreements, and shall in all respects be in compliance with chapter 39A, part II, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

A Bill for an Act Relating to Safety Inspections of Motor Carrier Vehicles.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-209, Hawaii Revised Statutes, is amended to read as follows:

“[[§286-209[]] **Safety inspection of motor carrier vehicles.** (a) Motor carrier vehicles including but not limited to trucks, truck-tractors, semitrailers, trailers, or pole trailers having a gross vehicle weight rating of more than 10,000 pounds, and motor carrier vehicles having a gross vehicle weight rating of 10,000 pounds or less which transport passengers in the furtherance of a commercial enterprise, including car rental transport vehicles shall be inspected and certified once every six months.

(b) The director shall adopt rules pursuant to chapter 91 for motor carrier vehicle safety inspections, the issuance of certificates of safety inspection, the affixing of motor carrier vehicle safety inspection decals, and the acceptance of certificates of safety inspection issued in other jurisdictions.

(c) The director shall collect a fee of \$1.50 for each motor carrier vehicle safety inspection decal issued by motor carrier vehicle inspection stations. All moneys collected shall be paid into the [State] state highway fund.

(d) A fee of no more than \$7 shall be charged by a motor carrier inspection station for each safety inspection performed.

(e) For the purposes of this section, “car rental transport vehicles” means motor carrier vehicles used to transport customers to or from car rental sites.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

A Bill for an Act Relating to Agreements of Sale.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 501-101.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§501-101.5[]] **Agreements of sale; priority.** (a) The rights of a buyer under an agreement of sale which has been duly filed and noted on the certificate of title in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was filed after the filing of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not filed prior to the filing of the agreement of sale.

(b) Upon the buyer's satisfaction of the agreement of sale, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from [such] a conveyance or [such] a judgment[,] referred to in subsection (a), [if such claim is subject to prior rights of the buyer as set forth in subsection (a),] shall [deliver to the holder of the buyer's interest in the agreement of sale a release of any interest which the claimant may have in the real estate covered by the agreement of sale.] be extinguished as to such real estate upon the filing of a transfer of title to such real estate from the seller to the buyer.

(c) Notwithstanding subsections (a) and (b), nothing in this section shall impair or waive any valid legal defense of the claimant to such release.

(d) (c) For the purposes of this section, the following definitions apply:

"Agreement of sale" means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or subsequent subagreement of sale.

"Buyer" means the party who has agreed to purchase, and "seller" means the party who has agreed to sell the real estate pursuant to an agreement of sale, and includes each of their respective assignees and successors in interest in the agreement of sale.

"Conveyance" means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encumbered, or by which title to any real estate may be voluntarily affected, other than wills.

"Filed" or "filing" means filed in accordance with this chapter.

"Real estate covered by the agreement of sale" means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

"Release" includes a transfer of title to the real estate where the claimant has succeeded to the seller's title and to the seller's obligation to transfer title to the buyer upon satisfaction of the agreement of sale.]

"Satisfaction of agreement of sale" means the full performance of the buyer's obligations under the agreement of sale, and:

- (1) The buyer's compliance or tender of compliance with all of the buyer's filed written agreements and filed written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all filed written directions, if any, of the seller to the buyer to make payments under the agreement of sale to a claimant or claimants;
- (2) The buyer's compliance or tender of compliance with all orders, which have been filed, of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer's payment of all periodic, interim, prepaid, and final payments under the agreement of sale[, either:
 - (A) Directly to the claimants who notify the buyer of their claimed right to such payments, according to the priority of the claims to the seller's interest in the real estate, to the extent of such payments or such claims, whichever is less; or
 - (B) Into an escrow account with a licensed escrow company together with the buyer's irrevocable written instructions to hold such payments and disburse them to claimants according

to such priority as the claimants agree to or establish among themselves, to the extent of such payments or such claims, whichever is less.

If a claimant delivers a release as required by subsection (b) pursuant to payment into such escrow by the buyer, before the claimant actually receives satisfaction of the claim, the claim shall be automatically transferred to the payments so held in escrow in the same priority as to other claimants as existed before the release].

If a claimant's claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment."

SECTION 2. Section 502-85, Hawaii Revised Statutes, is amended to read as follows:

"[]§502-85[]] Agreements of sale; priority. (a) The rights of a buyer under an agreement of sale which has been duly recorded in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was recorded after [this] the recordation of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not recorded prior to the recordation of the agreement of sale.

(b) Upon the buyer's satisfaction of the agreement of sale, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from [such] a conveyance or [such] a judgment[,] referred to in subsection (a), [if such claim is subject to prior rights of the buyer as set forth in subsection (a),] shall [deliver to the holder of the buyer's interest in the agreement of sale a release of any interest which the claimant may have in the real estate covered by the agreement of sale.] be extinguished as to such real estate upon the recording of a transfer of title to such real estate from the seller to the buyer.

[(c) Notwithstanding subsections (a) and (b), nothing in this section shall impair or waive any valid legal defense of the claimant to such release.

(d) (c) For the purposes of this section, the following definitions apply: "Agreement of sale" means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or other subsequent subagreement of sale.

"Buyer" means the party who has agreed to purchase, and "seller" means the party who has agreed to sell the real estate pursuant to an agreement of sale, and includes each of their respective assignees and successors in interest in the agreement of sale.

"Conveyance" means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encum-

bered, or by which title to any real estate may be voluntarily affected, other than wills.

“Real estate covered by the agreement of sale” means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

“Recorded” or “recording” means recorded in accordance with this chapter.

[“Release” includes a transfer of title to the real estate where the claimant has succeeded to the seller’s title and the seller’s obligation to transfer title to the buyer upon satisfaction of the agreement of sale.]

“Satisfaction of agreement of sale” means the full performance of the buyer’s obligations under the agreement of sale, and:

- (1) The buyer’s compliance or tender of compliance with all of the buyer’s recorded written agreements and recorded written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all recorded written directions, if any, of the seller to the buyer to make payments under the agreement of sale to a claimant or claimants;
- (2) The buyer’s compliance or tender of compliance with all orders, which have been recorded, of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer’s payment of all periodic, interim, prepaid, and final payments under the agreement of sale[, either:
 - (A) Directly to the claimants who notify the buyer of their claimed right to such payments, according to the priority of the claims to the seller’s interest in the real estate, to the extent of such payments or such claims, whichever is less; or
 - (B) Into an escrow account with a licensed escrow company together with the buyer’s irrevocable written instructions to hold such payments and disburse them to claimants according to such priority as the claimants agree to or establish among themselves, to the extent of such payments or such claims, whichever is less.

If a claimant delivers a release as required by subsection (b) pursuant to payment into such escrow by the buyer, before the claimant actually receives satisfaction of the claim, the claim shall be automatically transferred to the payments so held in escrow in the same priority as to other claimants as existed before the release].

If a claimant’s claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment.”

SECTION 3. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The provisions of this chapter expressly limiting the rate or amount of interest, discount, charges, or other consideration which may be directly or indirectly taken, received, or reserved shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, or by a first lien on stock in a residential cooperative housing corporation, and is agreed to or incurred after May 30, 1980; provided that for the purposes of this section a wraparound lien wherein the wraparound lender has committed to loan sufficient funds to pay off the principal amount of all prior liens shall be considered a first lien; or
- (2) Agreement of sale made after May 30, 1980 under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest is clearly stated. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made [during the period from [June 18, 1982] to midnight on June 30, 1985.] on or after June 18, 1982; or
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after [[June 18, 1982]]; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction [made during the period from [June 18, 1982] to midnight on June 30, 1985]."

SECTION 4. This Act shall not affect any rights or duties that have matured, obligations that were owed, penalties that were incurred, or proceedings that were begun prior to the effective date of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 248

S.B. NO. 1186

A Bill for an Act Relating to Hospitals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 27-22.5, Hawaii Revised Statutes, is amended to read as follows:

"[[§27-22.5]] **Administration of hospitals.** (a) The appointment of hospital administrators and assistant administrators shall be made on an exempt basis by the director of health after June 30, 1983. Hospital administrators and assistant administrators appointed before July 1, 1983, shall maintain their permanent civil service status as provided in chapters 76 and 77.

(b) [Notwithstanding any other law to the contrary, the director of health with the approval of the governor may contract for management services with private individuals or corporations solely for those services provided at Hilo hospital by hospital administrators and assistant administrators; provided that no contract under this subsection shall exceed a term of twenty-four months; and provided further that the term of any contract shall in any event expire before July 1, 1985.] Notwithstanding any other law to the contrary, the director

of health, with the approval of the governor, may contract with private individuals or corporations for the administration or lease of the facilities of the county and state hospitals division in the county of Hawaii. This subsection shall not supersede collective bargaining agreements, civil service rules [and regulations], and existing statutes protecting employee rights; nor shall any employee be adversely affected by this subsection.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 249

S.B. NO. 1274

A Bill for an Act Relating to Real Estate.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

“**§467-11 Fees; original license and biennial renewals.** The fee for any license prescribed by this chapter shall be as follows:

- (1) To act as a real estate broker, \$50, [~~\$5~~] \$20 of which shall be deposited in the real estate education fund;
- (2) To act as a real estate salesman, \$50, [~~\$5~~] \$20 of which shall be deposited in the real estate education fund;
- (3) Biennial renewal for broker, \$100, [~~\$10~~] \$20 of which shall be deposited in the real estate education fund;
- (4) Biennial renewal for salesman, \$50, [~~\$10~~] \$20 of which shall be deposited in the real estate education fund;
- (5) To obtain a branch office license, \$50;
- (6) To reinstate a suspended license, \$25;
- (7) Biennial renewal of inactive broker license, \$100, [~~\$10~~] \$20 of which shall be deposited in the real estate education fund;
- (8) Biennial renewal of inactive salesman license, \$50, [~~\$10~~] \$20 of which shall be deposited in the real estate education fund.

A fee of \$10 shall be charged for the reissuance of a lost license, or for the reissuance of license when there has been a change in the licensee's name or for the reissuance of license when there has been a change in the business address, or, in the case of a salesman, when he is either employed by or associated with a different broker.

The biennial renewal fee shall be paid to the real estate commission on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesman to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or salesman. The license of the broker or salesman may be restored upon written application therefor, the payment to the commission of the delinquent fee and a penalty fee of \$10, and satisfaction of such other requirements as the commission may impose as a condition to restoration.

A broker or salesman may place his license on an inactive status upon payment of the proper fee, and such license may be renewed biennially on or before December 31 of each even-numbered year.

All fees and other moneys collected or received under this chapter shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

The commission may refund any fee erroneously paid to it under the provisions of this section and section 467-9 when the commission deems it just and equitable.

Education fund balance. If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on such renewal contributions and the commission shall review and consider a reduction in the same amount in licensee fees."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 250

H.B. NO. 160

A Bill for an Act Relating to Hansen's Disease.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose changes for clarity including common parlance substitutions and additional functional clarification with respect to Hansen's disease.

SECTION 2. Section 326-1, Hawaii Revised Statutes, is amended to read as follows:

"§326-1 Establishment of hospitals, etc.; treatment and care of persons affected with Hansen's disease. The department of health, subject to the approval of the governor, shall establish hospitals, [settlements,] facilities, and places as it deems necessary for the care and treatment of persons affected with Hansen's disease.

At every such hospital, [settlement,] facility, and place there shall be exercised every reasonable effort to effect a cure of such persons, and all such persons shall be cared for as well as circumstances will permit, and given such liberties as may be deemed compatible with public safety and in the light of advances in medical science and in accordance with accepted practices elsewhere. Every patient shall be encouraged to take complete treatment so that prompt recovery can be attained and shall be discharged as soon as possible. The treatment shall be compulsory only in those cases where, in the opinion of the department, such treatment is necessary to save life [or], prevent obvious physical suffering, or protect the health of the public, and the department may take such measures as may be necessary to enforce this section."

SECTION 3. Section 326-3, Hawaii Revised Statutes, is amended to read as follows:

"§326-3 Care in other hospitals, homes, etc. Notwithstanding any of the provisions of this chapter or of any other chapter relating to this subject matter, the department of health may make arrangements for the care and treatment of any person within the jurisdiction at any hospital, nursing home, or convalescent home in the State, either public or private, and bear all expenses of the hospitalization and treatment and any other necessary expenses in the same

manner as though the person were [confined] staying at any hospital, [settlement,] facility, or place for the care and treatment of persons affected with Hansen's disease established under section 326-1. Any moneys at any time appropriated for the care of patients or maintenance of the hospital, [settlement,] facility, or place established under section 326-1 may be used by the department to pay any hospital, nursing home, or convalescent home with which the department has made such arrangements. When such arrangements have been made the other provisions of this chapter relating to the examination, care, treatment, and discharge of patients shall be applicable to the institution and patient involved in the same manner as they apply to the hospital, [settlement,] facility, or place established under section 326-1."

SECTION 4. Section 326-4, Hawaii Revised Statutes, is amended to read as follows:

"§326-4 Officers and employees; sickness and accident; expense. In case any officer or employee of the department of health becomes ill or is injured at the [settlement] facility at Kalaupapa and, in the opinion of the physician of the [settlement,] facility, or in [his] the¹ absence of the physician an authorized agent of the department of health, suitable medical, hospital, nursing, or other services or facilities are not available there, the department shall incur and pay the reasonable and necessary expenses of removing and transporting the officer or employee to and from a place within the State where suitable hospital facilities or treatment can be secured."

SECTION 5. Section 326-5, Hawaii Revised Statutes, is amended to read as follows:

"§326-5 Appropriations, how spent. All moneys at any time appropriated for the upkeep, support, maintenance, and conduct of any hospital, [settlement,] facility, or [receiving station] place for persons affected with Hansen's disease, shall be expended under the supervision and authority and by the order of the department of health, upon vouchers signed by the director of health."

SECTION 6. Section 326-11, Hawaii Revised Statutes, is amended to read as follows:

"§326-11 Voluntary transfer to and from Kalaupapa. Any person undergoing treatment and receiving care for Hansen's disease at Hale Mohalu on June 30, 1969 may be transferred to Kalaupapa [Settlement] for care and treatment if [he] the person desires. Any person who may undergo treatment and receive care for Hansen's disease at Hale Mohalu after June 30, 1969 may apply to the director of health for transfer to Kalaupapa [Settlement].

Any person undergoing treatment and receiving care for Hansen's disease at Kalaupapa [Settlement] may be transferred to Hale Mohalu for care and treatment if [he] the person desires. A person transferred may be retransferred to Kalaupapa [Settlement] if [he] the person desires."

SECTION 7. Section 326-16, Hawaii Revised Statutes, is amended to read as follows:

"§326-16 Rehabilitation of patients on temporary release. All patients on temporary release who can be rehabilitated shall be given the opportunity at the hospital or [settlement] facility where they are receiving medical care. Following satisfactory rehabilitation and training, every effort shall be made to assist the patients in securing gainful employment to become readjusted to a normal life in society."

SECTION 8. Section 326-21, Hawaii Revised Statutes, is amended to read as follows:

“§326-21 **Employment of patients.** The department of health, with the consent of a patient, and the patient’s attending physician, may employ that patient to perform labor or service as may be approved by the attending physician, at any hospital, [settlement,] facility, or place for the care and treatment of persons suffering from Hansen’s disease.

When there are vacancies in positions, classified under chapters 76 and 77, which are of such nature that the health of the public or of other nonpatient staff members will not be in danger by their being filled by individuals living with or associating closely with active patients, at any hospital, [settlement,] facility, or place exclusively for the care and treatment of persons suffering from Hansen’s disease, employment preference shall be given to temporary release patients and discharged patients from any such hospital, [settlement,] facility, or place; provided that the persons so hired shall be otherwise qualified under chapters 76 and 77.

Discharged patients who have been employed prior to December 30, 1960, under chapters 76 and 77 in accordance with the second paragraph of this section shall be eligible to receive the same rights and privileges as those enjoyed by temporary release patients employed under the second paragraph of this section.”

SECTION 9. Section 326-23, Hawaii Revised Statutes, is amended to read as follows:

“§326-23 **Pensions for patient employees at hospitals, etc.** All patient employees or patient laborers at every hospital, [settlement,] facility, and place maintained for the treatment and care of persons affected with Hansen’s disease shall be entitled, upon retirement after twenty years or more service with the department of health, at the hospital, [settlement,] facility, or place, to a pension, payable monthly, in an amount which shall be equal to sixty-six and two-thirds per cent of the wage or salary which the patient was receiving at the time of retirement, or to a pension, payable monthly, in an amount which shall be equal to sixty-six and two-thirds per cent of the average wage or salary which the patient employee was receiving during [his] the last twelve months of employment at the hospital, [settlement,] facility, or place, whichever is higher.

Patient employees may use service with any state department or agency not exceeding five years which has not been credited under the state retirement system in lieu of service with a hospital, [settlement,] facility, and place maintained for the treatment and care of persons affected with Hansen’s disease to satisfy the requirements of the preceding paragraph; provided that the service shall be authenticated by official records of the department where service was performed.

When work is available at Kalaupapa [Settlement] which may be fulfilled by patient residents of the [settlement] facility under section 326-21 and there are no applicants for such positions from among the eligible patients, pensioned patients who are in residence at Kalaupapa [Settlement] may be reemployed, not to exceed nineteen hours per week, without relinquishing the pension granted to them under this section. Furthermore, notwithstanding any provision of this chapter or of any other chapter relating to this subject matter, such reemployment shall not result in suspension or termination of payment of the pension granted originally or serve to increase, decrease, or alter said pension in any way.”

SECTION 10. Section 326-24, Hawaii Revised Statutes, is amended to read as follows:

“§326-24 Rules [and regulations]. The director of health may adopt rules [and regulations] pursuant to chapter 91 [as he may consider] necessary for the conduct of all matters pertaining to Hansen’s disease, the treatment and care thereof, [the care, custody, and control of all] and other services provided to persons affected with Hansen’s disease, and the full and complete governance of the county of Kalawao, except as limited by this chapter.”

SECTION 11. Section 326-26, Hawaii Revised Statutes, is amended to read as follows:

“§326-26 [Who] Persons allowed at [settlement.] places for Hansen’s disease patients. No person, not having Hansen’s disease, shall be allowed to visit or remain upon any land, place, or inclosure set apart by the department of health for the [isolation and confinement] domiciles and community facilities of persons affected with Hansen’s disease, without the written permission of the director of health, or some officer authorized thereto by the department, under any circumstances whatever, and any person found upon such land, place, or inclosure without a written permission shall be fined not less than \$10 nor more than \$100 for such offense; provided that any patient resident of Kalaupapa desiring to remain at the [settlement] facility shall be permitted to do so for as long as [he] the person may choose, regardless of whether or not [he] the person has been successfully treated.”

SECTION 12. Section 326-29, Hawaii Revised Statutes, is amended to read as follows:

“§326-29 Fishing laws exemption; Kalaupapa. Notwithstanding any provision of law to the contrary, state laws on fishing shall not be applicable to Hansen’s disease patients of Kalaupapa [settlement], provided the patients engage in fishing along the shorelines and in waters immediately adjacent to the county of Kalawao.

No fish or other marine products obtained by patients may be sold outside of the county of Kalawao.

The department of health shall adopt rules [and regulations] pursuant to chapter 91 necessary to control all fishing and acquisition of marine products by Hansen’s disease patients.”

SECTION 13. Section 326-30, Hawaii Revised Statutes, is amended to read as follows:

“§326-30 Making or taking of pictures without permission prohibited. Except for professional purposes, no person[, other than members of the staff,] shall take photographs of any patient confined at any hospital, [settlement,] facility, or place for the care and treatment of persons affected with Hansen’s disease, without the written permission of the patient.”

SECTION 14. Section 326-35, Hawaii Revised Statutes, is amended to read as follows:

“§326-35 Sheriff, appointment, removal. There shall be no county officer in the county other than a sheriff, who shall be a patient resident of and be appointed in the county by the department of health and who shall hold office at the pleasure of the department or until [his] a successor is appointed by the department. When a qualified patient resident is not available, the department

may appoint a staff employee or other qualified person to serve as sheriff on a non-compensated basis."

SECTION 15. Section 326-36, Hawaii Revised Statutes, is amended to read as follows:

"**§326-36 Sheriff, salary.** The salary of the sheriff who is a patient resident shall be fixed and paid by the department of health out of the appropriation allowed by the legislature for the care and treatment of persons affected with Hansen's disease."

SECTION 16. Section 326-38, Hawaii Revised Statutes, is amended to read as follows:

"**§326-38 Sheriff, powers.** The sheriff may appoint and dismiss and reappoint as many police officers as may be authorized by the department of health for the county [who,]. Patient residents, for the services rendered as police officers, shall receive pay as the department determines and which pay shall be taken out of and from the appropriation made by the legislature for the care and treatment of persons affected with Hansen's disease. The sheriff shall have other powers and duties within the county of Kalawao and appropriate thereto as are prescribed by law for the chiefs of police or police officers of the several counties respectively."

SECTION 17. Section 326-40, Hawaii Revised Statutes, is amended to read as follows:

"**§326-40 Kalaupapa; policy on residency.** The legislature finds that Hawaii's Hansen's disease victims have in many ways symbolized the plight of those afflicted with this disease throughout the world. Their sufferings and social deprivations helped eventually to bring the story of the disease and an understanding of its health ravages to people everywhere. Those patients who settled in Kalaupapa remain a living memorial to a long history of tragic separation, readjustment, and endurance.

It is the policy of the State that the patient residents of Kalaupapa shall be accorded adequate health care and other services for the remainder of their lives. Furthermore, it is the policy of the State that any patient resident of Kalaupapa desiring to remain at the [settlement] facility shall be permitted to do so for as long as [he] that patient may choose, regardless of whether or not [he] the patient has been successfully treated."

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Underscoring missing.

A Bill for an Act Relating to Employment Relations Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-20, Hawaii Revised Statutes, is amended to read as follows:

“§26-20 Department of labor and industrial relations. The department of labor and industrial relations shall be headed by a single executive to be known as the director of labor and industrial relations.

The department shall administer programs designed to increase the economic security, physical and economic well-being, and productivity of workers, and to achieve good labor-management relations, including the administration of workers' compensation, employment security, apprenticeship training, wage and hour, and industrial relations laws. The department shall also have the function of developing, preparing, and disseminating information on employment, unemployment, and general labor market conditions.

There shall be within the department of labor and industrial relations a committee to be known as the advisory committee on labor and industrial relations which shall sit in an advisory capacity to the director of labor and industrial relations on matters within the jurisdiction of the department of labor and industrial relations. The advisory committee shall consist of an equal number of representatives from labor, from management, and from the public, appointed by the director who shall designate one of the public members as chairman.

The labor and industrial relations appeal board and the industrial accident boards provided for in chapters 371 and 386 are placed within the department of labor and industrial relations for administrative purposes. The respective functions, duties, and powers, subject to the administrative control of the director of labor and industrial relations, and the composition of each board shall be as heretofore provided by law.

There shall be within the department of labor and industrial relations a [commission] board to be known as the Hawaii [employment] labor relations board]. The board shall consist of five members. Two of the members shall be representatives from labor, two from management, and one from the public. One labor member and one management member shall be from the city and county of Honolulu, and one labor and one management member shall be from outside the city and county of Honolulu. The board shall exercise powers and duties in accordance with the Hawaii employment relations act, chapter 377.] as provided for in section 89-5, which shall exercise powers and duties in accordance with chapters 89 and 377. The director shall have general administrative supervision over the board, but shall not have the power to supervise or control the board in the exercise of its powers or duties [under the Hawaii employment relations act. The board may appoint a hearings officer or officers as required to perform its responsibilities].

The functions of mediation heretofore exercised by the commission of labor and industrial relations existing immediately prior to November 25, 1959, as provided in section 371-10, shall be exercised by the governor or his designated agent.

The director may establish within the department of labor and industrial relations a committee to be known as the apprenticeship council which shall sit in an advisory capacity to the director of labor and industrial relations on matters within the jurisdiction of the department of labor and industrial relations relating to apprenticeship programs. The membership and organization of the council shall be determined by the director.

The functions and authority heretofore exercised by the department of labor and industrial relations, Hawaii employment relations board, and

apprenticeship council as heretofore constituted are transferred to the department of labor and industrial relations established by this chapter.”

SECTION 2. Section 89-1, Hawaii Revised Statutes, is amended to read as follows:

“[[§89-1[]] **Statement of findings and policy.** The legislature finds that [joint-decision making] joint decision-making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by (1) recognizing the right of public employees to organize for the purpose of collective bargaining, (2) requiring the public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other¹ conditions of employment, while, at the same time, (3) maintaining merit principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33, and (4) creating a [public employment] labor relations board to administer the provisions of [this chapter.] chapters 89 and 377.”

SECTION 3. Section 89-2, Hawaii Revised Statutes, is amended by amending the definitions of “board” and of “certification” to read as follows:

- (3) “Board” means the Hawaii [public employment] labor relations board created pursuant to section 89-5.
- (4) “Certification” means official recognition by the [Hawaii public employment relations] board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or [dissolves.] dissolved.”

SECTION 4. Section 89-5, Hawaii Revised Statutes, is amended to read as follows:

“§89-5 Hawaii [public employment] labor relations board. (a) There is created a Hawaii [public employment] labor relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each[, except that the terms of members first appointed shall be for four, five, and six years respectively as designated by the governor at the time of appointments]. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve

as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

The members shall devote full time to their duties as members of the board. [Effective July 1, 1981, the salary of the chairperson of the board shall be \$46,750 a year, and the salary of each of the other members shall be \$44,413 a year.] Effective July 1, 1982, the salary of the chairperson of the board shall be \$47,520 a year, and the salary of each of the other members shall be \$44,550 a year. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during his term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during his term of service, shall have the same powers and duties as the regular member.

The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. The provisions of section 103-3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and employees other than clerical and stenographic employees shall be exempt from chapters 76 and 77. Clerical and stenographic employees shall be appointed in accordance with chapters 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the legislative bodies.

(b) In addition to the powers and functions provided in other sections of this chapter, the board shall:

- (1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
- (2) Resolve any dispute concerning cost items;

- (3) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
- (5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;
- (6) Establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, members of fact-finding boards, or arbitrators;
- (7) Establish daily or hourly rates at which mediators, members of fact-finding boards, and arbitrators serving pursuant to [paragraph (3) of subsection 89-11(b)] section 89-11(b)(3) are to be compensated and apportion the costs of arbitration to the parties involved;
- (8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to employee organizations, as may exist, mediators, members of fact-finding boards, arbitrators, and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations; and
- (9) [Promulgate] Adopt rules [and regulations] relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91.”

SECTION 5. Section 89-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewed agreement. In the absence of such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

The board shall render assistance to resolve the impasse according to the following schedule:

- (1) **Mediation.** Assist the parties involved² in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists.
- (2) **Fact-finding.** If the dispute continues fifteen days after the date of the impasse, the board shall appoint, within three days, a fact-finding board of not more than three members, representative of the public, from a list of qualified persons maintained by the board. The fact-finding board, shall, in addition to powers delegated to it by the [public employment relations] board, have the power to make recommendations for the resolution of the dispute. The fact-finding board, acting by a majority of its members, shall transmit its findings of fact and any recommendations for the resolution of the dispute to both parties within ten days after its appointment. If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.
- (3) **Arbitration.** If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel has been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

The time frame prescribed in the foregoing schedule may be altered by mutual agreement of the parties, subject to the approval of the board.

The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.”

SECTION 6. Section 89-14, Hawaii Revised Statutes, is amended to read as follows:

“§89-14 Prevention of prohibited practices. Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9; provided that the board shall have exclusive original jurisdiction over such a controversy except that nothing herein shall preclude (1) the institution of appropriate proceedings in circuit court pursuant to section 89-12(e) or (2) the judicial review of decisions or orders of the board in prohibited practice controversies in accordance with section 377-9 and chapter 91. All references in section 377-9 to [“board” shall include the Hawaii public employment relations board and] “labor organization” shall include employee organization.”

SECTION 7. Section 89-15, Hawaii Revised Statutes, is amended to read as follows:

“[] §89-15[] Financial reports to employees. Every employee organization shall keep an adequate record of [his] its financial transactions and shall make available annually, to the employees who are members of the organization, within sixty days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant. In the event of failure of compliance with this section, any employee within the organization may petition the [public employment relations] board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter.”

SECTION 8. Section 89-16, Hawaii Revised Statutes, is amended to read as follows:

“[] §89-16[] Public records and proceedings. The complaints, orders, and testimony relating to a proceeding instituted by the [public employment relations] board under section 377-9 shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public.”

SECTION 9. Section 89-17, Hawaii Revised Statutes, is amended to read as follows:

“[] §89-17[] List of employee organizations and exclusive representatives. The [public employment relations] board shall maintain a list of employee organizations. To be recognized as such and to be included in the list, an organization shall file with the board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every employee organization shall notify the board promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The board shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of the list shall be made available to interested parties upon request.”

SECTION 10. Section 89-18, Hawaii Revised Statutes, is amended to read as follows:

“[]§89-18[] Penalty. Any person who wilfully assaults, resists, prevents, impedes, or interferes with a mediator, member of the fact-finding board, or arbitrator, or any member of the [public employment relations] board or any of the agents or employees of the board in the performance of duties pursuant to this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both.”

SECTION 11. Section 92-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) This part shall not apply:
- (1) To the judicial branch.
 - (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this [section,] subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
 - [(i)] (A) Hawaii [Employment] Labor Relations Board, [chapter] chapters 89 and 377;
 - [(ii)] Hawaii Public Employment Relations Board, chapter 89;]
 - [(iii)] (B) Labor and Industrial Relations Appeals Board, chapter 371;
 - [(iv)] (C) Hawaii Paroling Authority, chapter 353;
 - [(v)] (D) Civil Service Commission, chapter 26;
 - [(vi)] (E) Board of Trustees, Employees’ Retirement System of the State of Hawaii, chapter 88;
 - [(vii)] (F) Criminal Injuries Compensation Commission, chapter 351; and
 - [(viii)] (G) State Ethics Commission, chapter 84.”

SECTION 12. Section 377-1, Hawaii Revised Statutes, is amended by amending the definition of “board” to read as follows:

- “(10) “Board” means the Hawaii [employment] labor relations board, provided for by sections 26-20, 89-5, and 377-2.”

SECTION 13. Section 377-2, Hawaii Revised Statutes, is amended to read as follows:

“§377-2 Administration by Hawaii [employment] labor relations board. [There shall be within the department of labor and industrial relations a commission to be known as the Hawaii employment relations board. The board shall consist of five members. Two of the members shall be representatives from labor, two from management and one from the public. One labor member and one management member shall be from the city and county of Honolulu, and one labor and one management member shall be from outside the city and county of Honolulu. The director of labor and industrial relations shall have general administrative supervision over the board, but shall not have the power to supervise or control the board in the exercise of its powers or duties under the Hawaii employment relations act. The board may appoint a hearings officer or officers as required to perform its responsibilities.

Upon the expiration of the term of each member, his successor shall be appointed for a term to expire four years from the date of the expiration of the preceding term. Any vacancy in the board occurring otherwise than by expiration of a term of office shall be filled for the remainder of such unexpired term. Members shall be eligible for reappointment. The governor shall designate

the public member to serve as chairman. Each member shall take and file the official oath. Each member of the board shall be paid compensation for his services at the rate of \$15 a day for each day's performance upon his duties of the work of the board. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board and three members of the board shall constitute a quorum, but the governor may appoint a temporary alternate to act in the place of any member who is ill, absent, or for any other reason unable to attend.] The Hawaii labor relations board provided for in chapter 89 shall administer the Hawaii employment relations act.

The board shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the word "Hawaii [Employment] Labor Relations Board-Seal".

[The board shall employ, on a part-time basis, qualified attorneys who are licensed to practice in all the courts of the State to serve as its hearings officers, at its pleasure, and shall not be subject to the civil service laws of the State. It shall also fix the compensation of the employees. Such part-time employment may be temporary or permanent, but in no case shall any such person be employed on less than one-half time basis.

The board may also in conformity with section 103-3 employ and remove other counsel who are licensed to practice in all the courts of the State, and fix their compensation. Such counsel may, at the direction of the board, appear for and represent the board in any case in court. The appointment of persons as counsel shall not be subject to the civil service laws of this State.

The board may employ, promote, and remove an executive secretary on a full-time basis without regard to chapters 76 and 77. The board may also employ, promote, and remove a secretary, clerks, stenographers, and other assistants under such existing civil service and classification laws as may be applicable; provided, in the event the board determines that the performance of its functions does not require the services of a person in any of the positions, then the board may employ and fix the compensation of the person to fill any of the positions from time to time on either a part-time or temporary basis without regard to chapters 76 and 77.

The reasonable and necessary traveling and other expenses of the board and employees thereof, while actually engaged in the performance of their duties shall be paid from the state treasury upon the audit and warrant of the director of finance, upon vouchers signed by the chairman, or any three members, of the board.

At the close of each fiscal year the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and its disposition of the same, and the names, duties, and salaries of its officers and employees.]”

SECTION 14. Section 377-3, Hawaii Revised Statutes, is amended to read as follows:

“§377-3 Conciliator. In the event the [employment relations] board receives information that a labor dispute exists and determines that the dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall so notify the governor. Upon receipt of the notice, the governor shall appoint, as conciliator with respect to the dispute, a person who is well known in the community as being impartial to both labor and industry, and shall so notify the board. The position of conciliator shall not be subject to chapter 76, but the compensation thereof shall be determined pursuant to chapter 77.

Upon receipt of notice of the appointment of a conciliator, the board shall forthwith refer the dispute to the conciliator. He shall use his best efforts to terminate the dispute by conciliation within the ten days immediately succeeding the reference of the dispute to him or within such additional time, not to exceed ten days, as is agreed upon by all parties to the dispute. If, within the ten days, or the additional time, if any, he succeeds in terminating the dispute by conciliation, he shall immediately certify such fact to the board and his appointment shall then end. If, within the ten days, or the additional time, if any, he fails to terminate the dispute by conciliation, he shall immediately certify such fact to the board and his appointment shall then end. Upon¹ termination of the appointment of the conciliator, the board shall so notify the governor.”

SECTION 15. Section 377-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 377-1, the [employment relations] board, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this chapter, shall conduct an appropriate hearing upon due notice and it shall decide in each case the unit appropriate for the purpose of collective bargaining.”

SECTION 16. Section 377-6, Hawaii Revised Statutes, is amended to read as follows:

“§377-6 Unfair labor practices of employers. It shall be an unfair labor practice for an employer individually or in concert with others:

- (1) To interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 377-4;
- (2) To initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where the activities or use create no additional expense to the employer;
- (3) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representative of his employees in a collective bargaining unit, unless the [employment relations] board has certified that at least a majority of the employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one year preceding the date of the agreement. No employer shall justify any discrimination against any employee for nonmembership in a labor organization if he has reasonable grounds for believing that:
 - (A) Such membership was not available to the employee on the same terms and conditions generally applicable to other members;
 - (B) Or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues

- and the initiation fees uniformly required as a condition for acquiring or retaining membership;
- (4) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit provided that if the employer has good faith doubt that a union represents a majority of the employees, he may file a representation petition for an election and shall not be deemed guilty of refusal to bargain;
 - (5) To bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in paragraph (3) [of this section];
 - (6) To violate the terms of a collective bargaining agreement;
 - (7) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the board or of any tribunal of competent jurisdiction;
 - (8) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony under the provisions of this chapter;
 - (9) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;
 - (10) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter;
 - (11) To make, circulate, or cause to be circulated a blacklist."

SECTION 17. Section 377-7, Hawaii Revised Statutes, is amended to read as follows:

"§377-7 Unfair labor practices of employees. It shall be an unfair labor practice for an employee individually or in concert with others:

- (1) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 377-4;
- (2) To coerce, intimidate, or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 377-4, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;
- (3) To violate the terms of a collective bargaining agreement;
- (4) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the [employment relations] board or of any tribunal of competent jurisdiction;
- (5) To cooperate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed freedom of speech), boycotting or any other overt act accompanying a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;
- (6) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free

- and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;
- (7) To engage in a secondary boycott; or to hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or service. Nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft;
 - (8) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike;
 - (9) To fail to give the notice of intention to strike provided in section 377-12."

SECTION 18. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any controversy concerning unfair labor practices may be submitted to the [employment relations] board in the manner and with the effect provided in this chapter, but nothing herein shall prevent the pursuit of relief in courts of competent jurisdiction."

SECTION 19. Section 377-10, Hawaii Revised Statutes, is amended to read as follows:

"§377-10 **Financial reports to employees.** Every person acting as the representative of employees for collective bargaining shall keep an adequate record of his financial transactions and shall present annually, to such employees as may be members of the association with which the representative is connected, within sixty days after the end of his fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any such employee may petition the [employment relations] board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter."

SECTION 20. Section 377-11, Hawaii Revised Statutes, is amended to read as follows:

"§377-11 **Rules [and regulations].** The [employment relations] board may adopt rules [and regulations] relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91."

SECTION 21. Section 377-12, Hawaii Revised Statutes, is amended to read as follows:

"§377-12 **Strike notice.** Where the exercise of the right to strike by employees of any employer engaged in the State in the production, harvesting, or initial processing of any farm, agricultural, or dairy product produced in the State would tend to cause the destruction or serious deterioration of the product, such employees shall give to the [employment relations] board at least ten days' notice of their intention to strike, and the board shall immediately advise the employer of the notice."

SECTION 22. Section 377-13, Hawaii Revised Statutes, is amended to read as follows:

“§377-13 **Public records and proceedings.** The complaints, orders, and testimony relating to a proceeding instituted by the [employment relations] board under section 377-9 shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public.”

SECTION 23. Section 377-14, Hawaii Revised Statutes, is amended to read as follows:

“§377-14 **List of labor organizations.** The [employment relations] board shall maintain a list of labor organizations. To be recognized as such and to be included in the list, an organization shall file with the board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every labor organization shall notify the board promptly of any change of name, or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.”

SECTION 24. Section 377-15, Hawaii Revised Statutes, is amended to read as follows:

“§377-15 **Penalty.** Any person who wilfully assaults, resists, prevents, impedes, or interferes with the conciliator or any member of the [employment relations] board or any of the agents or agencies of either in the performance of duties pursuant to this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both.”

SECTION 25. Section 377-18, Hawaii Revised Statutes, is amended to read as follows:

“§377-18 **Cooperation with National Labor Relations Board.** The conciliator and the [employment relations] board shall cooperate with the National Labor Relations Board and its agents and representatives.”

SECTION 26. Section 380-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Hawaii [employment] labor relations board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by this chapter.”

SECTION 27. The existing chairperson and members of the Hawaii public employment relations board shall constitute the membership of the Hawaii labor relations board in their respective capacities. Their respective terms of office shall continue in accordance with their existing appointments.

SECTION 28. The existing administrative rules promulgated by the Hawaii public employment relations board and the Hawaii employment relations board shall continue in full force and effect until superseded by the rules promulgated by the Hawaii labor relations board.

SECTION 29. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 30. This Act shall take effect on January 1, 1986.

(Approved June 5, 1985.)

Notes

1. Word or words are missing.
2. Underscoring is missing.

ACT 252

H.B. NO. 176

A Bill for an Act Relating to the Commission on Manpower and Full Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 202, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“[MANPOWER AND FULL EMPLOYMENT]
EMPLOYMENT AND HUMAN RESOURCES”**

SECTION 2. Section 202-1, Hawaii Revised Statutes, is amended to read as follows:

“§202-1 Commission; appointment; tenure. The [State manpower advisory committee established by the governor, July, 1963, is hereby constituted as the] advisory commission on manpower and full employment[.], previously established by the governor in July 1963 as the state manpower advisory committee, is hereby constituted as the advisory commission on employment and human resources. The commissioners shall be appointed as provided for in section 26-34[.]; except that the terms of appointment shall be for three years and shall commence July 1 and end June 30. The governor shall appoint the [chairman] chairperson of the commission. The commission shall be composed of [twenty] thirteen members. The members shall be selected on the basis of their interest in and knowledge of the interrelations amongst the technological, economic, and social systems and on the basis of their ability to contribute to solution of difficulties arising from the new techniques and the proliferation of [manpower] employment problems including the problems of the hard to employ. The members of the advisory commission shall represent labor, management, agriculture, education, training, and the public in general. The commission shall also fulfill the advisory functions specified by federal laws relating to vocational education and shall be constituted so it shall comply in all respects with the membership provisions for the [State advisory] state council on vocational education required by the Federal Vocational Act of 1963, as amended by P.L. [90-576] 98-524 and as it may be further amended from time to time. The members shall serve without compensation but shall be paid per diem and travel expenses when attending meetings of the commission.”

SECTION 3. Section 202-2, Hawaii Revised Statutes, is amended to read as follows:

“§202-2 Duties of commission. The advisory commission on [manpower and full employment] employment and human resources shall:

- (1) Identify and assess the past effects and the current and prospective role and pace of technological change;

- (2) Identify and describe the impact of technological and economic change on production and employment, including new job requirements and the major types of worker displacement, both technological and economic, which are likely to occur during the next ten years; the specific industries, occupations, and geographic areas which are most likely to be involved; and the social and economic effects of these developments on the State's economy, [manpower,] labor force, communities, families, social structure, and human values;
- (3) Define those areas of unmet community and human needs toward which application of new technologies might most effectively be directed;
- (4) Recommend specific administrative and legislative steps which it believes should be taken by the [State] state government in meeting its responsibilities (A) to promote occupational training and skill development programs appropriate to the State's needs and resources, (B) to encourage a program of useful research into the State's [manpower] labor force requirements, development, and utilization, (C) to support and promote technological change in the interest of continued economic growth and improved well-being of [our] the people[,] in this State, (D) to continue and adopt measures which will facilitate occupational adjustment and geographical mobility, and insure full employment, and (E) to explore and evaluate various methods of sharing the cost of preventing and alleviating the adverse impact of change on displaced workers;
- (5) Create public awareness and understanding of the problems and potentials of the new technologies;
- (6) Submit an annual report with recommendations to the governor and the legislature;
- (7) Be the responsible body for planning, reviewing, and evaluating all [State] state and federal [manpower] employment training programs; and
- (8) Prepare and submit to the governor, an annual comprehensive statewide [manpower] employment plan."

SECTION 4. Section 202-3, Hawaii Revised Statutes, is amended by:

(a) Amending subsection (a) to read as follows:

"(a) The advisory commission on [manpower and full employment] employment and human resources shall appoint and fix the compensation of an executive [secretary,] director, who shall be exempt from chapters 76 and 77, and may employ such other personnel as it deems advisable within the provisions of chapters 76 and 77."

(b) Amending subsection (e) to read as follows:

"(e) The commission may convene such public conferences as it shall deem useful to keep the public informed of the needs of [manpower development] employment and the impact of the new technologies on the social and economic systems of the State."

SECTION 5. Section 202-4, Hawaii Revised Statutes, is amended to read as follows:

"§202-4 Duties of [chairman] chairperson and executive [secretary,] director. The [chairman] chairperson of the advisory commission on [manpower

and full employment] employment and human resources or the executive [secretary,] director, at the direction of the commission shall:

- (1) Serve as consultant to the governor on problems of the impact of the new technologies on the social and economic welfare of the people;
- (2) Assist in coordinating the programs of all agencies dealing with problems of concern to the commission;
- (3) Arrange for statewide studies of the problems referred to in this chapter;
- (4) Secure statistical data from agencies concerned with the problems referred to in this chapter;
- (5) Arrange for the exchange of information, plans, and programs between public and private groups interested in the problems referred to in this chapter;
- (6) Prepare articles, reports, and bulletins for the use of the commission, concerned agencies, and for general publication;
- (7) Keep and maintain records and reports and conduct correspondence relative to the work of the commission;
- (8) Review and [evaluate] assess the coordination between the State's [manpower development] employment and training programs, including any [Area Redevelopment Act and Manpower Development and Training Act] programs of the federal government operating in the State; and consider:
 - (A) The State's [manpower] employment and training requirements and resources;
 - (B) Practices of employers and unions that impede or facilitate the mobility of workers; and
 - (C) The special problems of untrained and inexperienced youth in the labor force; and
- (9) Develop recommendations and plans for action consistent with the purpose of this chapter."

SECTION 6. Section 202-5, Hawaii Revised Statutes, is amended to read as follows:

"§202-5 **Organizational relationships.** The advisory commission on [manpower and full employment] employment and human resources is placed within the department of labor and industrial relations for administrative purposes and shall act in an advisory capacity to the governor."

SECTION 7. Section 202-6, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 202-7, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 202-8, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Fishing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 188-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is unlawful for any person to use nets or traps including bullpen traps of any type with a stretched mesh of less than two inches, or to use any trap which is not portable or which is more than ten feet in length or six feet in height or width; provided that:

- (1) Persons engaged in sport fishing may use throw nets with stretched mesh of not less than one and one-half inches[,] until December 31, 1994; thereafter, persons engaged in sport fishing may not use throw nets with stretched mesh of less than two inches;
- (2) Pond owners or operators who hold a license issued under section 188-44 may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds[.];
- (3) Commercial marine licensees who hold a license issued under section 188-45 may use nets of smaller mesh to take nehu, iao, marquesan sardine, or any other species for which an open season may be declared by the department of land and natural resources for use as bait[.];
- (4) All persons may use nets of smaller mesh to take shrimp or opae, opelu, makiawa, or mikiawa[.];
- (5) Aquarium fish collectors with a valid aquarium fish permit issued by the department pursuant to section 188-31 may use nets of smaller mesh to take aquarium fish in conformance with the conditions of the permit[.];
- (6) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October[.];
- (7) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat[.]; and
- (8) The length of a bullpen trap shall be subject to section 188-28.5.”

SECTION 2. Section 188-30, Hawaii Revised Statutes, is amended to read as follows:

“§188-30 [Possession of fine meshed throw nets.] Fine meshed throw nets; possession; sale. (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in his possession a throw net with a mesh of less than one and one-half inches stretched measure. After December 31, 1994, it shall be unlawful for any person who is in the water or on or about the shore where fish can be taken to have in his possession a throw net with a mesh of less than two inches stretched measure.

(b) After July 1, 1988, it shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched measure.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 254

H.B. NO. 231

A Bill for an Act Relating to the Motor Vehicle Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "dealer" to read:

- "(6) "Dealer" includes "auction" as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. "New motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. "Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:
- (A) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court; or
 - (B) A public officer while performing [his] official duties; or
 - (C) A holder of a license issued under this chapter, other than a dealer, when acting within the scope of the license; or
 - (D) An insurance company, finance company, bank or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a retail installment sales contract or security agreement; or
 - (E) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for [their] the person's own personal, family, or business use; provided [such] the vehicles are acquired or disposed of for [such] the person's use in good faith and not for the purpose of evading any [provisions] provision of this chapter."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 255

H.B. NO. 239

A Bill for an Act Relating to Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 442-4, Hawaii Revised Statutes, is amended to read as follows:

“§442-4 **Election of officers; quorum; records; report.** The board of chiropractic examiners shall elect a [president] chairman and a [vice-president] vice-chairman from the members of the board. Elections of officers shall occur annually at the January meeting of the board. A majority of the board shall constitute a quorum.

The affirmative vote of a majority of the board is required to carry any motion or resolution, to adopt any rule, or to issue any license provided for in this chapter. The executive secretary shall keep a record of the proceedings of the board, which shall at all times during business hours be open to the public for inspection.”

SECTION 2. Section 448-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of dental examiners shall elect one of its members [president] chairman and another as [vice-president.] vice-chairman.”

SECTION 3. Section 448-13, Hawaii Revised Statutes, is amended to read as follows:

“§448-13 **Certificate, evidence.** All certificates of license issued by the board of dental examiners shall be signed by the [president,] chairman, sealed, and shall be presumptive evidence of the right of the holder to practice dentistry. No person shall practice dentistry without first having procured such a certificate, except as provided in this chapter. Any person practicing dentistry and not having at the time a valid and uncanceled license shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided.”

SECTION 4. Section 455-5, Hawaii Revised Statutes, is amended to read as follows:

“§455-5 **Organization of the board.** The board of examiners in naturopathy may elect a [president, a vice-president, and a secretary] chairman and a vice-chairman who shall each serve one year or until a successor is elected. The board may make such rules as it deems expedient to carry this chapter into effect. Two members of the board constitute a quorum for the transaction of business. The board shall serve without pay[,]; provided[,], that the expenses of conducting examinations shall be paid out of the office expenses of the department of commerce and consumer affairs upon vouchers signed by a majority of the board.”

SECTION 5. Section 457-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board shall hold meetings as it deems necessary. The board shall have a [president and a secretary-treasurer] chairman and a vice-chairman, who shall be elected annually from its members.”

SECTION 6. Section 458-3, Hawaii Revised Statutes, is amended to read as follows:

“§458-3 **Organization; meetings, records.** The board of dispensing opticians shall annually elect from its members a [president, secretary, and treasurer.] chairman and a vice-chairman. The board shall keep a complete record of its proceedings. The board, subject to chapter 91 and with the

approval of the governor and the director of commerce and consumer affairs may make, amend, and repeal rules for the administration of this chapter.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 256

H.B. NO. 263

A Bill for an Act Relating to Retention of State Tax Refunds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-51, Hawaii Revised Statutes, is amended to read as follows:

“[[]§231-51[]] **Purpose.** The purpose of sections 231-52 to 231-59 is to permit the retention of state income tax refunds [for] of those persons owing a debt to the State[.] or who are delinquent in the payment of child support.”

SECTION 2. Section 231-52, Hawaii Revised Statutes, is amended to read as follows:

“[[]§231-52[]] **Definitions.** As used in sections 231-51 to 231-59, unless the context otherwise requires:

(1) “Claimant agency” includes any state agency, board, commission, department, institution, or other state organization, or any subdivision thereof. In the case of delinquent child support, “claimant agency” means the department of social services and housing or an agency under cooperative agreement with the department, whenever the department is required by law to enforce a support order on behalf of an individual.

(2) “Debt” includes [any]:

(1) Any delinquency in periodic court-ordered payments for child support in an amount exceeding the sum of payments which would become due over a one-month period; and

(2) Any liquidated sum exceeding \$25 which is due and owing any claimant agency, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order.

(3) “Debtor” includes any person owing a debt to any claimant agency[.], or who is delinquent in payment of court-ordered child support payments.

(4) “Refund” includes any state income tax refund which is or will be due any debtor, or any other sums due to a debtor from the State.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1984.

(Approved June 5, 1985.)

A Bill for an Act Relating to Child Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-52, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [No employer shall use any assignment authorized by this section as a basis in whole or in part for the discharge of an employee or for any other disciplinary action against an employee.] It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or in part, upon an assignment authorized by this section. Any employer violating this section shall be guilty of a misdemeanor under section 710-1077(1)(g).”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§291- Driving after license suspended or revoked for driving under the influence of intoxicating liquor; penalties.** No person whose driver’s license has been revoked, suspended, or otherwise restricted pursuant to sections 291-4 or 286-155 shall operate a motor vehicle upon the highways of this State while such license remains suspended, revoked, or in violation of the restrictions placed on the license. Any person convicted of violating this section shall be sentenced to a term of imprisonment of at least three consecutive days but not more than thirty days, shall be fined not less than \$250 but not more than \$1,000, and that person’s driver’s license shall be suspended or revoked for an additional period of one year. The court for good cause may extend imprisonment up to sixty days. The period of suspension or revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 2. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

“**§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period[.]; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation[.]; or until the expiration of the period of revocation specified by law, whichever is greater; nor to

- any person who, while unlicensed, has within two years been convicted of driving while drunk;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
 - (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
 - (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways;
 - (5) To any person who is under seventeen years of age; provided that a person who is fifteen or sixteen years of age may be granted a special license upon satisfying the requirements of sections 286-108 and 286-109, which license may be suspended or revoked by a judge having jurisdiction over the holder of the special license. Upon revocation of the special license, the person shall not be eligible to operate a motor vehicle on the highway until he is seventeen years of age and has again satisfied the requirements of sections 286-108 and 286-109;
 - (6) To any person who has been ordered to be hospitalized under chapter 334 or committed under chapter 333 unless the director of health certifies to the examiner of drivers that the person is mentally competent and may be examined to determine his fitness to operate a motor vehicle.

Any person denied a license under this or any other section of this part shall have a right of appeal as hereinafter provided."

SECTION 3. Section 286-132, Hawaii Revised Statutes, is amended to read as follows:

"§286-132 Driving while license suspended or revoked; penalty. [Any] Except as provided in section 291-, any [person] resident or nonresident whose driver's license, [or driving privilege as a nonresident] right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked, and who drives any motor vehicle upon the highways of this State while such license, right, or privilege remains canceled, suspended, or revoked, shall be fined not less than \$250 but not more than \$1,000 or imprisoned not more than one year."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 259

H.B. NO. 346

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PROFESSIONAL CORPORATION ACT**

§ -1 **Title.** This chapter shall be known and may be cited as the “Hawaii Professional Corporation Act.”

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires, the term:

“Director” means the director of commerce and consumer affairs.

“Disqualified person” means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

“Foreign professional corporation” means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this State.

“Licensing authority” means the officer, board, agency, court, or other authority in this State which has the power to issue a license or other legal authorization to render a professional service.

“Professional corporation” or “domestic professional corporation” means a corporation for profit subject to this chapter, except a foreign professional corporation.

“Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter .

“Qualified person” means a natural person, or general partnership, which is eligible under this chapter to own shares issued by a professional corporation.

§ -3 **Purposes.** (a) Except as provided in this section, professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession.

(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Hawaii Business Corporation Act, chapter , to the extent that such combination of professional purposes or of professional and business purposes is permitted by the licensing laws of this State applicable to such professions and rules thereunder.

§ -4 **Prohibited activities.** A professional corporation shall not engage in any profession or business other than the profession or professions and businesses permitted by its articles of incorporation, except that a professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

§ -5 **General powers.** A professional corporation shall have the powers enumerated in the Hawaii Business Corporation Act, chapter , except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the corporation.

§ -6 **Rendering professional services.** A professional corporation, domestic or foreign, may render professional services in this State only through natural

persons permitted to render such services in this State; but nothing in this chapter shall be construed to require that any person who is employed by a professional corporation be licensed to perform services for which no license is otherwise required or to prohibit the rendering of professional services by a licensed natural person acting in the person's individual capacity, notwithstanding such person may be a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

§ -7 **Right of corporation to acquire its own shares.** A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; provided no purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

§ -8 **Corporate name.** The name of a domestic professional corporation or of a foreign professional corporation authorized to transact business in this State:

- (1) Shall contain the words, "professional corporation" or the abbreviation "P.C.";
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State or any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter , or the name of a corporation which has in effect a registration of its corporate name as provided in the Hawaii Business Corporation Act, chapter ; except that this provision shall not apply if:
 - (A) Such similarity results from the use in the corporate name of personal names of its shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or
 - (B) The applicant files with the director either of the following:
 - (i) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or
 - (ii) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this State; and
- (4) Shall otherwise conform to any rule adopted by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of such corporation.

§ -9 **Issuance and transfer of shares; share certificates.** (a) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

- (1) Natural persons who are authorized by law in this State or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation; and

- (2) General partnerships in which all the partners are qualified persons with respect to such professional corporation and in which at least one partner is authorized by law in this State to render a professional service permitted by the articles of incorporation of the corporation.

(b) Where deemed necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of such profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares but no such rule, of itself, shall have the effect of causing a shareholder of a professional corporation at the time such rule becomes effective to become a disqualified person. All shares issued in violation of this section or any rule hereunder shall be void.

(c) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons and general partnerships qualified hereunder to hold shares issued directly to them by such professional corporation. Any transfer of shares in violation of this provision shall be void; provided nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(d) Every certificate representing shares of a professional corporation shall state conspicuously upon its face that the shares represented thereby are subject to restrictions on transfer imposed by this chapter and are subject to such further restrictions on transfer as may be imposed by the licensing authority from time to time pursuant to this chapter.

§ -10 Death or disqualification of a shareholder. (a) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of such deceased shareholder or of such disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase.

(b) If the price for such shares is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case may be, shall make a written offer to pay for such shares at a specified price deemed by such corporation to be the fair value thereof as of the date of such death, disqualification, or transfer. Such offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

(c) If within thirty days after the date of such written offer from the corporation the fair value of such shares is agreed upon between such disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of such offer, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the disqualified persons shall cease to have any interest in such shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after

receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the county in this State where the registered office of the corporation is located requesting that the fair value of such share be found and determined. If the corporation shall fail to institute the proceeding as herein provided, the disqualified person may do so within sixty days after delivery of such written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing such shares. The court, in its discretion, may order that the judgment be paid in such installment as the court may determine. The court, if it so elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court shall find that the action of such disqualified person in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel forthwith the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for such shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares.

(i) This section shall not be deemed to require the purchase of shares of a disqualified person where the period of such disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.

(k) Nothing herein contained shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

§ -11 Responsibility for professional services. (a) Any reference to a corporation in this section shall include both domestic and foreign corporations.

(b) Every individual who renders professional services as an employee of a professional corporation shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual rendered such services as a sole practitioner. An employee of a professional corporation shall not be liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with them.

(c) Every corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation shall be liable to the same extent as its employees.

(d) Except as otherwise provided by statute, if any corporation is liable under subsection (c), every shareholder of that corporation shall be liable to the same extent as though the shareholder were a partner in a partnership and the services giving rise to liability had been rendered on behalf of the partnership, unless the corporation has provided security for professional responsibility as provided in this subsection and the liability is satisfied to the extent contemplated by the insurance or bond which effectuates the security.

A professional corporation, domestic or foreign, may provide security for professional responsibility by procuring insurance or a surety bond issued by an insurance company or a combination thereof, as the corporation may elect. The minimum amount of security and requirements as to the form and coverage provided by the insurance policy or surety bond may be established for each profession by the licensing authority for the profession, and the minimum amount may be set to vary with the number of shareholders, the type of practice, or other variables deemed appropriate by the licensing authority. If no effective determination by the licensing authority is in effect, the minimum amount of professional responsibility security for the professional corporation shall be the product of \$100,000 multiplied by the number of shareholders of the professional corporation.

§ -12 Professional relationships; privileged communications. (a) The relationship between an individual performing professional services as employee of a professional corporation, domestic or foreign, and a client or patient shall be the same as if the individual performed such services as a sole practitioner.

(b) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

(c) Any privilege applicable to communications between a person rendering professional services and the person receiving such services recognized under the laws of this State, whether statutory or deriving from common law, shall remain inviolate and shall extend to a professional corporation, domestic or foreign, and its employees in all cases in which it shall be applicable to communications between a natural person rendering professional services on behalf of the corporation and the person receiving such services.

§ -13 **Voting of shares.** No proxy for shares of a professional corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional corporation shall not be valid.

§ -14 **Directors and officers.** Not less than one-half the directors of a professional corporation and all the officers other than the secretary and the treasurer shall be qualified persons with respect to the corporations.

§ -15 **Amendments to articles of incorporation.** A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to such amendment. Articles of amendment so adopted shall be executed in duplicate by the corporation by such personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, and verified by one of the persons signing such articles, and shall set forth:

- (1) The name of the corporation;
- (2) The amendments so adopted;
- (3) The date of adoption of the amendment by the personal representative, guardian, conservator, or receiver;
- (4) The number of shares outstanding; and
- (5) The number of shares held by the personal representative, guardian, conservator, or receiver.

§ -16 **Merger and consolidation.** (a) A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.

(b) Upon the merger or consolidation of a professional corporation, if the surviving or new corporation, as the case may be, is to render professional services in this State, it shall comply with this chapter.

§ -17 **Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of the Hawaii Business Corporation Act, chapter , regarding its corporate name. The corporation then may continue in existence as a corporation under the Hawaii Business Corporation Act, chapter , and shall no longer be subject to this chapter.

§ -18 **Involuntary dissolution.** A professional corporation may be dissolved involuntarily by a decree of the circuit court in an action filed by the attorney general when it is established that the corporation has failed to comply with any provision of this chapter applicable to it within sixty days after receipt of written notice of noncompliance. Each licensing authority in this State and the director shall certify to the attorney general, from time to time, the names of all corporations which have given cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the director or any licensing authority shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the director or such licensing authority, as the case may be, shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the State against such corporation for its dissolution.

§ -19 **Admission of foreign professional corporations.** (a) A foreign professional corporation shall be entitled to procure a certificate of authority to transact business in this State only if:

- (1) The name of the corporation meets the requirements of this chapter;
- (2) The corporation is organized only for purposes for which a professional corporation organized under this chapter may be organized; and
- (3) All the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) No foreign professional corporation shall be required to obtain a certificate of authority to transact business in this State unless it shall maintain an office in this State for the conduct of business or professional practice.

§ -20 Application for certificate of authority. The application of a foreign professional corporation for a certificate of authority for the purpose of rendering professional services shall include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

§ -21 Revocation of certificate of authority. The certificate of authority of a foreign professional corporation may be revoked by the director if the corporation fails to comply with any provision of this chapter applicable to it. Each licensing authority in this State shall certify to the director, from time to time, the names of all foreign professional corporations which have given cause for revocation as provided in this chapter, together with the facts pertinent thereto. Whenever a licensing authority shall certify the name of a corporation to the director as having given cause for dissolution, the licensing authority shall concurrently mail to the corporation at its registered office in this State a notice that such certification has been made. No certificate of authority of a foreign professional corporation shall be revoked by the director unless the director shall have given the corporation not less than sixty days' notice thereof and the corporation shall fail prior to revocation to correct such noncompliance.

§ -22 Annual report of domestic and foreign professional corporations. (a) The annual report of each domestic professional corporation, and each foreign professional corporation authorized to transact business in this State, filed with the director pursuant to the Hawaii Business Corporation Act, chapter , shall include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) Financial information contained in the annual report of a professional corporation, other than the amount of stated capital of the corporation, shall not be open to public inspection nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such information is required for evidence in any criminal proceedings or in any other action by this State.

§ -23 Annual statement of qualification of domestic and foreign professional corporations. (a) Each domestic professional corporation, and each foreign professional corporation, authorized to transact business in this State, shall file annually before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and respective addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether such corporation is complying with this chapter and rules promulgated hereunder.

(b) The licensing authority shall charge and collect a fee of \$10 for filing a statement of qualification pursuant to this chapter.

§ -24 Interrogatories by licensing authority. Each licensing authority of this State may propound to any professional corporation, domestic or foreign, organized to practice a profession within the jurisdiction of such licensing authority, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the licensing authority to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the licensing authority, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The licensing authority shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

(b) Interrogatories propounded by a licensing authority and the answers thereto shall not be open to public inspection nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

§ -25 Penalties. (a) Each professional corporation, domestic or foreign, that fails or refuses to answer truthfully within the time prescribed by this chapter interrogatories propounded in accordance with this chapter by the licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation, shall be deemed to be guilty of a misdemeanor.

(b) Each officer and director of a professional corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to such officer in accordance with this chapter the licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation, or who signs any articles, statement, report, application, or other document filed with such licensing authority which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor.

§ -26 Regulation of professional corporations. No professional corporation, domestic or foreign, shall begin to render professional services in this State until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Each licensing authority in this State is hereby authorized to promulgate rules in accordance with this chapter which specifically provide for the issuance of rules to the extent consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct. Nothing in this chapter shall restrict or limit in any manner the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority, or any law, rule, or regulation pertaining to standards of professional conduct.

§ -27 Application of business corporation act. The provisions of the Hawaii Business Corporation Act, chapter , shall apply to professional

corporations, domestic or foreign, except to the extent such provisions are inconsistent with this chapter.

§ -28 Application to existing corporations. (a) This chapter shall apply to all existing corporations organized under any general act of this State which is repealed by this chapter. Every such existing corporation which shall be required to amend its corporate name or purposes to comply with this chapter shall deliver duly executed duplicate originals of articles of amendment or restated articles of incorporation containing such amendments to the director within ninety days after the effective date of this chapter.

(b) Any corporation organized under any act of this State which is not repealed hereby may become subject to the provisions of this chapter by delivering to the director duly executed duplicate originals of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendment of its corporate name or purposes as may be required to comply with this chapter.

(c) This chapter shall not apply to any corporation now in existence or hereafter organized under any act of this State which is not repealed hereby unless such corporation voluntarily becomes subject to this chapter as herein provided, and nothing contained in this chapter shall alter or affect any existing or future right or privilege permitting or not prohibiting performance of professional services through the use of any other form of business organization. Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter.

§ -29 Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

§ -30 Effect of repeal of prior acts. The repeal of a prior act by this chapter shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

§ -31 Effect of invalidity of part of this chapter. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional."

SECTION 2. Chapter 416, part VIII, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 1987.

(Approved June 5, 1985.)

SECTION 1. Section 467B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every written contract or, in the absence of a contract in writing, a written statement of the nature of the arrangement between a professional solicitor and a charitable organization shall be filed with the department within ten days after the contract or arrangement is concluded. [If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the department shall examine the contract to ascertain whether the compensation to be paid in the circumstances is likely to exceed twenty per cent of the total moneys, pledges, or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed twenty per cent of the total moneys, pledges, or other property the director shall disapprove the contract or arrangement within ten days after its filing unless special facts or circumstances are presented showing that a cost higher than twenty per cent is reasonable. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments, pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of the disapproval, be given a hearing before the director within thirty days after such request is filed.] The contract or statement shall disclose the percentage distribution between the parties to the contract of all funds raised or received as a result of the agreed upon solicitation activity. No solicitation activity shall commence prior to ten days after the date of filing of the contract or statement.”

SECTION 2. Section 467B-7, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 261

H.B. NO. 382

A Bill for an Act Relating to Jurors' Mileage Fee.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 612-8, Hawaii Revised Statutes, is amended to read as follows:

“**§612-8 Pay of jurors; mileage fee.** [The pay of jurors shall be \$20 for each day of actual attendance at court, and in addition 20 cents for each mile actually and necessarily traveled in going only. The mileage fee may be allowed to a juror although, upon his request, he is excused from jury service, or claims exemption from jury service, provided he reports in person at the time for which he was summoned.]

(a) Each juror shall be paid \$20 for each day of actual attendance at court. In addition, each juror shall be paid 20 cents for each mile actually and necessarily traveled in going to and from court. A person who appears at the

time for which that person is summoned to court for jury duty may be allowed the mileage fee although the person, upon that person's request, is subsequently excused or exempted from jury service.

(b) In the discretion of the court, any juror who incurs expenses for transportation, board, and lodging as a result of the distance [he] the juror resides from the location of the court, may be reimbursed for actual expenses.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 262

H.B. NO. 401

A Bill for an Act Relating to Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Surrender or forfeiture of animals. Upon conviction for any violation of section 711-1109 or 711-1109.3:

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction to the custody of a duly incorporated humane society or society for the prevention of cruelty to animals for such time and under such conditions as the court shall order.
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or society for the prevention of cruelty to animals for such a time and under such conditions as the court shall order, if there is substantial evidence that such animals are being abused or neglected.”

SECTION 2. This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 263

H.B. NO. 674

A Bill for an Act Relating to Reemployment and Recall Lists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 76-25, Hawaii Revised Statutes, is amended to read as follows:

“§76-25 Reemployment and recall lists. Whenever any employee who has been performing his duties in a satisfactory manner as shown by the records of the department of personnel services or the agency in which he has been employed, is demoted because of lack of work or lack of funds, has voluntarily accepted a position in a lower class, has resigned in good standing with the consent of the appointing authority, is retired for ordinary or accidental disability, or whenever his position has been [reclassified] reallocated to a lower class, he shall have the right to have his name placed on the appropriate reemployment list for a period of three years thereafter; provided that he files a written application for reemployment within three years after his [termination] separation, demotion, or reallocation [and]; provided further[,] that the period which an employee spends in a hospital, settlement or place within the State undergoing treatment for Hansen’s disease or tuberculosis, shall be excluded in computing the three year period. A person on a reemployment list shall be deemed eligible for certification to positions in the class in which he last held a permanent status[.] prior to separation, demotion, or reallocation. A person may also be deemed eligible for certification to positions in a class, in the same or lower grade, which are related to the class in which he last held a permanent appointment.

Whenever a regular employee has been laid off because his position has been abolished due to lack of work or funds or because he was displaced by another employee because of reduction-in-force, the employee shall have the right to have his name placed on appropriate recall lists and be deemed eligible for certification to positions in the class in which he last held permanent status or in a related class in the same or lower grade for which he meets the qualification requirements.

The director of personnel services may remove the name of a person on any reemployment or recall list or refuse to certify his name on any list of eligibles, if he finds, after giving him notice and an opportunity to be heard, that the person is no longer able to perform the necessary duties satisfactorily.”

SECTION 2. Section 76-40, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 264

H.B. NO. 759

A Bill for an Act Relating to Pharmacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. [(a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

31, 1985: (b) (a) The following chapters are hereby repealed effective December

(1) Chapter 460 (Board of Osteopathic Examiners)

[(2) Chapter 461 (Board of Pharmacy)

(3) (2) Chapter 455 (Board of Examiners in Naturopathy)

[(4) (3) Chapter 463E (Podiatry)

[(5) (4) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

[(6) (5) Chapter 457B (Board of Examiners of Nursing Home Administrators)

[(7) (6) Chapter 448H (Elevator Mechanics Licensing Board)

[(8) (7) Chapter 462A (Board of Pilot Commissioners)

31, 1986: [(c) (b) The following chapters are hereby repealed effective December

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

31, 1987: [(d) (c) The following chapters are hereby repealed effective December

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

(4) Chapter 471 (Board of Veterinary Examiners)

(5) Chapter 441 (Cemeteries and Mortuaries)

(6) Chapter 463 (Board of Detectives and Guards)

31, 1988: [(e) (d) The following chapters are hereby repealed effective December

(1) Chapter 465 (Board of Certification for Practicing Psychologists)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 359L (Factory Built Housing Advisory Board)

(4) Chapter 468B (Solar Energy Device Dealers)

(5) Chapter 468K (Travel Agencies)

(6) Chapter 373 (Commercial Employment Agencies)

(7) Chapter 442 (Board of Chiropractic Examiners)

(8) Chapter 448 (Board of Dental Examiners)

31, 1989: [(f) (e) The following chapters are hereby repealed effective December

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

31, 1990: [(g) (f) The following chapters are hereby repealed effective December

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(g) The following chapter is hereby repealed effective December 31, 1991:
(1) Chapter 461 (Board of Pharmacy)."

SECTION 2. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§461- Reciprocity. Any pharmacist who is registered or licensed under the laws of any state or territory of the United States with qualifications for licensure which equal or exceed those of this State, shall be eligible for licensure provided that (1) the pharmacist possesses a current valid license; (2) there is no disciplinary action pending or other unresolved complaints against the pharmacist in any state or territory; and (3) the laws of the other state or territory grant reciprocal treatment to licensees of this State. The board may examine such licensees only as to knowledge of this State's statutes and rules."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 265

H.B. NO. 839

A Bill for an Act Relating to Consumer Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of "investment adviser" to read as follows:

"(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (A) a bank, savings institution, or trust company; (B) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (C) a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for them; (D) a publisher of any bona fide newspaper, news magazine, or business or¹ financial publication of general, regular, and paid circulation; (E) a person whose advice, analyses, or reports relate only to securities exempted by section 485-4(1); (F) a person who has no place of business in this State if (i) his only clients in this State are other investment advisers, dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct business communications into this State in any manner to more than five clients other than those specified in clause (i), whether or not he or any of the persons to whom the communications are directed is then present in this State;

(G) a person who is employed by a mutual fund which is registered with the Securities and Exchange Commission; (H) a person who (i) is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940, (ii) does not have custody of any client money, securities, or other assets, (iii) does not collect fees from clients more than six months in advance of the end of the period for which such fees are intended to compensate the person for his services, (iv) has discretionary authority over client money, securities, or other assets only to invest in securities in which the person has no ownership interest or is considered to have an ownership interest, and (v) does not advise a client whose money, securities, and other assets under management by such person have a market value of less than \$250,000 per each separate account under management on the date of the inception of the client relationship; or [(H)] (I) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Note

- 1. So in original.

ACT 266

H.B. NO. 1243

A Bill for an Act Relating to Aquaculture Cooperative Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421-1, Hawaii Revised Statutes, is amended by amending the definition of “agricultural products” to read as follows:

“(1) “Agricultural products” includes floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, [and any] farm or plantation products[.], and aquacultural commodities.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

ACT 267

S.B. NO. 155

A Bill for an Act Relating to Tax Increment Financing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART VI. TAX INCREMENT FINANCING

§46-101 Short title. This part shall be known and may be cited as the “Tax Increment Financing Act.”

§46-102 Definitions. As used in this part, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

“Adjustment rate” means a percentage rate or rates of adjustment of the assessment base determined by the director of finance at the time the tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the tax increment district and the projected cost increases to the county for servicing the new developments within the tax increment district.

“Assessment base” means the total assessed values of all taxable real property in a tax increment district as most recently certified by the director of finance on the date of creation of the tax increment district.

“Assessment increment” means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment district exceeds its assessment base.

“Community development plan” means a plan established pursuant to section 206E-5.

“Council” means the council of the county in which a tax increment district is situated.

“County” has the same meaning as set forth in section 1-22 and means the county in which a tax increment district is situated.

“Director of budget” means the office or chief budget officer of the county charged with the responsibility of preparing and reviewing the operating and capital budget programs of the county.

“Director of finance” means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.

“Project costs” means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the agency that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

- (1) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of land;
- (2) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;
- (3) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;
- (4) Imputed administrative costs, including reasonable charges for the time spent by employees of the agency in connection with the implementation of a tax increment financing plan;

- (5) Relocation costs to the extent required by federal or state law;
- (6) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;
- (7) Payments determined by the county council to be necessary or convenient to the creation of a tax increment district or to the implementation of the tax increment financing plan for the tax increment district.

“Redevelopment agency” or “agency” means an agency defined in section 53-1 or the Hawaii community development authority as established pursuant to chapter 206E.

“Redevelopment plan” means a plan as defined in section 53-1.

“Tax increment” means the amount of real property taxes levied for one year on the assessment increment.

“Tax increment bonds” mean bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this part.

“Tax increment district” or “district” means a contiguous or noncontiguous geographic area within a redevelopment area or community development area designated pursuant to section 46-103 by the county council for the purpose of tax increment financing.

“Tax increment financing plan” means the plan for tax increment financing for a tax increment district submitted to the county council. The tax increment financing plan shall contain estimates of: project costs; amount of tax increment bonds to be issued; sources of revenue to finance or otherwise pay project costs; the most recent assessed value of taxable real property in the district; the duration of the district’s existence; and statements from the county’s department of finance, and the county’s department of budget, if applicable, regarding the financial and budgetary impacts on the county resulting from the proposed tax increment financing plan.

“Tax increment fund” means a fund which shall be held by the director of finance or other fiduciary designated by the county council and into which all tax increments and other moneys pledged by the county for payment of tax increment bonds are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district.

§46-103 Establishment of tax increment district. Any county council may provide for tax increment financing by approving a tax increment financing plan. If a redevelopment agency desires to establish tax increment financing as part of a redevelopment plan or community development plan, as the case may be, it may designate all or part of the area included within a redevelopment plan or community development plan, as the case may be, as a tax increment district, develop a tax increment financing plan, and submit the plan to the council for its approval. If the council approves a tax increment financing plan, it shall adopt an ordinance establishing the tax increment district. The ordinance shall:

- (1) Describe the boundaries of the tax increment district;
- (2) Provide for the date of commencement of the tax increment district and date of termination of the district;
- (3) Provide for the establishment of a tax increment fund for the district; and

- (4) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with the redevelopment plan or community development plan, as the case may be.

§46-104 County powers. A county may exercise any power necessary and convenient to establish tax increment districts, including the power to:

- (1) Create tax increment districts as part of a redevelopment plan or community development plan, as the case may be, and determine the boundaries of the districts;
- (2) Issue tax increment bonds;
- (3) Deposit tax increments into the tax increment fund created for a tax increment district; and
- (4) Enter into agreements, including agreements with the redevelopment agency and owners or developers of project lands and bondholders, determined to be necessary or convenient to implement redevelopment plans or community development plans, as the case may be, and achieve their purposes.

§46-105 Collection of tax increments. (a) The county by ordinance shall provide for the allocation of real property taxes and tax increments in the manner required by this part.

(b) If a county exercises the power allowed under this part, then commencing with the first payment of real property taxes levied by the county subsequent to the time a tax increment district takes effect, receipts from real property taxes shall be allocated and paid over as follows:

- (1) The amount of real property tax produced from the assessment base shall be paid to the county general fund; and
- (2) The tax increments produced from the assessment increment in the tax increment district shall be applied as follows:
 - (A) First, an amount equal to the installment of (i) principal and interest falling due of any tax increment bonds, or (ii) any project cost approved by the county, shall be deposited into the tax increment fund established for the tax increment district.
 - (B) Second, an amount equal to the adjustment rate times the amount of real property tax produced from the assessment base shall be computed and paid to the county general fund.
 - (C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund established for the tax increment district.

(c) The allocation of real property taxes pursuant to this part shall in no way limit the power of the county under section 47-16 to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the county for the payment of the principal and interest of its general obligation bonds.

§46-106 Tax increment bonds. (a) A county may issue tax increment bonds, the proceeds of which may be used to pay project costs for a tax increment district or to satisfy claims of bondholders. The county may issue refunding bonds previously issued by the county for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the county. Principal and interest on tax increment bonds shall be made payable, as to both principal and interest, solely from the tax increment fund established for the tax increment district.

A county may provide in its contract with the owners or holders of the tax increment bonds that the county will pay into the tax increment fund all or

any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to a redevelopment plan or community development plan, as the case may be, to be used to pay principal and interest on the tax increment bonds and, if a county so agrees, the owners or holders of the tax increment bonds may have a lien or mortgage on any facility acquired, improved, or constructed with the proceeds of the tax increment bonds.

(b) Tax increment bonds, and the income therefrom, issued pursuant to this part shall be exempt from all state and county taxation, except estate and transfer taxes.

The bonds shall be authorized by ordinance and may be issued in one or more series. The tax increment bonds of each issue shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the ordinance providing for issuance of the bonds or by the trust indenture or mortgage issued in connection with the bonds. The county may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive tax increment bonds, the county may issue interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(d) Should any bond issued under this part become mutilated or be lost, stolen, or destroyed, the county may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

- (1) Has paid reasonable expenses and charges in connection therewith;
- (2) In the case of a lost, stolen, or destroyed bond, has filed with the county or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and
- (3) Has furnished indemnity satisfactory to the county.

(e) Notwithstanding any of the provisions of this part or any recital in any tax increment bond issued under this part, all tax increment bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions pertaining to registration.

(f) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this part or the security for a bond or note issued under this part, a bond reciting in substance that it had been issued by the county for a tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this part.

(g) All banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all personal representatives, administrators, curators, trustees, and other fiduciaries legally may invest sinking funds, money, or other funds belonging to them or within their control in tax increment bonds issued by a

county pursuant to this part. The bonds shall be authorized security for all public deposits. Any person, political subdivision, and officer, public or private, are authorized to use funds owned or controlled by them for the purchase of tax increment bonds. This part does not relieve any person of the duty to exercise reasonable care in selecting securities.

(h) Tax increment bonds shall be payable only out of the tax increment fund. The county council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. A holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.

(i) No officer of the county including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this part shall not be general obligations of the State or county, nor in any event shall they give rise to a charge against the general credit or taxing powers of the State or county or be payable other than as provided by this part. No holder of bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or county to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this part shall state these restrictions on their face.

(j) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the county.

(k) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.

§46-107 Tax increment bond anticipation notes. Whenever the county has authorized the issuance of tax increment bonds under this part, tax increment bond anticipation notes of the county may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the county, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this part with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

§46-108 Annual report. The county council by ordinance may require the director of finance to prepare a report to the county council on the status of the

tax increment district. The county council shall determine what information and data are required to be included in the report.

§46-109 Termination of a tax increment district. A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment bonds issued for the district and the interest thereon, have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon.

§46-110 Tax increment fund. (a) Money shall be disbursed from the tax increment fund for a tax increment district only to satisfy the claims of holders of tax increment bonds issued for the tax increment district or to pay project costs for the district, or to make payments to the county as provided by subsection (c).

(b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds of the county.

(c) In any year in which the tax increment exceeds the amount necessary to pay all project costs and all installments of principal and interest of tax increment bonds issued for a tax increment district falling due and the amount paid to the county general fund pursuant to section 46-105(b)(2)(B), and subject to any agreement with bondholders, any excess money in the fund at the option of the county council, shall be used to redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the county general fund, or any combination thereof.

§46-111 Computation of tax increment. Upon or after creation of a tax increment district, the director of finance of the county in which the district is situated shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced by reason of a court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the reduction shall be applied to the assessment base of the district when the property upon which the abatement is made has not been improved since the date of creation of the

district, and to the assessment increment of the district in each year thereafter when the abatement relates to improvements made after the date of creation.

(b) The director of finance shall certify the amount of the assessment increment to the county and redevelopment agency each year, together with the proportion that the assessment increment bears to the total assessed value of the real property within the tax increment district for that year.

§46-112 Tax on leased redevelopment property. Whenever property in the tax increment district has been redeveloped and thereafter is leased by the county or redevelopment agency to any person or whenever the county or agency leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest.

§46-113 Cumulative effect. Neither this part nor anything contained in this part shall be construed as a restriction or limitation upon any power which a county might otherwise have under any law of this State, but shall be construed as cumulative. The authorization granted may be carried out by the county council acting at any regular or special meeting."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1985.)

ACT 268

H.B. NO. 208

A Bill for an Act Relating to the Hawaii Community Development Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to read:

"PART IV. REVENUE BONDS FOR PUBLIC FACILITY PROJECTS

§206E-151 Findings and declarations. The legislature finds and declares that the health, safety, and general welfare of the people of the State require that every opportunity be taken to assist the redevelopment of community development districts; that because of their location within or proximity to the urban core, the redevelopment and revitalization of these districts will alleviate community needs for employment, housing, parks, open space, and commercial and industrial facilities; that a significant deterrent to redevelopment is the cost of public facilities; that interest rates on moneys necessary to finance such public facilities add significantly to the cost of such facilities and that more favorable interest rates would be available through the issuance of tax-exempt bonds; and that the availability of revenue bonds to finance the cost of public facilities will facilitate redevelopment of community development districts.

The legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this part constitute

a serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination.

§206E-152 Definitions. The following words or terms as used in this part shall have the following meanings, unless a different meaning clearly appears from the context:

“Revenue bonds” means bonds, notes, or other evidence of indebtedness of the authority issued to finance any public facility under this part.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds.

§206E-153 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any public facility, including acquisition of the site thereof.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The revenue bonds shall be issued in the name of the authority and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

§206E-154 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

(b) The authority may pledge revenues derived from the public facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the authority to secure the loans.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged thereafter received by the authority shall immediately be subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

§206E-155 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semi-annually.

(b) The authority shall include the costs of undertaking the public facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the public facility, the authority may include the cost of constructing, acquiring, remodel-

ing, furnishing, and equipping the public facility, including acquisition of the site thereof; the cost of purchasing or funding loans or other agreements entered into for the public facility; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the best interest of the State.

§206E-156 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the authority may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and
- (2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds.

§206E-157 Revenue bonds; special funds. (a) A separate special fund shall be established for each public facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "public facility revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 206E-16, all revenues, income, and receipts derived from the public facility for which the revenue bonds are issued shall be paid into the public facility revenue bond fund established for that public facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

§206E-158 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer the public facility revenue bond special fund established pursuant to section 206E-156,¹ and to receive and receipt for, hold, and administer the revenues derived by the authority from the public facility for which the revenue bonds are issued and to apply these revenues to the payment of the cost:

- (1) Of undertaking the public facility;
- (2) Of administering and operating the proceedings providing for the issuance of the revenue bonds;
- (3) To pay the principal or interest on these bonds;
- (4) To the establishment of reserves; and
- (5) To other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-65, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-12, and the third sentence of section 39-65, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§206E-159 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the public facility, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-64 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the public facility, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the public facility.”

SECTION 2. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the authority pursuant to part III, chapter 39, Hawaii Revised Statutes, and part IV, chapter 206E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$15,000,000, at such times and in such amounts as it deems advisable for the purpose of undertaking, operating, and maintaining public facilities provided under chapter 206E, Hawaii Revised Statutes.

SECTION 3. Severability. If any provision of this Act, or any provision of the part to be added pursuant hereto to chapter 206E, Hawaii Revised Statutes, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision of this Act or the part or the application thereof to other persons or circumstances which can be given effect without the invalid provision or application, and to this end the provisions this Act and the part are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1985.)

Note

1. Should probably read "206E-157".

ACT 269

H.B. NO. 240

A Bill for an Act Relating to the Commissioner of Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 401, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"CHAPTER 401
[BANK EXAMINER]
COMMISSIONER OF FINANCIAL INSTITUTIONS"**

SECTION 2. Section 401-1, Hawaii Revised Statutes, is amended to read as follows:

"§401-1 [Bank examination division, bank examiner.] Division of financial institutions, commissioner of financial institutions. (a) The director of commerce and consumer affairs with the approval of the governor, shall appoint a fit and competent person to perform the duties of the [bank examiner,] commissioner of financial institutions, whose principal duty will be to examine financial institutions and who shall also be known as the "examiner of financial institutions." The commissioner [who] may be removed by the director with the approval of the governor; provided that while there is any vacancy in the office of the [bank examiner,] commissioner, the director shall serve as ex officio [bank examiner.] commissioner. The [bank examiner] commissioner shall not be subject to chapters 76 and 77. The [bank examiner] commissioner may appoint one or more [assistant bank] examiners who may make examinations and audits, and, with the approval of the [bank examiner,] commissioner, sign reports of examination or audit.

(b) The salary of the [bank examiner] commissioner shall be set by the director of commerce and consumer affairs but shall not be more than the maximum salary of first deputies to department heads."

SECTION 3. Section 401-2, Hawaii Revised Statutes, is amended to read as follows:

"§401-2 Disqualifications. No person shall be [a bank] an examiner who is a director in or owner of any interest, or shares of stock, in any company or corporation that may be examined pursuant to this chapter."

SECTION 4. Section 401-4, Hawaii Revised Statutes, is amended to read as follows:

"§401-4 Powers; report. The [bank examiner] commissioner may when making an examination examine any of the officers of the corporations and agents of the business being examined, on oath, and for such purpose may administer oaths, and may order and cause to be produced by the officers, agents, or employees of the corporation, person, or company so being examined, all books of account, papers, documents, and securities under their possession or

control. Upon the close of the examination by the [bank examiner,] commissioner, he shall make a full and detailed report of the condition of the affairs of the banking and fiduciary companies, corporations, or individuals, that have been examined by him, substantially in the form prescribed by the schedule in section 401-11. The report shall be filed with the records of the [director of regulatory agencies.] division of financial institutions.”

SECTION 5. Section 401-12, Hawaii Revised Statutes, is amended to read as follows:

“**§401-12 Receiver; application for, appointment; duties.** If the [bank examiner] commissioner becomes satisfied that the capital of any corporation subject to the inspection of the [bank examiner] commissioner has become impaired or reduced below the amount required by law, and the impairment or reduction is not made good as by him required, or if the [examiner] commissioner becomes satisfied that the corporation or any person, firm, association, or copartnership subject to the inspection of the [bank examiner] commissioner is conducting its or his business in an unsafe or unauthorized manner so that the continuance of its or his business would be hazardous to the public, or those having funds in its control, or if the corporation, person, firm, association, or copartnership has violated this chapter or any other law relating thereto, or if the corporation, person, firm, association, or copartnership refuses to submit its or his books and papers and concerns to the inspection of the [bank examiner,] commissioner, or his deputy, or if any officer of the corporation, person, firm, association, or copartnership unreasonably delays or refuses to be examined under oath, touching the affairs and condition of the corporation, person, firm, association, or copartnership, or if from any examination made, or report in this chapter provided for, the [bank examiner] commissioner concludes that the corporation, person, firm, association, or copartnership is in an unsound or unsafe condition to transact its or his business so that it is unsafe and inexpedient to continue the same, the [bank examiner] commissioner shall communicate these facts to the governor, and with his concurrence, application may be made by the attorney general, on behalf of the [bank examiner,] commissioner, to a judge or court of competent jurisdiction for the appointment of a receiver.

Upon presentation of such application and upon it being made to appear that any of the facts herein enumerated, as a ground for the application for a receiver exists, the court or judge shall immediately appoint a competent person as receiver and shall determine his bond and prescribe his duties and may make such further order as seems proper; provided, that pending the action, the [bank examiner] commissioner shall immediately take such control of the corporation and all of its property and assets and the property and assets of any such person, firm, association, or copartnership as may be necessary to prevent waste or diversion of assets, and hold possession of the same pending the action. The property and assets, while in his possession, shall not be subject to any levies and attachments.

The receiver, if any is appointed, shall, under the direction of the court, take possession of the books, records, and assets of every description of the corporation, person, firm, association, or copartnership, collect all debts, dues, and claims belonging to it or him and sell or compound all bad or doubtful assets, and sell all the real and personal property of the corporation, person, firm, association, or copartnership on such terms as the court shall direct, and may, if necessary to pay the debts of the corporation, enforce all individual liabilities of stockholders, and shall make a report to the court and [bank

examiner] commissioner of all his acts and proceedings. The compensation of the receiver, which shall be not more than \$15 per day, shall be fixed by the court and shall, together with the expenses of the receivership, be paid out of the assets of the corporation, person, firm, association, or copartnership or the moneys collected by the receiver.”

SECTION 6. Section 401-14, Hawaii Revised Statutes, is amended to read as follows:

“§401-14 Confidentiality of information. (a) Except as otherwise provided in this section or as may be specifically authorized under any law regulating the institutions described in this chapter, neither the [bank examiner,] commissioner, nor any [deputy,] examiner, nor any other person appointed by the [bank examiner] commissioner as provided by law, shall divulge any of the following information nor will it be made available to any person, if that information is:

- (1) Exempt from disclosure by any federal or state statute;
- (2) Contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of, the [bank examiner,] commissioner, relating to the affairs of any bank, trust company, building and loan association, fiduciary company, industrial loan and investment company, or licensee under chapter 409, or affiliate thereof;
- (3) Privileged or related to the business, personal, or financial affairs of any person and is furnished in confidence;
- (4) Contained in investigatory files compiled for law enforcement purposes, including but not limited to, information relating to matters involving:
 - (A) The issuance of an order under section 401-5;
 - (B) The issuance of an order of suspension, revocation, or removal; and
 - (C) The granting or revocation of any approval, permission, or authority;
- (5) Related solely to the internal personnel rules or other internal practices of the [bank examiner,] commissioner;
- (6) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (7) Contained in inter-agency and intra-agency memoranda or letters that would not be routinely available by law to a private party in litigation with the [bank examiner,] commissioner, including but not limited to memoranda, reports, and other documents prepared by the staff of the [bank examiner,] commissioner.

(b) The [bank examiner] commissioner shall furnish a copy of each report of the regular examination of a bank, trust company, building and loan association, industrial loan and investment company, or licensee under chapter 409 to the financial institution examined.

(c) Reports of examination and other information relating to financial institutions may be made available, upon request, by the [bank examiner] commissioner to:

- (1) Federal governmental agencies having supervision of state-chartered financial institutions;
- (2) State governmental agencies having supervisory authority similar to the [bank examiner,] commissioner; and

- (3) Other agencies of the United States or a state for use where necessary to investigate criminal charges in connection with the affairs of any financial institution under the supervision of the [bank examiner.] commissioner.

All reports or other information made available pursuant to this subsection shall remain the property of the [bank examiner,] division of financial institutions, and no person, institution, agency or authority to whom the information is made available, or any officer, director, or employee thereof, shall disclose any of that information, except published statistical material that would not disclose the identity of any individual or corporation.

(d) The [bank examiner] commissioner may cause to be published in the English language in a newspaper of general circulation in the State a combined statement of the statements of conditions of banks, trust companies, building and loan associations, industrial loan and investment companies, and licensees under chapter 409 in such form as the [bank examiner] commissioner may see fit, using information derived from reports made to the [bank examiner] commissioner by the respective banks, trust companies, building and loan associations, industrial loan and investment companies, and licensees under chapter 409.

(e) [Any bank] An examiner[, deputy bank examiner,] or any other person appointed by the [bank examiner] commissioner as provided by law who violates this section shall be immediately discharged.”

SECTION 7. Section 401-15, Hawaii Revised Statutes, is amended to read as follows:

“§401-15 Additional examinations, cost of. Whenever the [bank examiner] commissioner has reason to believe that any person, firm, association, corporation, copartnership, society, or company is so conducting its or such a business as to make the same subject to this chapter, or subject to any law requiring inspection of its or the person’s records or affairs or supervision or regulation of its or the person’s business by the [bank examiner,] commissioner, then the [bank examiner,] commissioner, deputy[,] commissioner, or any examiner appointed by the [bank examiner] commissioner may make an examination in accordance with this chapter, of the books, records, and accounts of any such person, firm, association, corporation, copartnership, society, or company.

The [bank examiner,] commissioner, deputy[,] commissioner, or any examiner appointed by the [bank examiner] commissioner when making the examinations may examine any such person or the members or employees of the firm, association, copartnership, or society or the officers or employees of the corporation or the agents of the person, firm, association, corporation, copartnership, society, or company on oath, and for such purpose may administer oaths, and may order and cause to be produced by any of the persons, members, officers, employees, or by agents so examined, all books of accounts, papers, documents, and securities under the person’s or their possession or control.

If the [bank examiner] commissioner finds that the person, firm, association, corporation, copartnership, society, or company is conducting its or such a business as to make the same subject to the inspection of the [bank examiner,] commissioner, the actual per diem cost and expenses of each person who may be engaged in such examination shall be paid by the person, firm, association, corporation, copartnership, society, or company examined.”

SECTION 8. Section 401-18, Hawaii Revised Statutes, is amended to read as follows:

“§401-18 Rules [and regulations]. [Subject to chapter 91, the bank examiner may make, amend, and repeal rules and regulations not inconsistent with sections 401-16 to 401-19, as in his judgment seem appropriate for the carrying out of the destruction of any records. The rules and regulations shall have the force and effect of law.] The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purpose of all laws within the jurisdiction of the division of financial institutions.”

SECTION 9. Section 402-1, Hawaii Revised Statutes, is amended to read as follows:

“§402-1 Fiduciary company defined. The term “fiduciary company”, as used in this part, means and includes: every bank, other than a national bank; every trust company; every building and loan association; every industrial loan and investment company which issues or which may hereafter issue or have outstanding any certificate or certificates of indebtedness or investment; every company organized for the purpose of accumulating and loaning the funds of its members or depositors, or which may loan or invest the funds or receive deposits of money or loan or invest or collect the funds or deposits with interest, or which may repay the depositors with or without interest, or which has the power to invest the funds or deposits in property, securities, or other obligations, or which has the power to pay interest or any profit on its general deposits or on its deposits made for a stated period or upon special terms.

The term “fiduciary company”, as used in this section, includes any corporation, association, firm, or copartnership that may be carrying on a fiduciary business as above defined but excludes any credit union which lawfully engages only in the business of credit union.

The term “commissioner”, as used in this chapter, means the commissioner of financial institutions.”

SECTION 10. Section 402-5, Hawaii Revised Statutes, is amended to read as follows:

“§402-5 Receiver; application for, appointment, duties; exemption from attachment, etc., pending receivership. If the [bank examiner] commissioner becomes satisfied that the capital of any fiduciary company has become impaired, and the impairment has not been made good as required by him; or if the [examiner] commissioner is satisfied that any fiduciary company is conducting its business in an unsafe or unauthorized manner so that the continuance of its business would be hazardous to the public, or to those having funds in its control; or if any fiduciary company has violated this part; or if the fiduciary company refuses to submit its books and papers and concerns to the inspection of the [bank examiner,] commissioner, or his deputy; or if any officer of the fiduciary company unreasonably delays or refuses to be examined under oath, touching the affairs and condition of the company; or if from any examination made, or report provided in this part, the [bank examiner] commissioner concludes that the company is in an unsound or unsafe condition to transact business so that it is unsafe and inexpedient to continue the same; the [bank examiner] commissioner shall communicate these facts to the director of [regulatory agencies,] commerce and consumer affairs, and with his concurrence, application may be made by the attorney general, on behalf of the [bank examiner,] commissioner, to a judge or court of competent jurisdiction for the appointment of a receiver of the company.

Upon presentation of the application and upon it being made to appear that any of the facts herein enumerated as a ground for the application for a receiver exists, the court or judge may immediately appoint a competent receiver and shall determine his bond and prescribe his duties and may make such further order as seems proper; provided, that pending the action, the [bank examiner] commissioner shall immediately take control of the fiduciary company and all the property and effects thereof as may be necessary to prevent waste or diversion of assets, and hold possession of the same pending the action. The property and effects, while in his possession, shall not be subject to any levies and attachments. The receiver, if any is appointed, shall, under the direction of the court, take possession of the books, records, and assets of every description of the company, collect all debts, dues, and claims belonging to it and sell or compound all bad or doubtful assets and sell all the real and personal property of the company on such terms as the court directs, and may, if necessary to pay the debts of the company, enforce all individual liabilities of stockholders, and shall make a report to the court and [bank examiner] commissioner of all his acts and proceedings.

The compensation of a receiver shall be fixed by the court."

SECTION 11. Section 403-7, Hawaii Revised Statutes, is amended to read as follows:

"§403-7 Administration of chapter. The administration of this chapter shall be vested in the [bank examiner.] commissioner of financial institutions. As used in this chapter, "commissioner" means the commissioner of financial institutions."

SECTION 12. Section 403-11, Hawaii Revised Statutes, is amended to read as follows:

"§403-11 Terms implying conducting of banking business; restrictions on use; penalty. No person (including firm, company, association, copartnership, or corporation, either domestic or foreign, except national banks) without having received a certificate of authority from the [director of regulatory agencies:] commissioner; shall advertise that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit or passbooks therefor; or make use of any office sign having any name or bearing any word or words indicating that its office or place of business is the office or place of business of a bank or that deposits are received there or payments made on check, or that any other form of banking business is transacted; or make use of or circulate any letterheads, blank notes, blank receipts, certificates, or circulars or other paper whatever, whether written or printed, having thereon any name, word, or words indicating that it is engaged in any banking business. Nor shall any such person or any agent of a foreign corporation solicit or receive deposits or transact any business in the way or manner of a banking business or in such a way or manner as to lead the public to believe that it is so engaged. Nor shall any such person or agent transact business under any name, title, or descriptive term which contains the word "bank", or "banker", or "bankers", or "banking", or "savings bank", or "savings", or any other word in any language having the same or a similar meaning. The [director] commissioner [or his deputy] or an examiner may examine the accounts, books, and papers of every such person or agent to ascertain whether this section has been or is being violated.

Any person, violating this section, shall forfeit to the State \$100 a day for every day or part thereof during which the violation continues. Upon action brought by the [director] commissioner the court may issue an injunction

restraining any person or agent from further violating this section or from further acting in any way or manner as to imply or lead the public to believe that its business is of a banking character, as well during the pendency of such action as for all time, and may make such other order or decree as may be proper.”

SECTION 13. Section 403-64, Hawaii Revised Statutes, is amended to read as follows:

“**§403-64 Oath of directors.** Each director when appointed or elected shall take an oath that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the bank and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the bank, and that he is the owner in good faith and in his own right of shares of stock of the par value required in section 403-63 subscribed by him or standing in his name on the books of the bank, and that the same to an amount equal to the par value of at least \$1,000 is not hypothecated or in any way pledged as security for any loan or debt. The oath shall be subscribed by the director making it, certified by the notarial officer before whom it is taken, and immediately transmitted to the [director of regulatory agencies] commissioner and filed and preserved in [his office.] the division of financial institutions. The managers or agents residing in the State, of a foreign corporation transacting any banking business in the State, shall take oath that they will, as far as the duty devolves on them, diligently and honestly administer the affairs of the bank, and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the bank. The oath shall be subscribed by the managers or agents taking it, certified by the officer before whom it is taken, and immediately transmitted to the [director] commissioner and filed and preserved in his office.”

SECTION 14. Section 403-149, Hawaii Revised Statutes, is amended to read as follows:

“**§403-149 Witness; failure to testify or produce records; penalty.** Any person who neglects or refuses to attend and testify or answer any lawful inquiry or to produce books, papers, accounts, records, contracts, or documents, if in his power to do so, in obedience to the subpoena or lawful requirements of the [director of regulatory agencies,] commissioner, or [any deputy or] an examiner employed by the [director,] commissioner, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.”

SECTION 15. Section 403-161, Hawaii Revised Statutes, is amended to read as follows:

“**§403-161 Capital impairment, procedure.** Whenever the capital of a bank is impaired and the [director of regulatory agencies] commissioner determines such fact, from either his own examination or that of any duly authorized [deputy bank] examiner, or from the report made by the bank, the bank shall be dealt with in the manner provided by section 403-162; provided, that nothing in this section and in section 403-162 shall prevent the [director] commissioner from appointing a conservator for the bank and otherwise dealing with the same pursuant to sections 403-172 to 403-179, if in his judgment the action is necessary to conserve the assets of the bank for the benefit of the depositors and other creditors thereof, pending the action to be taken by the directors and stockholders of the bank under section 403-162.”

SECTION 16. Section 403-162, Hawaii Revised Statutes, is amended to read as follows:

“§403-162 Capital impaired. The capital of a bank shall be deemed impaired when any shrinkage occurs in the surplus which it is at the time required to have pursuant to section 403-21, or in its capital. In determining whether a shrinkage has occurred, obligations of the United States, direct or indirect, bonds of the State or its political subdivisions, and other bonds which the [bank examiner] commissioner finds to be of similar quality shall be valued at par if their respective cash market values are less than par. Other assets shall be valued at cash market value unless the [bank examiner] commissioner determines that by virtue of extraordinary market conditions then prevailing their cash market value is greater or less than their true value, in which event he may adopt such other method of valuation as he finds to be acceptable to and consonant with then prevailing principles of sound banking practice.

Whenever it appears to the [director of regulatory agencies,] commissioner, either from his own examination or the examination of any duly appointed [bank] examiner or from any report made by any bank to the [director] commissioner that the capital of the bank is impaired, the [director] commissioner shall notify the bank to make good the impairment. The directors of the bank receiving this notice shall immediately call a meeting of the shareholders of the bank for the purpose of making good the impairment, which meeting shall be within fifteen days of the date of the receipt of the notice. The shareholders at the meeting shall take action within the time specified by the [director] commissioner to make up the impairment. The impairment shall be made up when the bank has obtained through the sale of additional stock or by other capital contribution, cash in an amount equal to the impairment. Upon making up the impairment, if the surplus of the bank is then less than fifty per cent of the capital, the bank shall not be deemed in violation of section 403-21, but the bank shall thereafter augment its surplus as in section 403-21 provided. Any further shrinkage in surplus or capital which occurs after an impairment has been made up shall also be deemed an impairment and subject to this section. The failure to call a meeting of the shareholders, or the failure to hold the meeting, or the failure of the stockholders to take such action to cover the impairment within the time prescribed by the [director,] commissioner, shall entitle the [director] commissioner to immediately close the bank and take possession of its assets and proceed with the liquidation of the bank; provided the bank may, with the consent of the [director,] commissioner, later resume business upon such conditions as the [director] commissioner may approve.”

SECTION 17. Section 403-182, Hawaii Revised Statutes, is amended to read as follows:

“§403-182 Placing business in hands of [director,] commissioner; notice. Any bank doing business in the State subject to this chapter may place its business and assets under the control of the [director of regulatory agencies,] commissioner, to be liquidated, as herein provided, by posting a notice on its door as follows: “This bank is in the hands of the [director of regulatory agencies] commissioner of financial institutions of the State.” Immediately upon posting this notice an executive officer of the bank shall notify the [director] commissioner of the action in person, by mail and wireless, or other expeditious means of communication. The posting of the notice of possession of any bank by the [director] commissioner shall be sufficient to place all of its assets and property of whatever nature in the legal possession of the [director] commissioner and shall operate as a bar and dissolution to any attachment proceedings.”

SECTION 18. Section 404-1, Hawaii Revised Statutes, is amended by adding the definition of “commissioner” to read as follows:

“(7) ‘‘Commissioner’’ means the commissioner of financial institutions of the State.”

SECTION 19. Section 404-4, Hawaii Revised Statutes, is amended to read as follows:

“§404-4 Merger procedure; resulting state bank. (a) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

- (1) The name of each merging bank and location of each office;
- (2) With respect to the resulting bank:
 - (A) The name and location of the principal and the other offices;
 - (B) The name and residence of each director to serve until the next annual meeting of the stockholders;
 - (C) The name and residence of each officer;
 - (D) The amount of capital, the number of shares and the par value of each share;
 - (E) Whether preferred stock is to be issued and the amount, terms, and preferences;
 - (F) The amendments to its charter and bylaws;
- (3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank or of distributing cash or any other property, in whole or in part, in lieu of or partially in lieu of shares of the resulting state bank to stockholders of the merging banks or any class of them;
- (4) A statement that the agreement is subject to approval by the [director of regulatory agencies] commissioner and by the stockholders of each merging bank;
- (5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of merging banks;
- (6) Such other provisions as the [director] commissioner requires to enable him to discharge his duties with respect to the merger.

(b) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the [director] commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board, and together with evidence of proper action by the board of directors of any merging national bank.

(c) Within thirty days after receipt by the [director] commissioner of the papers specified in subsection (a) the [director] commissioner shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The [director] commissioner shall approve the agreement if it appears that:

- (1) The resulting state bank meets the requirements of state law as to the formation of a new state bank;
- (2) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;
- (3) The agreement is fair;
- (4) The merger is not contrary to the public interest.

(d) If the [director] commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate the objections.

(e) Nothing in this chapter shall be construed to require the approval by any state authority for any state bank to convert into and merge or consolidate with national banking associations as provided by federal law.”

SECTION 20. Section 405-1, Hawaii Revised Statutes, is amended to read as follows:

“§405-1 Definitions. As used in this chapter, unless the context otherwise requires, “corporation” means a corporation organized pursuant to this chapter, “commissioner” means the commissioner of financial institutions, and “bank” has the meaning used in section 403-2.”

SECTION 21. Section 405-19, Hawaii Revised Statutes, is amended to read as follows:

“§405-19 Power of [director] commissioner to take possession; grounds. Whenever it appears to the [director of regulatory agencies] commissioner that any corporation has violated its articles of incorporation or any law of this State, or is conducting its business in an unsafe or unauthorized manner, or if the capital of the corporation is impaired, or if the corporation refuses to submit its books, papers, and concerns to the inspection of any [bank] examiner of the department of commerce and consumer affairs or if any officers thereof refuse to be examined upon oath touching the concerns of the corporation or if the corporation suspends payment of its obligations, or if from any examination or report provided for by this chapter the [director] commissioner has reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation neglects or refuses to observe any order of the [director,] commissioner, the [director] commissioner may forthwith take possession of the property and business of the corporation and retain possession until the corporation resumes business, or its affairs are finally liquidated as provided by chapter 403 for the liquidation of banks.”

SECTION 22. Section 405A-2, Hawaii Revised Statutes, is amended to read as follows:

“§405A-2 International banking facilities, establishment of; notice to [bank examiner,] commissioner of financial institutions, quarterly reports. (a) A depository institution, an Edge or Agreement Corporation or United States branch or agency of a foreign bank may establish an international banking facility for the purpose of:

- (1) Making, arranging for, placing, or servicing loans to foreign persons; provided that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per cent or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than a bank), domestic partnership, or resident individual, all the proceeds of the loan shall be for use outside of the United States;
- (2) Making or placing deposits of foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities;

(3) Entering into foreign exchange trading or hedging transactions related to any other transactions described in this paragraph; and

(4) Accepting deposits from foreign persons.

(b) International banking facilities may be located in any county.

(c) At least fourteen days prior to the first reserve computation period that any institution intends to establish an international banking facility, the institution shall provide the [bank examiner] commissioner with a copy of the statement of intention required under Regulation D (12 CFR Part 204) of the Board of Governors of the Federal Reserve System.

(d) An institution which establishes an international banking facility shall provide the [bank examiner] commissioner with a copy of each quarterly report concerning the operations of its international banking facility which is required under Regulation D (12 CFR Part 204) of the Board of Governors of the Federal Reserve System.”

SECTION 23. Section 406-1, Hawaii Revised Statutes, is amended to read as follows:

“**§406-1 Trust company defined.** The term “trust company” as used in this chapter means any corporation or joint-stock company, organized under the general laws of the State, which has obtained from the [director of regulatory agencies] commissioner of financial institutions a certificate that it is qualified to act as a trust company under section 406-1.5.”

SECTION 24. Chapter 406, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§406- Rules.** The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter.”

SECTION 25. Section 407-8, Hawaii Revised Statutes, is amended to read as follows:

“**§407-8 [Bank examiner; assistants.] Commissioner of financial institutions; examiners.** Any duly authorized [assistant bank] examiner may perform any act in this chapter authorized or required to be performed by the [bank examiner.] commissioner of financial institutions. As used in this chapter “commissioner” means the commissioner of financial institutions.”

SECTION 26. Section 407-13, Hawaii Revised Statutes, is amended to read as follows:

“**§407-13 Investigation by [bank examiner;] commissioner; allowance or disallowance, procedure.** Upon the filing of the application, if the [bank examiner] commissioner upon investigation finds (1) that the financial responsibility, experience, character, and general fitness of the applicants and of the officers or members thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter; (2) that allowing the applicants to engage in this business will promote the convenience and advantage of the locality or community in which the business of the applicants is to be conducted; and (3) that capital stock in excess of \$25,000 has been subscribed for and ten per cent paid to the applicants in cash; he shall write upon the face of the application the fact that he has approved the same, together with the date, and affix his signature. The application shall then be returned to the applicants who shall upon receipt of the approved application transmit the same within thirty days to the [director of regulatory agencies.] commissioner,

together with the articles of association, and pay to the [director] commissioner the corporation and other filing fees required by law.

No application shall be disapproved except after the applicants have had notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the [bank examiner] commissioner shall, within twenty days thereafter, prepare and keep on file in his office, a written order or denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and forthwith serve upon the applicants a copy thereof. Within ten days after the receipt of the copy the applicants may appeal from the order of denial to a board consisting of the [director,] director of commerce and consumer affairs, comptroller, and director of taxation by filing with the comptroller a notice of appeal. After notice by mail to the applicants and after a hearing at which the applicants shall be entitled to be present and to be heard, the board shall file with the comptroller its decision in writing either ordering the [bank examiner] commissioner to approve the application or affirming his action in disapproving the same. A copy of the decision or order of the board shall forthwith be served upon the applicants by the [bank examiner.] commissioner. The applicants may appeal from an adverse decision of the board to the circuit court of the circuit in which the applicants propose to engage in business, as provided in chapter 91."

SECTION 27. Section 407-42, Hawaii Revised Statutes, is amended to read as follows:

"§407-42 "Branch", "agency" defined; powers, termination; appeals. A branch office is a legally established place of business of the association, other than the home office or any agency, authorized by the board of directors and approved by the [bank examiner,] commissioner, at which payments on accounts and loan payments may be accepted and applications for loans may be received and in those instances allowed by this section, be approved, and at which passbooks and share or investment certificates may be issued and loans, books and share or investment certificates may be issued and loans, when properly approved, may be closed.

An agency of an association is the place of business, other than the home office or a branch office, at which an agent or agents of the association transact authorized business of the association. At any agency payments on accounts and loan payments may be received solely for transmission to the home office or a branch office of the association, but may not be accepted for or on behalf of the association. At any agency an agent or agents may, however, perform such other special duties as may be directed from time to time by the home office or a branch office. No agency shall be authorized, however, to issue passbooks and share or investment certificates.

No loan may be approved at any agency of the association.

Any branch office of the association may approve loans authorized to be made pursuant to sections 407-83, 407-84, 407-85, 407-86 and 407-89 after approval of the board of directors or authorized committee. No other loans may be approved at any branch office but solely at the main office in the State after approval by the board of directors or authorized committee.

The [bank examiner] commissioner may revoke his approval of the maintenance of any branch office or agency by a written notice to the association fixing a reasonable time after which the association shall cease to use and maintain its branch office or agency.

Any association aggrieved by any action of the [bank examiner] commissioner under sections 407-41 and 407-42 may appeal to a board,

consisting of the director of [regulatory agencies,] commerce and consumer affairs, comptroller, and director of taxation by filing with the comptroller a notice of appeal.”

SECTION 28. Section 407-97, Hawaii Revised Statutes, is amended to read as follows:

“[[]§407-97 Rules [and regulations].[]] [Rules and regulations may be promulgated by the bank examiner in order to effectuate the purposes of sections 407-95 and 407-96.] The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter.”

SECTION 29. Section 407-102, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

“§407-102 Inspection by [director,] commissioner; appointment and powers of conservator or receiver. (a) Inspection. The [director of regulatory agencies] commissioner may at any time, without previous notice, in person or by any person by him appointed, examine into the business and affairs of every building and loan association, and shall have free access to all of its books, papers, records, and securities, to ascertain the condition of the association in any respect and whether it is operating conformably with law. For this purpose he may summon and compel the attendance of any director, officer, agent, or employee of the association, and examine them under oath.

(b) Conservator. If the [director,] commissioner, as a result of such examination, or from any report made to him finds that any building and loan association is violating its articles of association or bylaws or the laws of this State or of the United States, or any lawful order of the [director,] commissioner, or is conducting its business in an unsafe manner, he may, by an order, direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. If any such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the [director] commissioner that any such association is in an unsafe condition or is conducting its business in an unsafe manner, or if he finds that an impairment of capital exists to such an extent that it threatens loss to the members or investment certificate holders, or if any association refuses to submit its books, papers, and accounts to the inspection of the [director] commissioner or his representative, the [director] commissioner may appoint a conservator to take charge of the association and manage its business until the [director] commissioner permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed by the [director] commissioner to liquidate its affairs. Any conservator appointed by the [director] commissioner shall have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association.

The conservator shall not liquidate assets except in the ordinary course of operations, or incur any expenses other than normal operating expenses, except that he may retain special counsel to assist, advise, or represent him in the performance of his duties hereunder.

The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee provided the order of removal of a director or officer shall be approved in writing by the [director of regulatory agencies.] commissioner. While the association is in the charge of a conservator, members and investment certificate holders of the association shall continue to make payments to the association in accordance with the terms and conditions of their

contracts, and the conservator, in his discretion, may permit holders of withdrawable shares or investment certificates to withdraw such shares or investment certificates from the association as in the ordinary course of business, or under, and subject to, such rules and regulations as the [director] commissioner may prescribe, and the conservator may accept payments on shares or investment certificates, but the payments thereon received by the conservator may be segregated if the [director] commissioner so orders in writing, and if so ordered, the payments shall not be subject to offset, and shall not be used to liquidate any indebtedness or the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of the association existing at the time the conservator was appointed. All expenses of the association during the conservatorship shall be paid by the association. The appointment of a conservator shall be evidenced by the [director] commissioner issuing a certificate under the seal of his office delivered to the board of directors of the association, certifying that a conservator has been appointed pursuant to this chapter.

Restoration, when. Within six months from the date upon which the conservator takes charge of an association, the [director] commissioner shall determine whether or not he shall restore the management of the association to the board of directors. The determination shall be evidenced by the [director's] commissioner's certificate under the seal of his office, delivered to the board of directors reciting that the conservator forthwith is redelivering the management to the board of directors of the association then in office. After the management of the association has been redelivered to the board of directors, the association shall henceforth be managed and operated as though no conservator had been appointed.

Reorganization, when. At any time before the redelivery of the management to the board of directors, the [director] commissioner shall determine whether the association shall be required to reorganize. The determination shall be evidenced by the [director's] commissioner's certificate under the seal of his office, delivered to the association, reciting that unless the association reorganize under the laws of the State within a period of ninety days from the date of the certificate, or within such further time as the [director] commissioner shall approve, the [director] commissioner will proceed to liquidate the association. If the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, a signed and sealed copy of each certificate mentioned in this section shall be promptly sent by the [director] commissioner by registered mail to the Federal Savings and Loan Insurance Corporation, Washington, D.C."

SECTION 30. Section 408-2, Hawaii Revised Statutes, is amended by amending the definition of "bank examiner" to read:

"["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions of the State."

SECTION 31. Section 408-24, Hawaii Revised Statutes, is amended to read as follows:

"§408-24 **False entries; penalty.** Any director, officer, agent, or employee of any corporation, or any licensee hereunder, or agent, member, or employee of any licensee, who knowingly or wilfully makes any false certificate, entry, or memorandum upon any of the books or the papers of any company or upon any statement filed or offered to be filed in the [bank examiner's] commissioner's

office or used in the course of an examination, inquiry, or investigation with the intent to deceive the director of [regulatory agencies] commerce and consumer affairs or the [bank examiner.] commissioner, or his assistants, shall be fined not more than \$1,000 or imprisoned not more than six months, or both."

SECTION 32. Section 408-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The fees to be paid for examinations of industrial loan companies shall be the same as those charged for examination of banks, trust companies, and all fiduciary companies as provided by section 401-8[; provided that for foreign corporations the fees shall be \$20 per day, or the actual cost thereof whichever is the greater, but not to exceed \$250 for any one examination]. All fees shall be paid directly to the [director of regulatory agencies] commissioner upon receipt of a bill from the [bank examiner.] commissioner."

SECTION 33. Section 408-27, Hawaii Revised Statutes, is amended to read as follows:

"**§408-27 Not to divulge information.** The [bank examiner.] commissioner, [assistant bank] examiners, and any other person appointed by the [bank examiner] commissioner as provided by this chapter, shall not divulge any information acquired by them in the discharge of their duties, except to the extent permitted by section 401-14; provided any information may be furnished to the board of directors of the Thrift Guaranty Corporation of Hawaii in response to a written request by the board."

SECTION 34. Section 408-29.5, Hawaii Revised Statutes, is amended to read as follows:

"[[§408-29.5]] **Good faith reliance.** If a contract is made or any other act is done or omitted in good faith reliance on an interpretation of this chapter made by the supreme court of this State or in a rule or regulation duly adopted by the [bank examiner] commissioner [or the examiner's authorized deputy] pursuant to chapter 91, no penalty imposed by this chapter shall apply, notwithstanding that after such contract is made, such interpretation, rule, or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

SECTION 35. Section 408A-3, Hawaii Revised Statutes, is amended by amending the definitions of "bank examiner" and "applicant" to read as follows:

"(a) ["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions as provided in section 401-1.

(d) "Applicant" means an industrial loan company which subsequent to [[April 1, 1977,]] obtains the written approval of the [bank examiner] commissioner to issue thrift account obligations."

SECTION 36. Section 409-1, Hawaii Revised Statutes, is amended to read as follows:

"**§409-1 [Bank examiner.] Commissioner of financial institutions.** As used in this chapter, ["bank examiner"] "commissioner" means the [bank examiner] commissioner of financial institutions of the State."

SECTION 37. Section 409-4, Hawaii Revised Statutes, is amended to read as follows:

“§409-4 Application for license; fees; assets. Application for a license shall be in writing, under oath, and in the form prescribed by the [director of regulatory agencies,] commissioner, and shall contain the name and address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the [director] commissioner may require. The applicant shall, at the time of filing of the application, pay to the [director] commissioner the sum of \$37.50 for investigating the application. Upon notification by the [director] commissioner of approval of the application, the applicant shall pay, within twenty days of notification of approval of application, as the initial license fee (1) the sum of \$50 if the approval occurs between January 2 and June 30, inclusive, or (2) the sum of \$25 if the approval of application occurs between July 1 and December 31, inclusive. Thereafter, on or before December 31, the licensee shall annually pay the sum of \$50 to the [director,] commissioner, as the annual license fee for the ensuing year. A licensee whose application was approved in December may pay to the [director] commissioner his first annual fee of \$50 for the ensuing year on or before the expiration of thirty days after receiving notice of approval of his application.

Every applicant, except an individual loaning his own money, shall also prove, in form satisfactory to the [director,] commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least \$15,000.”

SECTION 38. Section 409-12, Hawaii Revised Statutes, is amended to read as follows:

“§409-12 Revocation of license; suspension; surrender. The [deputy bank examiner] commissioner shall, upon ten days’ notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he finds that:

- (1) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under this chapter or to comply with any demand, ruling, or requirement of the [deputy bank examiner] commissioner lawfully made pursuant to and within the authority of this chapter; or that
- (2) The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the [deputy bank examiner] commissioner under and within the authority of this chapter; or that
- (3) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the [director of regulatory agencies] commissioner in refusing originally to issue the license.

The [deputy bank examiner] commissioner may, without notice or hearing suspend any license for a period not exceeding thirty days, pending investigation.

The [deputy bank examiner] commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he finds that the grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by the licensee, he shall revoke or suspend all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the [director] commissioner written notice that he surrenders his license, but the surrender shall not affect the licensee's civil or criminal liability for acts committed before the surrender, or entitle the licensee to a return of any part of the annual license fee or affect his bond or bonds.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until it is surrendered, revoked or suspended in accordance with this chapter, but the [director] commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the [director] commissioner in refusing originally to issue the license under this chapter.

Whenever the [deputy bank examiner] commissioner revokes or suspends a license issued pursuant to this chapter, he shall forthwith file in the [office of the director] division of financial institutions a written order to that effect and findings with respect thereto containing the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof. The order may be reviewed in the manner provided in section 409-13."

SECTION 39. Section 409-27, Hawaii Revised Statutes, is amended to read as follows:

"§409-27 Powers to subpoena; circuit judge to enforce. The [director of regulatory agencies and the deputy bank examiner] commissioner shall [each] be vested with the power to subpoena and examine witnesses under oath relating to any matter mentioned in sections 409-6 to 409-8, 409-12, and 409-24. For the purposes of this chapter [they] the commissioner shall [each] have the power to administer oaths. A circuit judge of the circuit in which any hearing or examination is held may enforce by proper proceedings the attendance and testimony of witnesses."

SECTION 40. Section 409-29, Hawaii Revised Statutes, is amended to read as follows:

"§409-29 Regulations, rulings, findings, etc. The [deputy bank examiner] commissioner may make and enforce such general rules and regulations and specific directions, orders, decisions, and findings as may be necessary for the execution and enforcement of this chapter and the purposes sought to be attained herein, in addition thereto and not inconsistent therewith. All the rules, regulations, directions, orders, decisions, and findings shall be filed and entered by the [deputy bank examiner] commissioner in the [office of the director of regulatory agencies] division of financial institutions in an indexed, permanent book or record, with the effective date thereof suitably indicated, and the book or record shall be a public document. Copies of all findings, orders, and decisions shall be mailed to the parties affected thereby by United States mail, within five days of their filing, except as otherwise provided herein."

SECTION 41. Chapter 409, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§409- Rules. The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter."

SECTION 42. Section 410-2, Hawaii Revised Statutes, is amended by amending the definition of "commissioner" to read:

"Commissioner" means the [director of commerce and consumer affairs.] commissioner of financial institutions."

SECTION 43. Section 410-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The [director of commerce and consumer affairs] commissioner of financial institutions shall be the commissioner."

SECTION 44. Section 410-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Supervision fee. Not later than January 31 of each calendar year, each credit union shall pay to the [credit union] division of financial institutions of the department of commerce and consumer affairs for the preceding calendar year, a supervision fee in accordance with a graduated scale prescribed by this subsection on the basis of assets as of December 31 of such preceding year, but the fee shall in no event be less than \$10, as follows:

<u>Total Assets</u>	<u>Maximum Fee</u>
\$500,000 or less.....	25 cents per \$1,000
Over \$500,000 and not over \$1,000,000	\$125 plus 20 cents per \$1,000 in excess of \$500,000
Over \$1,000,000 and not over \$2,000,000	\$225 plus 15 cents per \$1,000 in excess of \$1,000,000
Over \$2,000,000 and not over \$5,000,000	\$375 plus 10 cents per \$1,000 in excess of \$2,000,000
Over 5,000,000	\$675 plus 5 cents per \$1,000 in excess of \$5,000,000

No annual supervision fee shall be payable by the credit union with respect to the year in which its charter is issued except in cases of conversion from a credit union chartered under the Federal Credit Union Act to a credit union chartered under this chapter, or in which final distribution is made in its liquidation or the charter is otherwise canceled.

Failure of any credit union to pay any amount required by this subsection shall be grounds for the revocation of the charter of the credit union failing to make the payment.

Fees collected under this section shall be deposited to the credit of a general fund and be available for the purposes of administering this chapter."

SECTION 45. Section 410-35, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The compensation of the liquidating agent, counsel, and other employees and assistants, and all expenses of supervision and liquidation shall be fixed by the commissioner, subject to the approval of the circuit court for the county in which the credit union is located, and shall upon the certificate of the commissioner be paid out of the funds of the credit union. Expenses of supervision and liquidation shall include the cost of the service rendered by the [credit union] division of financial institutions to the credit union being

liquidated and shall be determined from time to time by the commissioner and shall be paid to the office of the commissioner from the assets of the credit union as other expenses of liquidation are paid. The moneys collected by the liquidating agent shall be from time to time deposited in one or more banks or corporate credit union domiciled in the State.”

SECTION 46. Section 410-40, Hawaii Revised Statutes, is amended to read as follows:

“**[]§410-40[] Immunity of the commissioner.** The commissioner [of credit unions] shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by him in his official capacity under this chapter.”

SECTION 47. Section 420-10, Hawaii Revised Statutes, is amended to read as follows:

“**§420-10 Articles; amendments.** The articles may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and the amendments shall require approval of the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled; provided, that no amendment of the articles which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director of commerce and consumer affairs to examine the corporation or the obligation of the corporation to make reports as provided in section 420-14, shall be made without amendment of this chapter; and provided further, that no amendment of the articles which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member’s right to withdraw from membership as provided in section 420-8, or affects a member’s voting rights as provided in section 420-9, shall be made without the consent of each member affected by the amendment.

Within thirty days after any meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth the amendment and the due adoption thereof, shall be submitted to the [director,] commissioner of financial institutions, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the [director] commissioner and no amendment shall take effect until the articles of amendment have been filed.”

SECTION 48. Section 420-14, Hawaii Revised Statutes, is amended to read as follows:

“**§420-14 Examination by [bank examiners.] commissioner of financial institutions.** The corporation shall be subject to the examination of the [bank examiners,] commissioner of financial institutions, and shall make reports of its condition not less than annually to the [examiners,] commissioner, who in turn shall make copies of the reports available to the director of commerce and consumer affairs and to the governor, and the corporation shall also furnish such other information as may from time to time be required by the [director.] commissioner.”

SECTION 49. Section 449-1, Hawaii Revised Statutes, is amended by amending the definition of "bank examiner" to read as follows:

"(1) ["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions of this State."

SECTION 50. Sections 401-3, 401-5, 401-6, 401-7, 401-8, 401-9, 401-10, 401-11, 401-13, 401-16, 402-6, 402-11, 402-18, 403-14, 403-38.8, 403-53, 403-68, 403-75, 403-111, 403-209, 403-221, 406-14, 406-22, 406-24, 406-40, 407-11, 407-12, 407-14, 407-31, 407-34, 407-41, 407-55, 407-61, 407-72, 407-81, 407-83, 407-88, 407-90, 407-91, 407-95, 407-101, 407-104, 407-105, 407-113, 408-2.1, 408-8, 408-11.1, 408-14, 408-14.5, 408-15, 408-21, 408-21.5, 408-22, 408-23, 408-25, 408-32, 408A-4, 408A-6, 408A-7, 408A-8, 408A-9, 408A-10, 408A-12, 408A-13, 408A-14, 408A-15, 408A-16, 408A-17, 408A-18, 408A-19, 408A-21, 408A-22, 408A-24, 408A-25, 408A-26, 408A-28, 408A-31, 409-17, 409-28, 410-15.5, 449-2, 449-5, 449-6, 449-7, 449-7.5, 449-8, 449-9, 449-10, 449-11, 449-12, 449-13, 449-14, 449-15, 449-16, and 449-17, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "bank examiner" appears, as the context requires.

SECTION 51. Sections 402-3, 403-8, 403-13, 403-16, 403-23, 403-24, 403-25, 403-28, 403-29, 403-30, 403-31, 403-32, 403-33, 403-37, 403-40, 403-41, 403-44, 403-45, 403-46, 403-54, 403-55, 403-71, 403-73, 403-74, 403-75, 403-92, 403-171, 403-172, 403-173, 403-175, 403-178, 403-180, 403-181, 403-183, 403-184, 403-185, 403-192, 403-197, 403-198, 403-199, 403-200, 403-201, 403-202, 403-203, 403-205, 403-207, 403-208, 403-209, 403-210, 403-212, 403-213, 403-221, 404-6, 404-7, 405-2, 405-3, 405-8, 405-12, 405-20, 405-24, 405-27, 405-28, 406-3, 406-11, 406-12, 406-35, 406-37, 406-39, 406-51, 407-14, 407-15, 407-23, 407-35, 407-47, 407-48, 407-49, 407-94, 407-103, 408-10, 408-11, 409-5, 409-7, 409-10, and 409-11, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies" or "director" appears, as the context requires.

SECTION 52. Sections 402-4, 402-7, 403-6, 403-26, 403-27, 403-34, 403-47.1, 403-49, 403-53, 403-67, 403-82, 403-93, 403-95, 403-96, 403-97, 403-98, 403-99, 403-103, 403-104, 403-105, 403-128, 403-141, 403-148, 403-174, 403-176, 403-177, 403-204, 403-206, 404-3, 404-10, 404-11, 404-12, 405-4, 405-5, 405-6, 405-9, 405-22, 405-26, 405-30, 405-31, 405-32, 406-1.5, 406-4, 406-22, 406-36, 406-61, 407-11, 407-46, 407-82, 407-105, 408-12, 409-3, and 409-13, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies" appears, as the context requires.

SECTION 53. Sections 403-56, 407-102(c) and (d), 409-6, 409-9, and 409-13, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director" appears, as the context requires.

SECTION 54. Sections 409-6, 409-9, 409-13, 409-14, 409-15, 409-18, 409-24, 409-25, and 409-30, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies or the deputy bank examiner", "director or deputy bank examiner", or "deputy bank examiner" appears, as the context requires.

SECTION 55. Sections 53-34, 408-19, 416-33, 417-9, 417-16, 417E-1, 417E-3, 433-16, 441-24.5, and 478-8 are amended by substituting the term "commissioner of financial institutions" wherever the term "bank examiner" appears, as the context requires.

SECTION 56. Section 418-6, Hawaii Revised Statutes, is amended to read as follows:

“§418-6 Activities not constituting doing business in State. (a) Without excluding other activities which may not constitute doing or carrying on business in the State, a corporation formed or organized under the laws of any territory, possession, or other state of the United States, or of any foreign state or country shall not be considered to be doing or carrying on business in the State for the purposes of this chapter by reason of carrying on in the State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining agents, trustees, or depositories with relation to its securities.
- (5) Effecting sales through independent contractors.
- (6) Soliciting or procuring orders whether by mail or through employees or agents or otherwise where the orders require acceptance without the State before becoming binding contracts.
- (7) Creating evidences of debt, mortgages, or liens on real or personal property.
- (8) Securing or collecting debts or enforcing any rights in property securing the same.
- (9) Transacting any business in interstate commerce.
- (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(b) A foreign financial institution whose principal office is not within this State and which is federally or state chartered and federally-insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State. Such financial institution shall not thereby become subject to chapters 401, 402, 403, 406, 407 or 408. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapters 401, 402, 403, 406, 407 or 408.”

SECTION 57. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 58. This Act shall take effect upon its approval.

(Approved June 6, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

HAWAII NONPROFIT CORPORATION ACT

PART I. NONPROFIT CORPORATIONS, GENERALLY

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Nonprofit Corporation Act”.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires, the term:

“Articles of incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

“Board of directors” means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

“Bylaws” means any code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which such rules are designated.

“Corporation” or “domestic corporation” means a nonprofit corporation subject to this chapter, except a foreign corporation.

“Director” means the director of commerce and consumer affairs.

“Foreign corporation” means a nonprofit corporation organized under laws other than the laws of this State.

“Insolvent” means the inability of a corporation to pay its debts as they become due in the usual course of its affairs.

“Member” means any person having membership rights in a corporation in accordance with its articles of incorporation or bylaws.

“Nonprofit corporation” means a corporation of which no part of the income or profit is distributable to its members, directors, or officers.

§ -3 **Applicability.** This chapter relating to domestic corporations shall apply to:

- (1) Any corporation organized under this chapter; and
- (2) Any nonprofit corporation heretofore organized under any law superseded by this chapter, for a purpose or purposes for which a corporation might be organized under this chapter.

The provisions of this chapter relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this State for any purpose for which a corporation might be organized under this chapter.

§ -4 **Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that, labor unions, cooperative organizations other than limited equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State shall not be organized under this chapter.

§ -5 **General powers.** Any corporation organized under this chapter shall have the power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

- (2) To sue, be sued, complain, and defend, in its corporate name;
- (3) To have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile thereof, to be impressed, affixed, or in any other manner reproduced;
- (4) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (6) To lend money and use its credit to assist its employees who are not also members, directors, or officers;
- (7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;
- (8) To make contracts and incur liabilities; borrow money at such rates of interest as the corporation may determine; issue its notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or any portion of its property, franchises, and income;
- (9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this State;
- (11) To elect or appoint officers and agents of the corporation, who may be directors or members, define their duties, and fix their compensation;
- (12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation;
- (13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific, or educational purposes; and during periods where the United States is engaged in armed conflict, to make donations in aid of military and related operations;
- (14) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers, and employees;
- (15) To cease its corporate activities and surrender its corporate franchise;
- (16) To have and exercise all powers necessary or convenient to effect its purposes.

§ -6 Indemnification of officers, directors, employees, and agents. (a) As used in this section, unless the context otherwise requires:

“Agent” means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or

domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

"Expenses" include, without limitation, attorney's fees and any expenses of completed action or proceeding, whether civil, criminal, administrative, or investigative.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, of itself, shall not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of such action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(d) To the extent that an agent has been successful on the merits or otherwise in defense of proceeding referred to in subsection (b) or (c), or in defense of any claim, issue, or matter therein, the agent shall be indemnified by the corporation against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Any indemnification under subsection (b) or (c) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding; or (2) if such a quorum is not obtainable, by independent legal counsel in a written opinion; or (3) by the shareholders; or (4) by the court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense,

whether or not the application by the agent, attorney, or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be paid by the corporation in advance of the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall ultimately be determined that the agent is entitled to be indemnified by the corporation as authorized in this section.

(g) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders, or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(h) A corporation shall have the power to purchase and maintain insurance on behalf of any agent of the corporation, against any liability asserted against or incurred by the agent in any such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under this section.

(i) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity, although such person may also be an agent of the employer corporation as defined in subsection (a). Nothing contained in this section shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise.

§ -7 Corporate name. The corporate name:

- (1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, partnership, or trade name existing or registered under the laws of this State or any foreign corporation, partnership, or trade name authorized to transact business or registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant files with the director either of the following:
 - (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this State.

§ -8 Reserved name. The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this chapter.
- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.

- (4) Any foreign corporation authorized to transact business in this State and intending to change its name.
- (5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this State.

The reservation shall be made by filing with the director an application to reserve a specified corporate name, executed by the applicant. If the director finds that the name is available for corporate use, the director shall reserve the name for the exclusive use to the applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the director a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ -9 Service of process on corporation. (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any officer or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in the event of failure to find any such officer or director, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

If (1) no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and (2) the corporation, if a foreign corporation, has neglected to file with the director the name of a person upon whom legal notice and process from the courts of the State may be served or if the person so named is not found within the State, then service may be made upon the corporation by filing with the director, or in the director's absence with the deputy director, a copy of the notice or process, certified to be such under the seal of any court of record, or by the chairperson or president of the board, or by the officer issuing the same. The director or deputy director so served shall immediately notify the defendant corporation of the service. The filing shall be deemed service upon the corporation forty-five days after the filing, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.

(b) The director shall keep a record of all processes, notices, and demands served upon the director under this section, and shall record therein the time of such service and the action taken with reference thereto.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

§ -10 Filing of documents and effective date. (a) Any document required to be delivered to the director pursuant to this chapter shall be:

- (1) Executed by:
 - (A) A person intending to organize a corporation or an incorporator, if the corporation has not been organized;
 - (B) Two persons who are officers of the corporation, if the corporation has been organized; or
 - (C) A majority of incorporators with respect to articles of dissolution delivered pursuant to section -94.
- (2) Delivered to the director.

(b) If the director finds such document sets forth the information required by this chapter, the director shall:

(1) Endorse the word "Filed" and the hour, minute, month, day, and year of the delivery thereof; and

(2) File the document in the director's office.

(c) The director, however, shall not file a document required by this chapter unless all fees prescribed by this chapter have been paid with respect to such document.

(d) Upon the filing of a document, the document shall become effective as of delivery or at such later date set forth in the instrument, but not more than thirty days after being filed.

(e) Any person knowingly making a false statement in any document to be filed with the director shall be deemed to be guilty of a violation.

§ -11 Annual report of domestic and foreign corporations. Each domestic corporation or foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this chapter, an annual report setting forth:

(1) The name of the corporation and the state or county under the laws of which it is incorporated;

(2) The address of the corporation's registered office in this State, the name of the corporation's registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or county under the laws of which it is incorporated;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State; and

(4) The names and respective addresses of the directors and officers of the corporation.

The annual report shall be made on forms prescribed and furnished by the director, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed on behalf of the corporation by its president, a vice-president, secretary, assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, by such receiver or trustee.

§ -12 Filing of annual report of domestic and foreign corporations. Such annual report of a corporation shall be delivered to the director between the first day of January and the thirty-first day of March of each year in the case of a domestic corporation, or between the first day of January and the thirtieth day of June in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between the first day of January and the thirty-first day of March in the case of a domestic corporation, or between the first day of January and the thirtieth day of June in the case of a foreign corporation of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the director. Proof to the satisfaction of the director that prior to the thirty-first day of March in the case of a domestic corporation, or the thirtieth day of June in the case of a foreign corporation, such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.

If the director finds that such report conforms to the requirements of this chapter, the director shall file the report. If the director finds that it does not so

conform, the director shall return the report to the corporation for any necessary corrections, in which event the penalties prescribed in this chapter for failure to file such report within the time provided shall not apply, if the report is corrected to conform to the requirements of this chapter and returned to the director within thirty days from the date on which it was mailed to the corporation by the director.

§ -13 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid because the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, if all of the parties to the contract are parties to the proceeding, and if the court deems the same to be equitable, the court may set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; or
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative action, against the officers or directors of the corporation for exceeding their authority.

§ -14 Greater voting requirements. With respect to any action to be taken by the members or directors of a corporation, whenever the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by this chapter, the articles of incorporation or bylaws shall control.

§ -15 Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under this chapter or under the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance at a meeting without protest shall constitute a waiver of notice of that meeting.

Subject to any limitations which are expressly contained in the articles of incorporation or in the bylaws of any corporation, or in any applicable statute, when two-thirds of the directors or members entitled to vote at any meeting sign by themselves or their proxies or other authorized representatives a written consent or approval on the record of the meeting, actions taken at the meeting, however called or notified, shall be valid.

§ -16 Action by members or directors without a meeting. Any action required or permitted by this chapter to be taken at a meeting of the members or directors of a corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members or directors, as the case may be, entitled to vote on the subject matter of the meeting. Such consent shall have the force and effect of a unanimous vote and

may be stated as such in any articles or document filed with the director pursuant to this chapter.

§ -17 **Unauthorized assumption of corporate powers.** All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

§ -18 **Certificates and certified copies to be received in evidence.** All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director's office pursuant to this chapter where certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director under the seal of this State as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ -19 **Forms to be furnished by director.** All reports required by this chapter to be filed in the office of the director shall be made on forms which shall be prescribed and furnished by the director. Forms for all other documents to be filed in the office of the director may be furnished by the director on request therefor, but the use thereof, unless otherwise provided in this chapter, shall not be mandatory.

PART II. ORGANIZATION AND MEMBERS

§ -31 **Members.** A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class may be set forth in the articles of incorporation or the bylaws or determined by the board of directors. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

The directors, officers, employees, and members of the corporation shall not be liable for the corporation's obligations.

§ -32 **Meetings of members.** A meeting of the members shall be held at least once each year following the year of incorporation, unless this is dispensed with pursuant to unanimous consent under section -16. Meetings of members may be held at such place within or without the State as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the principal office of the corporation within this State. Unless otherwise provided in the articles of incorporation or bylaws or fixed in accordance with the bylaws, the annual meeting of the members for the consideration of business as may come before the meeting, shall be held on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following.

Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one twentieth of the votes entitled to be cast at such meeting.

§ -33 Notice of members' meetings. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, any purpose for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, secretary, or officers or any person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage thereon prepaid.

§ -34 Articles of incorporation. One or more persons may organize a corporation by signing and delivering articles of incorporation in duplicate to the director pursuant to section -10, which shall set forth:

- (1) The name of the corporation;
- (2) The period of the corporation's duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
- (5) The street address of the corporation's initial registered office; provided that where no specific street address is available, the rural route post office or post office box designated or made available by the United States Postal Service may be listed, and the name of its initial registered agent at such address;
- (6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors and initial officers; and
- (7) The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

§ -35 Effect of filing of articles of incorporation. Upon the effective date of the articles of incorporation, the corporate existence shall begin, and such articles shall be prima facie evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the State in a proceeding to cancel or revoke the articles of incorporation or for involuntary dissolution of the corporation.

§ -36 Right to amend articles of incorporation. A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions which might be lawfully contained in original articles of incorporation at the time of making such amendment.

§ -37 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed

amendment and directing that it be submitted to a vote at an annual or special meeting of any such members. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

- (2) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

§ -38 **Articles of amendment.** The articles of amendment shall be filed pursuant to section -10 and shall set forth:

- (1) The name of the corporation;
- (2) The amendment so adopted;
- (3) If there are members entitled to vote on the amendment, (A) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (B) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote thereon; and
- (4) If there are no members or no members entitled to vote on the amendment, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

§ -39 **Effectiveness of amendment.** No amendment to the articles of incorporation shall affect any existing cause of action in favor of or against a corporation, any pending action to which a corporation shall be a party, or the existing rights of persons other than members; and, if the corporate name is changed by amendment, no action brought by or against the corporation under its former name shall abate for that reason.

§ -40 **Restated articles of incorporation.** A domestic corporation at any time may restate amended articles of incorporation by a resolution adopted by the board of directors.

Upon the adoption of the resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles, as amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles, as amended, and that the restated articles supersede the original articles and all prior amendments thereto.

The restated articles of incorporation shall be delivered to and filed by the director pursuant to section -10.

§ -41 **Bylaws.** The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions

for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

§ -42 Organization meetings. After the effective time and date of the articles of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, and transacting any other business. The incorporators calling the meeting shall give at least three days' notice of the time and place of the meeting to each director.

A first meeting of the members may be held at the call of at least a majority of the directors, upon at least three days' notice for any purpose stated in the notice.

§ -43 Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws or as determined by the board of directors. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws or directors may provide that such elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate the member's vote and give one candidate a number of votes equal to the candidate's vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

§ -44 Quorum. The bylaws shall provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members and is necessary for the conduct of business. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of the matter to be voted upon, unless a greater proportion is required by this chapter, the articles of incorporation, or the bylaws.

§ -45 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and any committee having any of the authority of the board of directors; and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member or member's agent or attorney, for any proper purpose at any reasonable time.

§ -46 Shares of stock and dividends prohibited; compensation; distribution. A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay

compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

PART III. OFFICERS AND DIRECTORS

§ -61 **Board of directors.** The affairs of a corporation shall be managed by a board of directors, of which one director shall be a resident of this State. The other directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

§ -62 **Number and election of directors.** The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except that if authorized by the articles of incorporation or the bylaws, the number may be fixed by the members at the annual meeting or at any other meeting properly called for such purpose, and except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws or, if authorized by the bylaws or articles of incorporation, by the members, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw or membership resolution fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected by the members or elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which the director is elected or appointed and until a successor is elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws.

§ -63 **Quorum of directors.** A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws.

§ -64 **Place and notice of directors' meetings.** Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction

of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Unless prohibited by the articles of incorporation, association, charter, or bylaws, and subject to provisions therein relating to notice, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can simultaneously hear each other. Participation by such means shall constitute presence in person at a meeting.

§ -65 **Vacancies.** Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, even if such majority is less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

A director elected or appointed to fill a vacancy shall be elected or appointed, as the case may be, for the unexpired term of the director's predecessor in office.

Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

If a corporation has no members other than the directors and all the directors resign, die, or become incompetent, any circuit judge of the circuit where the corporation has its principal office or any circuit judge of the first circuit may appoint directors of the corporation upon petition of a creditor of the corporation, the personal representative of a deceased director, or the guardian or conservator of an incompetent director.

§ -66 **Committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering, or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation, restating articles of incorporation adopting a plan of merger, or adopting a plan of consolidation with another corporation;
- (4) Authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;
- (5) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor;
- (6) Adopting a plan for the distribution of the assets of the corporation; or
- (7) Amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

Nothing in paragraphs (1) to (7) shall prohibit any committee, if properly authorized by the board of directors and not prohibited by the bylaws from engaging in any sale, lease, exchange, mortgage, pledge, or distribution of assets of the corporation in the normal course of the corporation's business.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon the board or such director by law.

§ -67 Equal division of directors; appointment of provisional director; qualifications, rights, powers, and compensation. (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of corporate affairs so that its business can no longer be conducted advantageously or so that there is danger that corporate property and business will be impaired or lost, and notwithstanding any provisions of the articles of incorporation or bylaws to the contrary and whether or not any action is pending for an involuntary dissolution of the corporation, a first circuit court judge may appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by the collective action of at least thirty-three and one-third per cent of the members, if there are members.

(b) A provisional director shall be an impartial person, who is not a member, director, officer, employee, or creditor of the corporation, or related by consanguinity or affinity within the third degree according to the common law to any other director of the corporation or to any judge of the court by which such provisional director is appointed. A provisional director shall have all the rights and powers of a director until the deadlock in the board or among the members is broken or until such provisional director is removed by order of the court or by approval of members holding a majority of the voting power. A provisional director shall be entitled to compensation which shall be fixed by the court unless otherwise agreed with the corporation.

(c) This section shall not prohibit, nullify, or limit any other lawful means of resolving a deadlock between directors, including, without limitation, the right of the directors, the president, or the members to call a special meeting of the members pursuant to section -32 or the right of the members to set a different number of directors and elect directors pursuant to section -62.

§ -68 Officers. The officers of a corporation shall consist of a president, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person; provided the corporation shall have at least two persons as officers.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

§ -69 **Removal of officers.** Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§ -70 **Loans to directors and officers prohibited.** No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until it is repaid. For the purposes of this section, any director who votes against the making of such loan shall be deemed not to have assented to or participated in the making of such loan.

PART IV. MERGERS AND CONSOLIDATIONS

§ -81 **Procedure for merger.** Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

- (1) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (2) The terms and conditions of the proposed merger;
- (3) A statement of the proposed articles of incorporation of the surviving corporation, as amended, to effect such merger; and
- (4) Any other necessary or desirable provisions with respect to the proposed merger.

§ -82 **Procedure for consolidation.** Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

- (1) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
- (2) The terms and conditions of the proposed consolidation;
- (3) With respect to the new corporation, all of the statements required to be set forth in the articles of incorporation for corporations organized under this chapter; and
- (4) Any other necessary or desirable provisions with respect to the proposed consolidation.

§ -83 **Approval of merger or consolidation.** A plan of merger or consolidation shall be adopted in the following manner:

- (1) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at an annual or special meeting of such members. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; and

- (2) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions set forth in the plan of merger or consolidation.

§ -84 **Articles of merger or consolidation.** The articles of merger or articles of consolidation shall be delivered to the director and filed pursuant to section -10 and shall set forth:

- (1) The plan of merger or the plan of consolidation;
- (2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (A) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (B) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and
- (3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the director, shall be returned to the surviving or new corporation, as the case may be, or its representative.

§ -85 **Effect of merger or consolidation.** Upon compliance with section -84, the merger or consolidation shall be effected and:

- (1) The several corporations party to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;
- (2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;
- (3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;
- (4) Such surviving or new corporation, thereupon and thereafter, shall possess all the rights, privileges, immunities, and franchises, public and private, of each of the merging or consolidating corporations. Any property, whether real, personal, or mixed; any debt due on account, any other chose in action, and any other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in the surviving or new corporation, as the case may be, without further act or deed. The title to any real estate, or any

interest therein, vested in any surviving or new corporation shall not revert or be in any way impaired by reason of the merger or consolidation.

- (5) Any surviving or new corporation shall be responsible and liable for all the liabilities and obligations of its merged or consolidated corporations. Any claim existing or action or proceeding pending by or against any merged or consolidated corporation may be prosecuted as if the merger or consolidation had not taken place or the surviving or new corporation may be substituted in the former's place. Neither the rights of creditors nor any liens upon the property of any merged or consolidated corporation shall be impaired by any merger or consolidation; and
- (6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter, shall be deemed to be the articles of incorporation of the new corporation.

§ -86 Merger or consolidation of domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner; provided that a merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

- (1) Each domestic corporation shall comply with this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the laws of the jurisdiction under which it is organized;
- (2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this State, and it shall file with the director:
 - (A) An agreement that the surviving or new corporation may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation; and
 - (B) An irrevocable appointment of the director as the surviving or new corporation's agent to accept service of process in any such proceeding.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except where the surviving or new corporations are governed by laws other than those of this State, insofar as those laws otherwise provide.

After approval by the members, or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation.

PART V. DISSOLUTION, LIQUIDATION, AND SALE OF ASSETS

§ -91 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and direct that the question of the dissolution be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting pursuant to this chapter. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the dissolution, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve adopted by the vote of a majority of the directors in office.
- (3) The corporation shall publish once in each of four successive weeks in any newspaper of general circulation published in the State, a notice to all creditors of the corporation to present their claims at a place designated in the notice within ninety days from the first publication of the notice. The corporation shall mail, within thirty days from the first publication of the notice, postage prepaid, a like notice to each creditor whose name and address is known to the corporation and who prior to the mailing of the notice, has not presented any claim. The notice shall also set forth all corporate and trade names actually used by the corporation or its predecessors in its trade or business during the preceding six years. All claims, other than tort claims, not so presented shall be forever barred. The corporation, with the approval of the director, may omit the publication of the notice if the assets of the corporation are insufficient to pay for the publication.

Upon the adoption of the resolution to dissolve by the members, or by the board of directors if there are no members or no members entitled to vote on the dissolution, the corporation shall cease to conduct its affairs upon the date established, except insofar as may be necessary for the winding up thereof, and shall proceed to collect its assets and apply and distribute them pursuant to this chapter.

§ -92 Plan of distribution. Subject to this chapter, a plan providing for the distribution of assets may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

- (1) The board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at an annual or special meeting of members entitled to vote thereon. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, pursuant to this chapter. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes

which members present at such meeting or represented by proxy are entitled to cast.

- (2) If there are no members or no members entitled to vote on the plan of distribution, a plan shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

§ -93 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for payment and discharge;
- (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or other similar purposes, but not subject to any condition requiring return, transfer, or conveyance upon dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted pursuant to this chapter;
- (4) Any other assets shall be distributed in accordance with the articles of incorporation or bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted pursuant to this chapter.

§ -94 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be filed pursuant to section -10, and shall set forth:

- (1) The name of the corporation;
- (2) A statement setting forth the date of any meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that a resolution to dissolve was adopted by a consent in writing signed by all members entitled to vote with respect thereto;
- (3) If there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
- (6) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
- (7) That there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the corporation in any pending action; and
- (8) That the notice required by section -91(3) has been complied with.

§ -95 Filing of articles of dissolution. The articles of dissolution shall be delivered to the director and filed pursuant to section -10.

Upon the filing of the articles of dissolution the existence of the corporation shall cease on the date established therein, except for the purpose of any action, proceeding, or other appropriate corporate action by members, directors, and officers as permitted in this chapter.

§ -96 Revocation of voluntary dissolution proceedings. At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action theretofore taken to dissolve the corporation in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs.

§ -97 Involuntary dissolution, when. A corporation may be dissolved involuntarily when it is established that:

- (1) The corporation has failed to file its annual report within the time required by this chapter;
- (2) The corporation procured its articles of incorporation through fraud;
- (3) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (4) The corporation has failed for ninety days to appoint and maintain a registered agent in this State;

- (5) The corporation has failed for ninety days after change of its registered agent to file in the office of the director a statement of such change;
- (6) The corporation has been adjudicated bankrupt; or
- (7) The corporation's articles of incorporation have expired with no attempt by the corporation to renew or extend the articles for two years.

§ -98 Involuntary dissolution, ordered by director. Whenever the director certifies that a corporation has given any cause for dissolution pursuant to section -97, the director may disincorporate the corporation or annul the articles of incorporation and declare the corporation dissolved, after giving notice of the intention to dissolve the corporation by mailing to the corporation at its last known address appearing in the records of the director and by publishing notice of such intention once in each of three successive weeks in a newspaper of general circulation published in the State. If any corporation is declared dissolved any trustee appointed to settle the affairs of the corporation shall pay to the State out of any funds under the control of the trustee, a sum equal to any penalty imposed under section -157. In each case the director shall deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

§ -99 Jurisdiction of court to liquidate assets and affairs of corporation. The first circuit court shall have full power to liquidate the assets and affairs of a corporation:

- (1) Pursuant to action by a member or director when it appears:
 - (A) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and the members are unable to break the deadlock or there are no members having voting rights;
 - (B) That the acts of the directors or those in control of the corporation are illegal or fraudulent;
 - (C) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;
 - (D) That the corporate assets are being misapplied or wasted; or
 - (E) That the corporation is unable to carry out its purposes; or
- (2) Upon application by a corporation to have its dissolution continued under the supervision of the court.

It shall be unnecessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

§ -100 Procedure in liquidation of corporation by court. (a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions; to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take any other action as may be necessary to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Any such liquidating receiver

shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing any such liquidating receiver shall state the powers and duties, which may be increased or diminished at any time during the proceedings.

(b) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

- (1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;
- (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirement;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not subject to any condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court directs;
- (4) Any other assets shall be distributed in accordance with the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted pursuant to this chapter, or where no plan of distribution has been adopted, as the court directs.

(c) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to any receiver, and to any attorney in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(d) A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

§ -101 Qualification of receivers. A receiver shall be an individual resident of this State, or a domestic corporation for profit authorized to act as receiver, and shall give such bond as the court directs with any sureties the court requires.

§ -102 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in any form the court prescribes, proof under oath of their respective claims. If the court requires the filing of claims it shall fix a date, not less than four months from the date of the order, as the last day for the filing of claims and shall prescribe the notice to be given to creditors and claimants of the date so fixed. Prior to such date, the court may extend the time for the filing of

claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

§ -103 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

§ -104 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed pursuant to this chapter, or in case the corporation's property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation and the existence of the corporation shall cease.

§ -105 Filing of decree of dissolution. If the court enters a decree dissolving a corporation, the clerk of the court shall cause a certified copy of the decree to be filed with the director. No fee shall be charged by the director for the filing thereof.

§ -106 Deposits with director of finance. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the director of finance and paid over to such person or to the person's legal representative upon proof satisfactory to the director of finance of right to the proceeds.

§ -107 Survival of tort claims after dissolution. The dissolution of a corporation by (1) the issuance of a certificate of dissolution by the director, (2) a decree of court when the court has not liquidated the assets and affairs of the corporation pursuant to this chapter, or (3) expiration of the corporation's period of duration shall not take away or impair any tort remedy available to or against such corporation for any right or claim existing, or any liability incurred, prior to such dissolution; provided the action or other proceeding thereon is commenced within two years after the date of the incident giving rise to the claim, or the date of such dissolution, whichever is earlier. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If a corporation is dissolved by the expiration of its period of duration, the corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

§ -108 Sale, lease, exchange, or mortgage of assets. A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

- (1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and direct that it be

submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, pursuant to this chapter. At the meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. Such authorization by a vote of members notwithstanding, the board of directors may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or

- (2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Nothing in this section shall require a vote of the members with respect to any sublease, exchange, mortgage pledge, or distribution of assets of the corporation in the normal and continuing course of the corporation's business.

PART VI. FOREIGN CORPORATIONS

§ -121 Admission of foreign corporation. (a) No foreign corporation shall have the right to conduct affairs in this State until it obtains a certificate of authority from the director. No foreign corporation shall be entitled to obtain a certificate of authority under this chapter to conduct in this State any affairs which a corporation organized under this chapter is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws, of the jurisdiction under which it is organized, which govern its organization and internal affairs differ from the laws of this State. Nothing in this chapter shall be construed to authorize this State to regulate the organization or the internal affairs of such a foreign corporation.

(b) A foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this chapter, by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof, or the settlement of claims or disputes;
- (2) Holding meetings of its directors or members or carrying on other activities concerning the corporation's internal affairs;
- (3) Maintaining bank accounts;
- (4) Creating evidences of debt, mortgages, or liens on real or personal property;
- (5) Securing or collecting debts due to it or enforcing any rights in property securing the same;
- (6) Conducting corporate affairs in interstate commerce;
- (7) Granting funds;

- (8) Distributing information to corporate members; or
- (9) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

§ -122 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Does not contain any term which indicates or implies that it is organized for any purpose other than any of the purposes contained in the corporation's articles of incorporation;
- (2) Is not the same as, or deceptively similar to, the name of any profit or nonprofit corporation existing under the laws of this State, or any profit or nonprofit foreign corporation authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered pursuant to the laws of this State; and
- (3) Is transliterated into letters of the English alphabet, if the name is not in English.

§ -123 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this State until it has changed its name to a name which is permitted by the laws of this State.

§ -124 Application for certificate of authority. In order to procure a certificate of authority to conduct affairs in this State, a foreign corporation shall submit an application therefor to the director stating:

- (1) The name of the corporation and the jurisdiction under which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The address of the corporation's proposed registered office of the corporation in this State and the name of its proposed registered agent in this State at such address;
- (5) Any purpose of the corporation which it proposes to pursue in conducting its affairs in this State;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- (7) Any additional information necessary or appropriate to enable the director to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

§ -125 Filing of application for certificate of authority. The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a copy of the corporation's articles of incorporation and any amendments thereto, duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated.

§ -126 Effect of certificate of authority. Upon the issuance of a certificate of authority by the director, a foreign corporation shall be authorized to conduct affairs in this State for any purpose set forth in the corporation's application; provided that this State may suspend or revoke such authority pursuant to this chapter.

§ -127 Conducting affairs without certificate of authority. (a) No foreign corporation which is conducting affairs in this State without a certificate of

authority shall be permitted to maintain any action or proceeding in any court of this State until such corporation has obtained a certificate of authority. No action or proceeding shall be maintained in any court of this State by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this State, until a certificate of authority has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action or proceeding in any court of this State.

(c) A foreign corporation which conducts affairs in this State without a certificate of authority shall be liable to this State, for any year or portion thereof, during which the corporation conducted affairs in this State without a certificate of authority in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all interest and penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover any amount due this State pursuant to this section.

§ -128 **Powers of foreign corporation.** A foreign corporation which has received a certificate of authority under this chapter and until a certificate of revocation or of withdrawal has been issued pursuant to this chapter, shall enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued. Except as otherwise provided by this chapter, such a foreign corporation shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

§ -129 **Registered office and registered agent of foreign corporation.** Any foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

- (1) A registered office which may be the same as its principal office; and
- (2) A registered agent which may be either an individual resident in this State whose business office is identical with the corporation's registered office, a profit or nonprofit domestic corporation, or a profit or nonprofit foreign corporation authorized to transact business or conduct affairs in this State and having an office identical with the corporation's registered office.

§ -130 **Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs in this State may change its registered office or change its registered agent, or both, upon delivering to the director pursuant to section -10 a statement setting forth:

- (1) The name of the corporation;
- (2) The street address of the corporation's current registered office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service may be provided;
- (3) If the address of the corporation's registered office is to be changed, the street address to which the registered office is to be changed; provided that where no specific street address is available, the rural

route post office number or post office box designated or made available by the United States Postal Service may be provided;

- (4) The name of the corporation's registered agent;
- (5) If the corporation's registered agent is to be changed, the name of the successor registered agent;
- (6) That the address of the corporation's registered office and the registered agent, as changed, will be identical; and
- (7) That such change was authorized by resolution duly adopted by its board of directors.

Any registered agent in this State appointed by a foreign corporation may resign as such agent upon filing a written notice thereof with the director who shall mail a copy of the notice to the foreign corporation at its principal office in the jurisdiction in which it is incorporated as shown by its most recent annual report. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of the notice by the director.

§ -131 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this State are amended, the foreign corporation, within thirty days after such amendment becomes effective, shall file in the office of the director a copy of such amendment duly certified by the proper officer of the jurisdiction in which the corporation is incorporated; provided that the filing of itself shall neither enlarge nor alter any purpose which the corporation is authorized to pursue in conducting its affairs in this State nor authorize the corporation to conduct affairs in this State under any other name than the name set forth in its certificate of authority.

§ -132 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this State shall apply with the director for an amended certificate of authority to change the corporate name, or for the purpose of pursuing in this State any other purpose than one set forth in the corporation's prior application for a certificate of authority.

The requirements in respect to the form and contents of such application shall be the same as in the case of an original application for a certificate of authority.

§ -133 Merger of foreign corporation authorized to conduct affairs in this State. Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the jurisdiction in which it is incorporated, and such corporation is the surviving corporation, it shall file within sixty days after such merger becomes effective with the director a copy of the articles of merger duly certified by the proper officer of the jurisdiction in which such statutory merger was effected. It shall not be necessary for such surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State unless the name of such corporation is changed by the merger or the corporation desires to pursue in this State any purpose other than one which it is then authorized to pursue in this State.

§ -134 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. The application for withdrawal shall state:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) That the corporation is not conducting affairs in this State;

- (3) That the corporation surrenders its authority to conduct affairs in this State;
- (4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director; and
- (5) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.

§ -135 **Filing of application for withdrawal.** The application for withdrawal shall be delivered to the director and filed pursuant to section -10. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

§ -136 **Revocation of certificate of authority.** The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by the director when:

- (1) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties imposed pursuant to this chapter;
- (2) The corporation has failed to appoint and maintain a registered agent in this State as required by this chapter;
- (3) The corporation, after change of its registered agent, has failed to file in the office of the director a statement of the change as required by this chapter;
- (4) The corporation has failed to file in the office of the director any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter;
- (5) The certificate of authority of the corporation was procured through fraud practiced upon the State;
- (6) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or
- (7) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

No certificate of authority of a foreign corporation shall be revoked by the director unless the director has given the corporation at least sixty days' notice of the revocation by mail addressed to the corporation's registered office in this State, and the corporation, prior to revocation fails to file an annual report, pay fees or penalties, file the required statement of change of registered agent, file articles of amendment or articles of merger, or correct any misrepresentation.

§ -137 **Issuance of certificate of revocation.** Upon revoking any such certificate of authority, the director shall:

- (1) Issue a certificate of revocation in duplicate;
- (2) File one of such certificates in the director's office; and
- (3) Mail to the corporation at its registered office in this State a notice of revocation accompanied by one of the certificates.

Upon the issuance of the certificate of revocation, the authority of the corporation to conduct affairs in this State shall cease.

PART VII. ENFORCEMENT, FEES, AND PENALTIES

§ -151 **Powers of director.** The director shall have the power and authority reasonably necessary to administer this chapter efficiently, to perform the duties by this chapter imposed upon the director, and to adopt, amend, and repeal rules under this chapter subject to chapter 91.

§ -152 **Appeal from director.** (a) If the director fails to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the director before the same shall be filed in the director's office, the director within thirty days after the delivery thereof to the director, shall deliver written notice of disapproval to the person or corporation and specify the reasons therefor. The person or corporation, domestic or foreign may appeal the director's disapproval to the first circuit court by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written disapproval thereof by the director. The matter shall be tried de novo by the court and the court shall either sustain the action of the director or order the director to take any action the court deems proper.

(b) If the director revokes the certificate of authority of any foreign corporation to conduct affairs in this State, pursuant to this chapter, the foreign corporation may appeal to the first circuit court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this State and a copy of the notice of revocation given by the director. The matter shall be tried de novo by the court, and the court shall either sustain the action of the director or order the director to take such action as the court deems proper.

(c) Appeals from all final orders and judgments entered by the first circuit court pursuant to this section may be taken in the manner provided for civil actions.

§ -153 **Interrogatories by director.** The director may propose to any foreign or domestic corporation, subject to this chapter, and to any officer or director thereof, any interrogatories which are reasonably necessary and proper to enable the director to ascertain whether the corporation has complied with all the applicable provisions of this chapter.

Interrogatories to an officer or director shall be mailed by registered mail to the individual's latest residence address on file in the office of the director. The interrogatories shall be answered within thirty days after their mailing or within any additional time fixed by the director. The answers to the interrogatories shall be full and complete, in writing, and under oath. If the interrogatories are directed to an individual they shall be answered by such individual; and, if directed to a corporation, they shall be answered by its president, vice-president, secretary, assistant secretary, treasurer, or assistant treasurer.

The director need not file any document related to such interrogatories until the interrogatories are answered pursuant to this section, and not then if such answers disclose that the document is not in conformity with this chapter. The director shall certify to the attorney general, for such action as the attorney general deems appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

The director, or designated agent, at any time, may call for the production of the books and papers of any foreign corporation doing business in the State and examine under oath its officers, members, and any others relating to corporate affairs.

§ -154 **Information disclosed by interrogatories.** Interrogatories proposed by the director and the answers thereto shall not be open to public inspection.

The director shall not disclose any facts or information obtained from the interrogatories except insofar as the director's official duty requires any such facts or information to be made public or if the interrogatories or the answers thereto are required for evidence in any criminal proceedings or other action by this State.

§ -155 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation of nonprofit corporation, \$10;
- (2) Certificate of amendment and renewal or extension of charter of nonprofit corporation, \$5;
- (3) Annual exhibit of nonprofit domestic and foreign corporations, \$1;
- (4) Agreement of merger or consolidation of nonprofit corporations, \$5; and
- (5) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$5.

§ -156 Miscellaneous charges. The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 35 cents a page and \$1 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as resident agent of a corporation, \$5, which amount may be recovered as taxable costs by the party to the action causing such service to be made if such party prevails in the action.

§ -157 Penalties imposed upon corporation. Any domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of \$50 to be assessed by the director.

Any domestic or foreign corporation that fails or refuses to truthfully and fully answer, within the time prescribed by this chapter, interrogatories propounded by the director pursuant to this chapter shall be subject to chapter 710, part V.

§ -158 Penalties imposed upon directors and officers. Any director and officer of a foreign or domestic corporation who, within the time prescribed by this chapter, fails or refuses to truthfully and fully answer interrogatories propounded to such director or officer by the director pursuant to this chapter, or who signs any articles, statement, report, application, or other document filed with the director which is known to such officer or director to be false in any material respect, shall be subject to chapter 710, part V.

§ -159 Effect of chapter on existing corporations. The existence of corporations formed or existing on the date of enactment of this chapter or the voting requirements in the charter of incorporation of any such corporations shall not be affected by the enactment of this chapter nor by any change in the requirement or repeal of the laws under which they were formed or created.

Neither the repeals effected by the enactment of this chapter nor the amendment thereof shall impair or take away any existing liability, cause of action, or right against any corporation, its shareholders, directors, or officers incurred prior to the time of such enactment, or amendment.

Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter."

SECTION 2. In printing the new chapter enacted by this Act, the revisor of statutes shall provide a historical note to follow each section in the new

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chapter or prepare a table to precede the new chapter, in the revisor's discretion, indicating which section in this Act is from the Model Nonprofit Corporation Act of the Committee on Corporate Laws of the American Bar Association and the corresponding section number from that edition of the Model Act. In order to prepare the historical notes the revisor shall use the following tables:

CROSS REFERENCE TABLES Model Nonprofit Corporation Act to House Bill

MNPCA (2nd edition)	H.B. No. 347, H.D. 1, S.D. 1	MNPCA (2nd edition)	H.B. No. 347, H.D. 1, S.D. 1
1	1	35	38
2	2	36	39
3	3	37	40
4	4	38	81
5	5	39	82
6	13	40	83
7	7	41	84
8	deleted	42	85
9	deleted	43	86
10	8	44	108
11	31	45	91
12	41	46	93
13	32	47	92
14	33	48	96
15	43	49	94
16	44	50	95
17	61	51	97
18	62	52	98
19	65	53	67
20	63	54	99
21	66	55	100
22	64	56	101
23	68	57	102
24	69	58	103
24A	deleted	59	104
25	45	60	105
26	46	61	106
27	70	62	107
28	34	63	121
29	34	64	128
30	10 (amended)	65	123
31	35	66	122
32	42	67	124
33	36	68	125
34	37	69	126
70	129	85	157
71	130	86	158
72	deleted	87	153
	repeats 10	88	154

73	131	89	151
74	133	90	152
75	132	91	18
76	134	92	19
77	135	93	14
78	136	94	15
79	137	95	16
80	127	96	17
81	11	97	deleted
82	12 (amended)	98	deleted
83	155	99	deleted
84	156	100	deleted

House Bill

to

Model Nonprofit Corporation Act

MNPCA

(2nd edition)

H.B. No. 347,

H.D. 1

S.D. 1

MNPCA

(2nd edition)

H.B. No. 347,

H.D. 1,

S.D. 1

1	1	19	92
2	2	31	11
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4	4	33	14
5	5	34	28
6			& 29
7	7	35	31
8	9	36	33
9	10	37	34
10	30 (amended)	38	35
11	81	39	36
12	82 (amended)	40	37
13	6	41	12
14	93	42	32
15	94	43	15
16	95	44	16
17	96	45	25
18	91	46	26
61	17	105	60
62	18	106	61
63	20	107	62
64	22	108	44
65	19	121	63
66	21	122	65
67	53	123	66
68	23	124	67
69	24	125	68
70	27	126	69
81	38	127	80
82	39	128	64
83	40	129	70
84	41	130	71
85	42	131	73
86	43	132	75

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91	45	133	74
92	47	134	76
93	46	135	77
94	49	136	78
95	50	137	79
96	48	151	89
97	51	152	90
98	52	153	87
99	54	154	88
100	55	155	83
101	56	156	84
102	57	157	85
103	58	158	86
104	59		

SECTION 3. This Act shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any proceedings which were begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date.

SECTION 4. Act 167, Session Laws of Hawaii 1983, is amended by amending section 24 to read as follows:

“SECTION 24. This Act shall take effect on July 1, [1986.] 1987.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1987.

(Approved June 6, 1985.)

ACT 271

S.B. NO. 59

A Bill for an Act Relating to Immunization for School Attendance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 298-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No child shall attend [be admitted to] any school [for the first time] in the State unless such child presents to the appropriate school official certification from a licensed physician stating that the child has received immunizations against communicable diseases as required by the department of health.”

SECTION 2. Section 298-43, Hawaii Revised Statutes, is amended to read:

“§298-43 **Provisional entrance to school.** (a) A child may enter school provisionally upon submitting written proof from a licensed physician or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further certification showing that the required immunizations have been completed must be submitted to the appropriate school official no later than three months after the child first entered the school.

(b) Provisional entrance to school may be suspended by the department of health when there is danger of an epidemic from any of the communicable diseases for which immunization is required."

SECTION 3. Chapter 298, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§298- Emergency measures. The department of health may implement emergency measures to refuse, modify, or limit attendance at any school in the State pursuant to section 321-1 if it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease."

SECTION 4. Section 321-1, Hawaii Revised Statutes, is amended to read as follows:

"§321-1 General powers of the department. The department of health shall have general charge, oversight, and care of the health and lives of the people of the State. It shall have authority in matters of quarantine and other health matters and may declare and enforce quarantine when none exists and modify or release quarantine when it is established. When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, it may refuse, modify, or limit attendance at any school in the State. When in the judgment of its director, there is deemed to be a potential health hazard, the department, through its director, may take precautionary measures to protect the public through the imposition of an embargo or the detention of products regulated by the department, or the removal of products regulated by the department from the market, or the declaration of quarantine; provided that the director must find evidence of a health hazard within seventy-two hours of the action taken or rescind the action. The director shall make public the findings. All county health authorities, sheriffs and police officers, and all other officers and employees of the State, and every county thereof, shall enforce the rules [and regulations] of the department. All such powers in health matters as have been or may be conferred upon any county shall be concurrent with those of the department. It shall make, through its director, an annual report to the governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as it may deem of special interest.

The department shall also, during the prevalence of any severe pestilence or epidemic, publish a weekly report of the public health."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on August 1, 1985.

Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 272

S.B. NO. 64

A Bill for an Act Relating to Domiciliary Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to place all licensing functions relative to domiciliary care facilities in one state agency, the department of

health. The objective is to increase cost efficiency in carrying out the licensing function in regard to domiciliary care facilities. This Act combines within one licensed group, all facilities currently licensed as adult family boarding homes, family care homes, residential care facilities, and independent group residences. This new licensing group is to be called adult residential care homes.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§321- Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Adult residential care home” means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, but who do not need the services of an intermediate care facility.”

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In areas zoned for residential use, neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities licensed by the State as provided for under [sections] section 321-15.6[, 346-91, or 346-122] for persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons[, whether or not such persons], who are not related[, and] to the home operator or facility staff; provided that such group living facilities meet all applicable county requirements, not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements. For purposes of this section, “elderly person” means an elderly person as defined under section 359-52; “handicapped person” means a handicapped individual as defined under section 515-2; “developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333E-2; and “totally disabled person” means a person totally disabled as defined under section 235-1.”

SECTION 4. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

“§321-11 Subjects of health regulations, generally. The department of health may make such regulations as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of such bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead

- human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
 - (9) Laundries, and the laundering and sterilization of all articles of linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of such laundering and sterilization by those conducting any of such businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
 - (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, special treatment facilities and programs, home health agencies, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution";
 - (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
 - (12) Laboratories;
 - (13) Any place or building where noisome or noxious trades or manufactures are carried on, or intended to be carried on;
 - (14) Milk;
 - (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
 - (16) Pig and duck ranches;
 - (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
 - (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
 - (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
 - (20) Devices as defined in section 328-1;
 - (21) Sources of ionizing radiation;

- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, revaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such objection shall be recognized when, in the opinion of the department there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department may be lethal, poisonous, noxious, or dangerous to human life; and
- (25) Ambulances and ambulance equipment.

The department may require such certificates, permits, or licenses as it may deem necessary adequately to regulate the conditions or businesses referred to in this section."

SECTION 5. Section 321-15.6, Hawaii Revised Statutes, is amended to read as follows:

"§321-15.6 [Care homes; licenses; temporary permits; training and regulation.] Adult residential care homes. (a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein; provided that the department may issue a temporary permit to operate [a] an adult residential care home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months.

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of facilities [regulated;] providing domiciliary care; provided that in areas zoned for residential use, the rules shall allow group living in [a family] an adult residential care home of up to five persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons[, whether or not such persons] who are not related[, and] to the home operator or facility staff. For purposes of this section, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

(c) The department shall provide for the training of operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and [in coordination with the department of social services and housing,] to ensure that adult residential care home operators shall have the needed skills to provide proper care and supervision in a home environment (i.e., first aid, cardiopulmonary resuscitation, and nutrition training as a minimum). Such training shall be provided at the expense of the State.

(d) Rules adopted under this section shall be enforced by the director.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities."

SECTION 6. Section 321-15.7, Hawaii Revised Statutes, is amended to read as follows:

"[]§321-15.7[] Penalty. Any person who intentionally operates an adult residential care home without a license shall be guilty of a misdemeanor."

SECTION 7. Section 346-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "domiciliary care" to read:

""Domiciliary care" means the provision of twenty-four-hour living accommodations and personal care services and appropriate medical care, as needed, to adults unable to care for themselves by persons unrelated to the recipient in private residences or other facilities. ["Domiciliary care" is the type of care provided by licensed adult family boarding homes, family care homes, and residential care homes.] "Domiciliary care" does not include the provision of rehabilitative treatment services provided by special treatment facilities."

2. By deleting the definition of "adult family boarding home".

[""Adult family boarding home" means any family home providing twenty-four hour living accommodations for a fee to adults unrelated to the family, who are in need of minimal assistance and supervision in their living activities, and includes other similar institutions, which home accommodates group living by up to eight persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff. For purposes of this definition, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1.""]

SECTION 8. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of social services and housing and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

(1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, social services; or

- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any and all forms of public assistance, food stamps, medical assistance, or social services, including but not limited to disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any and all aspects of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, such determination to include but not be limited to verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services, needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any and all information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs, which provide assistance, in cash or in kind, for services, directly to individuals on the basis of need; and certification of receipt of aid to families with dependent children to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
- (6) Employees acting within the scope and course of their employment of such recognized social welfare organizations as may be approved by the department; and
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an [adult boarding home, or] adult day care center, including but not limited to disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations."

SECTION 9. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The director shall pursuant to chapter 91 determine the rate of payment for the different levels of domiciliary care provided to recipients eligible for Federal Supplemental Security Income or public assistance in accordance with state standards.

The rate of payment at which level a recipient enters an adult [family boarding home or a] residential care home licensed pursuant to [sections 346-91 and] section 321-15.6[,] shall remain the same for as long as the recipient resides in that adult [family boarding home or] residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; provided further that if the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility. The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult [family boarding home,] residential care home[,] or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care."

SECTION 10. Section 346-64, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) "Substantially less" as the term is used in this section means not more than sixty per cent of the cost of the lowest level of care in an adult [family boarding home or a] residential care home."

SECTION 11. Subpart B of part IV of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 12. Part VI of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect the rights and duties which matured, penalties which were incurred, or proceedings which were begun, prior to the effective date of this Act.

SECTION 14. All rights, powers, functions, and duties of that portion of the department of social services and housing which relate to adult family boarding homes in regard to licensing and clearinghouse functions are transferred to the department of health.

All appropriations, position counts, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of social services and housing relating to the functions transferred to the department of health shall be transferred with the functions to which they related.

SECTION 15. All facilities that hold an adult family boarding home license or a family care home license shall upon the date of expiration of the current license be placed into one of the following transitional categories:

Category one, which shall include all facilities which have the requisite level of operator skills and physical environment requirements, as determined by the department of health to receive a license to operate an adult residential care home.

Category two, which shall include all facilities in which either the operator skills, or the physical environment, or both, are not up to standard, but whose operators desire to enter category one after appropriate upgrading; provided that any facility previously licensed by the department of social services and housing shall not have to meet the physical requirements of the department of health so long as all residents in the home remain ambulatory. These facilities shall accept only those new patients who do not need trained medical care. If a facility initially contains a resident needing trained medical care, it shall upgrade within one year after the effective date of this Act or transfer such residents promptly. If a facility fails to obtain an adult residential care home license within two years after the effective date of this Act, it shall revert to category three.

Category three, which shall include all facilities which are not up to adult residential care home licensing standards and whose operators choose not to be upgraded to the required level. These facilities may obtain an appropriately waived adult residential care home license pursuant to administrative rules of the department of health, as long as no resident has, or develops a need for, trained medical care. Such residents shall be transferred immediately to another facility. These facilities shall not accept new residents.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$127,202, or so much thereof as may be necessary for fiscal year 1986-1987, to implement the provisions of this Act.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 18. This Act shall take effect on July 1, 1986, except that section 15 shall take effect upon approval.

(Approved June 7, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Expenditure of Public Money and Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-43, Hawaii Revised Statutes, is amended to read as follows:

“§103-43 Mandatory purchase of Hawaii products. In any expenditure of public funds, a governmental agency shall review purchase and design specifications of public works contracts including repair and maintenance requirements for products and purchase any required product from the Hawaii products list established under section 103-42 where such products are available, provided the products meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable

general excise tax and use tax of a similar non-Hawaii product by more than three per cent, where Class I Hawaii products are involved, or five per cent where Class II Hawaii products are involved, or ten per cent where Class III Hawaii products are involved.

Where a package bid or purchase contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent, or ten per cent where similar Class I, Class II, or Class III Hawaii product items have been bid or offered by another party pursuant to the preferences stated above. The lowest total bid, taking into consideration the above preferences, shall be awarded the contract but the contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of such preferences.

Notwithstanding the provisions of the preceding paragraphs, an additional five per cent preference shall be applicable to Hawaii products manufactured by nonprofit corporations and public agencies operating sheltered workshops as certified by the department of labor and industrial relations for physically or mentally handicapped persons. The state comptroller shall adopt rules under chapter 91 to require a governmental agency to give an additional five per cent preference to the purchase of products manufactured by nonprofit corporations or public agencies operating sheltered workshops consistent with this section."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

ACT 274

S.B. NO. 379

A Bill for an Act Relating to the Motor Carrier Safety Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-209, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) A fee of no more than [\$7] \$12.00 shall be charged by a motor carrier inspection station for each safety inspection performed."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

ACT 275

S.B. NO. 461

A Bill for an Act Relating to Shoplifting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CIVIL LIABILITY FOR SHOPLIFTING**

“§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Mercantile establishment” means any place where merchandise is displayed, held, or offered for sale at retail.

“Merchandise” means all things movable and capable of manual delivery.

“Owner” means any person who owns or operates a mercantile establishment or the agents or employees of that person.

“Shoplifting” means the specific type of theft offense defined in section 708-830(8).

§ -2 Damages and penalties. (a) Any person who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner and with the intention of converting such merchandise to the individual’s own use without having paid the purchase price thereof, who alters the price indicia of such merchandise, or who takes any other action that constitutes the offense of shoplifting, shall be civilly liable to the owner of the mercantile establishment for either:

- (1) Actual damages and a civil penalty of \$75, if a written demand is made pursuant to subsection (e), for the actual damages and this civil penalty; or
- (2) Actual damages, a civil penalty of \$75, and an additional civil penalty of not less than \$50 nor more than \$500, to recover the costs and expenses of bringing a civil suit, as determined by the court.

(b) A conviction for theft under section 708-830 to 708-833 is not a condition precedent to the maintenance of a civil action under this section.

(c) A civil liability under this section is not limited by another law that limits liability of parents or minor children.

(d) An action for recovery of damages and the assessment of the civil penalties under this section may be brought in any court of competent jurisdiction, including the small claims division of a district court.

(e) The fact that an owner of a mercantile establishment may bring an action against an individual for damages as provided in this section shall not limit the right of the owner of a mercantile establishment to demand, in writing, prior to the commencement of any legal action, that a person who is liable for damages under this section remit said damages and the amount of civil penalty allowed in section -2.

(f) Judgments, but not claims, arising under this section may be assigned.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

A Bill for an Act Relating to Physical Therapy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PHYSICAL THERAPY PRACTICE ACT**

§ -1 **Definitions.** As used in this chapter:

“Board” means the board of physical therapy.

“Foreign-trained person” means a person who has completed an educational program or course of study in physical therapy in an institution located outside the United States.

“Physical therapist” means a person who is licensed to practice physical therapy in this State.

“Physical therapy” or “physical therapy services” means the examination, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction, pain from injury, disease, and any other physical or mental condition as performed by a physical therapist appropriately licensed under this chapter. It includes but is not limited to:

- (1) Administration, evaluation, modification of treatment, and instruction involving the use of physical measures, activities, and devices, for preventive and therapeutic purposes; provided that should the care or treatment given by a physical therapist contravene treatment diagnosed or prescribed by a medical doctor, osteopath, or as determined by the board, the physical therapist shall confer with the professional regarding the manner or course of treatment in conflict and take appropriate action in the best interest of the patient; and
- (2) The provision of consultative, educational, and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction, or pain.

“Practice of physical therapy” includes, but is not limited to, the use of the following:

- (1) Physical agents, such as heat, cold, water, air, sound, compression, light, electricity, and electromagnetic radiation;
- (2) Exercise with or without devices, joint mobilization, mechanical stimulation; biofeedback; postural drainage; traction; positioning, massage, splinting, training in locomotion, and other functional activities with or without assisting devices; and correction of posture, body mechanics, and gait;
- (3) Tests and measurements of: muscle strength, force, endurance, and tone; joint motion, mobility, and stability; reflexes and automatic reaction; movement skill and accuracy; sensation and perception; peripheral nerve integrity; locomotor skill, stability, and endurance; activities of daily living; cardiac, pulmonary, and vascular functions; the fit, function, and comfort of prosthetic, orthotic, and other assisting devices; posture and body mechanics; limb strength, circumference, and volume; thoracic excursion and breathing patterns; vital signs; nature and locus of pain and conditions under which pain varies; photosensitivity; and the home and work physical environments.

§ -2 **Practice of physical therapy; qualifications.** (a) No person shall practice physical therapy gratuitously or for pay, offer to practice physical therapy, offer physical therapy or physical therapy services, or represent, advertise, or announce, either publicly or privately, that the person is a physical therapist or physiotherapist, unless the person is appropriately licensed under this chapter.

(b) No person shall use, in connection with the person's name or business, the words "licensed physical therapist", "physical therapist", or "physiotherapist", or the letters "RPT", "LPT", "PT", or any other words, letters, abbreviations, or insignia indicating or implying that the person is a physical therapist, unless the person is appropriately licensed under this chapter.

(c) No person shall practice as a physical therapist except as licensed pursuant to this chapter and under the administrative rules and regulations determined by the board in accordance with chapter 91.

§ -3 Exemptions. (a) Nothing in this chapter shall be construed to prohibit any person from acting within the scope of a license issued to that person under any other law; provided that the person shall not claim to be a physical therapist or that the person is performing physical therapy or physical therapy services.

(b) Nothing in this chapter shall be construed to prohibit students in an educational program for physical therapists or physical therapist support personnel from participating in activities that are conducted as part of the educational program and are under the guidance and direct supervision of a licensed physical therapist.

(c) A person licensed to practice physical therapy by any other state or by a foreign country may practice physical therapy in this State if the person is part of an educational demonstration or instructional program or seminar sponsored by an educational institution, hospital, medical care program, the Hawaii Chapter of the American Physical Therapy Association, or any other similar person or group, for the duration of the program or seminar and confined to the purpose of the program or seminar.

§ -4 Board of physical therapy; establishment, appointment, membership.

(a) There is established within the department of commerce and consumer affairs for administrative purposes the board of physical therapy. The board shall consist of five members appointed by the governor pursuant to section 26-34. Three members shall be physical therapists. The fourth member shall be a consumer who has demonstrated interest in community health concerns prior to appointment. The fifth member shall be a physician or surgeon with a permanent license under chapters 453 or 460, or a dentist with a permanent license under chapter 448. All members shall be at least eighteen years of age and residents of the State.

(b) The terms for the physical therapist members first appointed shall be as follows: one shall serve for a term of four years, one shall serve for a term of three years, and one shall serve for a term of two years.

(c) Each physical therapist member of the board shall possess a valid permanent license as a physical therapist in this State and shall have, after graduation from a school of physical therapy, at least three years of full-time experience or the equivalent in any of the following areas or in any combination of the following: clinical physical therapy services, administration in physical therapy or related health fields, or teaching in an educational program to prepare practitioners of physical therapy.

(d) The governor may fill each vacancy for a physical therapist member from a recommendation list of at least two or more persons submitted by the Hawaii Chapter of the American Physical Therapy Association.

(e) Members shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

§ -5 Meetings; general duties. (a) The board shall hold meetings semiannually and at such other times deemed necessary by a quorum of the board. A quorum of the board shall be three members.

(b) In addition to any other powers and duties prescribed under this chapter, the board may:

- (1) Adopt, amend, or repeal rules in accordance with chapter 91 for the purposes of this chapter;
- (2) Recommend the denial or withdrawal of accreditation from educational programs for failure to meet prescribed standards;
- (3) Conduct hearings upon charges calling for discipline of a licensee or denial, suspension, limitation, or revocation of a license;
- (4) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
- (5) Enforce this chapter and the rules adopted pursuant thereto; and
- (6) Keep a record of all its proceedings.

§ -6 Permanent licenses. (a) An applicant for a permanent license to practice physical therapy shall submit proof of educational qualifications and any other information required by the board on an application form supplied by the board. The board shall maintain a current list of schools of physical therapy which are approved by an agency recognized by the United States Department of Education or Council on Postsecondary Accreditation.

In the case of foreign-trained persons, the board shall establish procedures for assessing the education and training to determine in each case whether it is equivalent to that of applicants trained in the United States.

(b) Except as provided under section -7, every applicant for a permanent license who meets the qualifications established by the board shall take an examination administered by the board or an examination administered by a testing agency selected by the board. The board shall establish the schedule for examinations, determine the passing score, and notify applicants of the results of examinations according to rules adopted by the board.

§ -7 Reciprocity. The board shall establish procedures for waiving the examination requirement for applicants who have already taken and passed an equivalent examination or who have been licensed in another state with standards equivalent to or higher than those in Hawaii.

§ -8 License without necessity of examination or meeting the education requirement. All persons holding licenses as physical therapists from the department of health and in practice on the day prior to the effective date of this Act shall be licensed under this chapter on the effective date of this Act without necessity of examination or meeting the education requirement.

§ -9 Temporary license. The board shall establish rules for issuing temporary licenses to applicants for permanent licenses either under section -6 or -7. The rules adopted by the board shall include provisions concerning the length of time for which temporary licenses are valid, the renewal of such licenses, and the need for supervision by a physical therapist holding a permanent license.

§ -10 Biennial renewal; failure to renew. The biennial renewal fee shall be paid to the department of commerce and consumer affairs on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license. A forfeited license may be restored upon written application within one year from the date of forfeiture and the payment of the delinquent fee plus an amount equal to fifty per cent of the delinquent fee.

§ -11 Fees. The fees charged under this chapter shall be adopted by the board in accordance with chapter 91. In determining the level of these fees, the board shall take into consideration the costs of administering this chapter.

§ -12 Revocation, suspension, probation of license. (a) Any license issued under this chapter may be revoked or suspended, by the board at any time for any one or more of the following acts or conditions on the part of the holder of the license:

- (1) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (2) Wilfully betraying patient confidentiality;
- (3) Making an untruthful and improbable statement in advertising one's practice of business;
- (4) False, fraudulent, or deceptive advertising;
- (5) Being habituated to the excessive use of drugs or alcohol or being or having been addicted to, dependent on, or a habitual user of, a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (6) Practicing physical therapy while the ability to practice is impaired by alcohol, drugs, or mental instability;
- (7) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (8) Professional misconduct, gross carelessness, or manifest incapacity in the practice of physical therapy;
- (9) Conduct or practice contrary to the ethics of the profession of physical therapists in the United States;
- (10) Violation of the conditions or limitations upon which a temporary license is issued or an exemption is granted; or
- (11) Violation of this chapter or the rules adopted pursuant thereto.

(b) All actions under this section shall be taken in accordance with chapter 91.

(c) Any license revoked or suspended may be restored in full by the board but not until at least one calendar year has elapsed from the date of revocation or suspension. To restore a license, the board may require further education or training or require proof of competence in performance.

(d) In lieu of revoking or suspending a license, the board may place the licensee on probation, the terms of which may require observation of the licensee by an appropriate group or society of physical therapists.

§ -13 Penalty. Any person who violates or fails to comply with any of the provisions of this chapter shall be fined not more than \$1,000 for each violation."

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, factory built housing advisory board, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of practicing psychologists, board of detectives and guards, real estate

commission, board of veterinary examiners, and speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“**§26H-4 Repeal dates.** [(a) The following chapter is hereby repealed effective December 31, 1984:

(1) Chapter 436D (Board of Acupuncture)

31, 1985: [(b)] (a) The following chapters are hereby repealed effective December

(1) Chapter 460 (Board of Osteopathic Examiners)

(2) Chapter 461 (Board of Pharmacy)

(3) Chapter 455 (Board of Examiners in Naturopathy)

(4) Chapter 463E (Podiatry)

(5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(6) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(7) Chapter 448H (Elevator Mechanics Licensing Board)

(8) Chapter 462A (Board of Pilot Commissioners)

31, 1986: [(c)] (b) The following chapters are hereby repealed effective December

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 460J (Pest Control Board)

(5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

31, 1987: [(d)] (c) The following chapters are hereby repealed effective December

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

(4) Chapter 471 (Board of Veterinary Examiners)

(5) Chapter 441 (Cemeteries and Mortuaries)

(6) Chapter 463 (Board of Detectives and Guards)

31, 1988: [(e)] (d) The following chapters are hereby repealed effective December

(1) Chapter 465 (Board of Certification for Practicing Psychologists)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 359L (Factory Built Housing Advisory Board)

(4) Chapter 468B (Solar Energy Device Dealers)

(5) Chapter 468K (Travel Agencies)

(6) Chapter 373 (Commercial Employment Agencies)

(7) Chapter 442 (Board of Chiropractic Examiners)

(8) Chapter 448 (Board of Dental Examiners)

31, 1989: [(f)] (e) The following chapters are hereby repealed effective December

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)
[g] (f) The following chapters are hereby repealed effective December 31, 1990:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)[.]

(g) The following chapter is hereby repealed effective December 31, 1991:

- (1) Chapter (Board of Physical Therapy)."

SECTION 4. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of health with the approval of the governor, may prescribe such rules as it deems necessary for the public health or safety respecting:

- (1) The occupations or practices of midwives, laboratory directors, laboratory technicians, [physical therapists,] tattoo artists, and sanitarians;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for such occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding such certificates or permits; or
- (4) The ground or causes for revoking or suspending such certificates or permits.

Such rules shall have the force and effect of law.”

SECTION 5. All administrative rules of the department of health concerning the licensure and regulation of physical therapists shall continue in effect until modified or repealed by the board of physical therapy.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 1986.

(Approved June 7, 1985.)

A Bill for an Act Relating to Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new section to part 5 of article 3 to be appropriately designated and to read as follows:

“§490:3-5 **Dishonored check; action for treble damages; procedures.**

(a) In any action against a person who makes any check, draft, or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to \$100 or triple the amount for which the check, draft, or order is drawn, whichever is greater; provided that damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft, or order, and may be awarded only if:

- (1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than ten days before commencing the action; and
- (2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

The written demand shall include notice that if the money is not paid within ten days, triple damages may be incurred by the defendant. The plaintiff shall provide the defendant written notice of demand for payment by registered mail at the last known address of the defendant with a request for a return receipt and marked "deliver to addressee only".

(b) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs.

(c) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages; provided the court or jury shall render judgment against defendant for not less than the amount of the dishonored check plus incurred court and service costs.

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 278

S.B. NO. 1413

A Bill for an Act Relating to Public Agency Meetings and Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92-3, Hawaii Revised Statutes, is amended to read as follows:

"§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5;¹ provided [further] that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule."

SECTION 2. Section 92-4, Hawaii Revised Statutes, is amended to read as follows:

"§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present[.]; provided the affirmative vote constitutes a

majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. [The vote of each member on the question of holding a meeting closed to the public and the] The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting."

SECTION 3. Section 92-5, Hawaii Revised Statutes, is amended to read as follows:

"§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- [(1)] (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- [(2)] (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- [(3)] (4) To consult with the board's attorney[;] on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- [(4)] (5) To investigate proceedings regarding criminal misconduct; and
- [(5)] (6) To consider sensitive matters related to public safety or security.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power."

SECTION 4. Section 92-7, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The board shall give written public notice of any regular, special, or rescheduled meeting[.], or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting[.], and in the case of an executive meeting the purpose shall be stated.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major

importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time."

SECTION 5. Section 92-12, Hawaii Revised Statutes, is amended to read as follows:

"§92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

(d) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

- (1) There is likelihood that the party bringing the action will prevail on the merits;
- (2) Irreparable damage will result if a stay is not ordered;
- (3) No irreparable damage to the public will result from the stay order;
and
- (4) Public interest will be served by the stay order."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1985.)

Note

1. Prior to amendment, "," appeared here.

ACT 279

H.B. NO. 28

A Bill for an Act Relating to Evidence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 626, Hawaii Revised Statutes, is amended by adding a new rule to the Hawaii Rules of Evidence to be appropriately designated and to read as follows:

"Rule Videotaping the testimony of a child who is a victim of an abuse offense or a sexual offense. (a) This rule applies only to a proceeding in the prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than sixteen years of age at the time of the offense, and applies only to the statements or testimony of that child.

(b) The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

- (1) No attorney of either party was present when the statement was made;

- (2) The recording is both visual and aural and recorded on film or videotape or by other electronic means;
- (3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and unaltered;
- (4) The statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) Every voice on the recording and every person present at the interview is identified;
- (6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify for or be cross-examined by either party and every other person present at the interview is available to testify;
- (7) The defendant or the attorney for the defendant is afforded discovery of the recording before it is offered into evidence; and
- (8) The child is present to testify.

(c) If the electronic recording of the statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

(d) On the motion of the attorney for any party, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit equipment in the courtroom to be viewed by the court, the prosecuting attorney, defense attorney, the defendant, and the trier of fact in the proceeding. During the child's testimony, persons necessary to operate the equipment and such other persons as determined by the court shall be present in the room with the child. Attorneys for the defendant and for the State may be present in the room with the child. Only the attorneys or the judge may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall supervise the video monitoring to ensure that the defendant can see the victim while testifying, but that the defendant's presence is not unduly emphasized to the child.

(e) If the court orders the testimony of the child to be taken under subsection (d) the child may not be required to testify in court at the proceeding for which the testimony was taken."

SECTION 2. This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

SECTION 1. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

“§706-662 Criteria for sentence of extended term of imprisonment for felony. The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.

- (1) Persistent offender. The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has previously been convicted of two felonies committed at different times when he was eighteen years of age or older.
- (2) Professional criminal. The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) Dangerous person. The defendant is a dangerous person whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusion that his criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such condition makes him a serious danger to others.
- (4) Multiple offender. The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted. The court shall not make such a finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) Offender against elderly [or], handicapped[.], or minor under the age of eight. The defendant is an offender against the elderly [or], handicapped, or minor under the age of eight whose commitment for an extended term is necessary for the protection of the public. The court shall not make such a finding unless:
 - (a) The defendant attempts or commits any of the following crimes: murder, a sexual offense which constitutes a felony under part V of chapter 707, robbery, felonious assault, burglary, and kidnapping; and
 - [(a)] (b)¹ The defendant, in the course of committing or attempting to commit the crime, inflicts serious bodily injury upon a person who is [sixty]:

- (i) Sixty years of age or older; [or against a person who is blind,]
 - (ii) Blind, a paraplegic, or a quadraplegic; [and] or
 - (iii) Eight years of age or younger; and
- [(b)] (c) Such disability is known or reasonably should be known to the defendant. [; and
- (c) The defendant attempts or commits any of the following crimes: murder, rape, robbery, felonious assault, burglary and kidnapping.]”

SECTION 2. This Act shall not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

Note

- 1. Underscoring missing.

A Bill for an Act Relating to Payment for Goods and Services Under Section 103-10, Hawaii Revised Statutes, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-10, Hawaii Revised Statutes, is amended to read as follows:

“§103-10 Payment for goods and services. Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid [no earlier than thirty days, except with the approval of the comptroller, and] no later than forty-five calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services[, whichever is later]. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at the effective rate of twelve per cent simple interest per year commencing on the forty-fifth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the warrant. This section shall not apply in those cases where delay in payment is due to: a bona fide dispute between the State or any county and the contractor concerning the services or goods contracted for; a labor dispute; a power or mechanical failure; fire; acts of God; or any similar circumstances beyond the control of the State or any county. Where the time of payment is contingent upon the receipt of federal funds, or federal approval, the solicitation of bids for contracts shall clearly state that payment is contingent upon such conditions. If the solicitation for bids contains the warning and a contract is awarded in response to the solicitation then interest will not begin to accrue upon any unpaid voucher until the forty-fifth day following receipt by the State of the contractor’s statement or the

thirtieth day following receipt of the federal funds or approval, whichever occurs later, and will end as of the date of the warrant. All payments for goods delivered or services performed to a state agency which are less than \$100 shall be made from the petty cash funds of the agency; provided that the comptroller may establish a higher threshold for petty cash payments and may grant exceptions to this requirement."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1985.

(Approved June 7, 1985.)

ACT 282

H.B. NO. 1231

A Bill for an Act Relating to Environmental Quality.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 27-21.6, Hawaii Revised Statutes, is amended to read as follows:

"§27-21.6 Functions reassigned to the counties. The following functions are hereby reassigned to the several counties:

- (1) The medical care of inmates of county jails;
- (2) The rendering of medical investigatory services requested by the police;
- (3) Physical examinations of employees to the extent that such functions had been performed immediately prior to the adoption of Act 97, Session Laws of Hawaii 1965; [and]
- (4) The care and treatment of county workers' compensation cases to the extent that such functions [have] had been performed immediately prior to the adoption of Act 97, Session Laws of Hawaii 1965[.]; and
- (5) The regulation of the design, construction, and operation of individual wastewater systems and private wastewater treatment works, provided that the transfer of this function to each county shall take place on the date that the expenditure of start-up funds is made by the State to such county for this purpose."

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Regulation of sewerage and wastewater treatment systems. Effective July 1, 1987, counties may implement programs for the regulation of sewerage and wastewater treatment systems in their respective county jurisdictions; except that a county program shall be implemented by that county immediately upon receipt of state funds pursuant to section 27-21.6(5). Each county is authorized to adopt ordinances and rules on the design, construction, and operation of sewerage and treatment systems and shall submit to the director of health, for approval, a full and complete description of the program it proposes to establish and administer under county laws."

SECTION 3. Section 342-19, Hawaii Revised Statutes, is amended to read as follows:

“§342-19 Effect of laws, ordinances, and rules[, and regulations]. (a) All laws, ordinances, and rules[, and regulations] inconsistent with this part shall be void and of no effect.

(b) Any county may adopt ordinances[, and rules[, and regulations] governing any matter relating to environmental quality control which is not governed by a rule [or regulation] of the department adopted pursuant to this part; provided that any county ordinance[, or rule[, or regulation] relating to environmental quality control shall be void and of no effect as to any matter regulated by a rule [or regulation] of the department upon the adoption thereof. [except as provided in (c).

(c) Any county desiring to administer its own laws, ordinances, rules and regulations on the design, construction and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of such county provide adequate or more stringent authority to carry out the described program. The director shall approve each such submitted program unless he determines that either adequate authority does not exist or the proposed standards are not equal to or are less stringent than those of the department.]”

SECTION 4. Section 342-31, Hawaii Revised Statutes, is amended by adding the following new definitions to be appropriately inserted and to read as follows:

“Individual Wastewater System” means a facility which dispose of treated or untreated domestic wastewater generated from dwelling units or other sources generating domestic wastewater of similar volume and strength such as: (1) developments of density not greater than one dwelling unit per 5,000 square feet of ultimate development or (2) developments with buildings other than dwellings but involving the generation of domestic wastewater at a rate of less than 400 gallons per day per 5,000 square feet of ultimate development. Individual wastewater systems include, but are not limited to, cesspools, septic tanks and household aerobic units.

“Private wastewater treatment works” means any plant, facility, or equipment that is not owned or operated by a federal, state, or county authority and used in the treatment of wastewater including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment, and its associated collection system and disposal system, excluding individual wastewater systems.”

SECTION 5. Section 342-32, Hawaii Revised Statutes, is amended to read as follows:

“§342-32 Powers and duties, specific. (a) In addition to any other power or duty prescribed by law and in this part, the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may:

- (1) Establish by rule [or regulation] water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions;
- (2) Appoint a master or masters to conduct investigations and hearings;

- (3) Consult with and advise any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters;
- (4) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the purity and potability of water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;
- (5) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution;
- (6) Consult and advise persons intending to alter or to extend any system of drainage, sewage, or water supply;
- (7) Require complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of or alteration of any such works, system, or plant which contain the information requested by the director in the form prescribed by him; which plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner;
- (8) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution;
- (9) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution;
- (10) Require the owner or operator of any effluent source or any discharger of effluent to (A) establish and maintain records; (B) make reports; (C) install, use, and maintain monitoring equipment or methods; (D) sample effluent and state waters; and (E) provide such other information as the department may require;
- (11) Require any [permittee] person, operator or holder of a variance or person subject to pretreatment requirements to permit the director or his authorized representative upon the presentation of his credentials:
 - (A) To enter [upon permittee's] the premises of the person, operator or variance [holder's premises] holder or premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance or pretreatment requirements; [and]
 - (B) To inspect any monitoring equipment or method required in the [permit] plans, specifications or variance or by pretreatment requirements; and
 - (C) To sample any discharge of pollutants or effluent; and
- (12) Publish an annual report on the quality of the state waters, which annual reports shall include, but not be limited to:
 - (A) A description of sampling programs and quality control methods procedures;

- (B) Statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations);
- (C) Discussion of the results of these analyses to the extent that the implications can be understood by the general public;
- (D) Recommendations for the modification of the water quality monitoring program to enhance its effectiveness for maintaining high standards of water quality in the State; and
- (E) A note of any significant changes in the quality of state waters.

(b) In addition, until such time that each county assumes complete administration of the wastewater treatment system program, the director shall regulate individual wastewater systems and private wastewater treatment works in those counties that have not assumed these functions pursuant to section 27-21.6(5) by imposing requirements, including the two following requirements:

- (1) No individual wastewater system or private wastewater treatment work shall be constructed unless the plans and specifications for the system are submitted to and approved in writing by the director; and
- (2) Following its construction, but prior to its operation, individual wastewater systems and private wastewater treatment works shall be inspected and approved by the director.

The department is authorized to exercise its professional judgement as to the appropriateness and adequacy of wastewater treatment systems on a case by case basis."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. Until such time each county shall assume complete administration of the wastewater treatment system program under sections 1 and 2 of this Act, the department of health shall control and administer wastewater treatment systems as follows:

1. Preamble, Purpose, Definitions

1.1 Preamble

The State Department of Health seeks to insure that the disposal of wastewater does not contaminate or pollute any drinking water supply, the waters of any bathing beaches, shorewaters, ponds, lakes, streams, groundwater, or shellfish breeding grounds; does not give rise to nuisances by reason of odor or unsightly appearance; and does not become a hazard or potential hazard to the public health, safety, and welfare; On-site disposal methods that meet health and environmental standards are encouraged wherever they are consistent with state and county planning policies. Regional sewage collection, treatment and disposal system are encouraged for urban areas wherever they are consistent with state and county planning policies and they are demonstrated to be the most cost-effective solution.

If specific information on which to base a decision is lacking, and there is a risk that detrimental environmental effects would be irreversible, uncertainty will be resolved in favor of environmental protection, unless such irreversible environmental effects are clearly outweighed by public health, safety or social and economic benefits.

1.2 Purpose

These rules seek to insure that the disposal of wastewater from private wastewater treatment works and individual wastewater systems:

- A. does not contaminate or pollute any drinking water or potential drinking water supply, or the waters of any beaches, shores, ponds, lakes, streams, groundwater, or shellfish growing waters;
- B. does not encourage the harborage of insects, rodents or other possible vectors;
- C. does not give rise to nuisances by reason of odor, noise, unsightly appearance, or other reasons;
- D. does not become a hazard or a potential hazard to public health, safety and welfare;

- E. contributes to the achievement of wastewater management goals contained in approved county water quality management plans; and
- F. reinforces State and County planning policies.

1.3 Definitions

“Activated Sludge Process” means a biological wastewater treatment process in which a mixture of wastewater and micro-organism is mixed and agitated with induced aeration. Aeration supplies dissolved oxygen and wastewater supplies the organic substrate necessary for microorganism growth. Such process includes sedimentation units which normally follow aeration and where the settled solids are withdrawn and returned to the aeration unit.

“BOD₅” means five (5) days Biochemical Oxygen Demand which is a standard test indicating the quantity of oxygen utilized by wastewater under controlled conditions of temperature and time.

“Building” means a structure, permanent or temporary, built, erected, and framed of component structural parts designed for the housing, shelter, workplace, enclosure or support of persons, animals or property of any kind.

“Cesspool” means an excavation in the ground which receives untreated wastewater and is designed to retain the organic matter and solids discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

“Composite Sample” means sample(s) collected on regular intervals in proportion to the existing flow and then combined to form a sample representative of flow over a period of time. For the purposes of this chapter, a composite sample means at least four (4) equally timed grab samples taken over a twelve (12) consecutive hr/day period and proportioned according to the flow rate.

“County” means any County or City and County of the State of Hawaii.

“Director” means the Director of Health of the State of Hawaii or his duly authorized agent.

“Disposal System” means any outlet, outfall sewer, seepage pit, cesspool, injection well, effluent irrigation system, tile field, disposal trench, or other facility or any combination thereof used in the disposal of wastewater including any wastewater transmission lines, pumps, power, or other equipment associated with the ultimate disposal of wastewater.

“Domestic Wastewater” means the wastewater derived from the ordinary human habitation or human activities including, but not limited to, wastewaters from dwellings, hotels, hospitals, and comfort stations.

“Dwelling” means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants and includes, but is not limited to, hotels, apartment houses, lodging houses, single family houses, duplex houses, cluster houses, townhouses, and planned developments.

“Dwelling Unit” means any habitable room or group of habitable rooms within a dwelling and forming a single habitable unit.

“Engineer” means a professional engineer registered in the State of Hawaii competent in the field of sanitary/environmental engineering.

“Grab Sample” means a single discrete sample of wastewater collected at a particular time and place which represents the composition of the source at that time and place.

“Household Aerobic Unit” means a watertight receptacle which receives domestic wastewater from one dwelling unit or from other sources generating wastewater of a similar volume and strength, and retains solids, aerobically digests organic matter over a period of time, and allows the clarified effluent to discharge outside the tank into a disposal system.

“Individual Wastewater System” means the facilities which dispose of treated or untreated domestic wastewater generated from dwelling units, or other sources generating domestic wastewater of similar volume and strength in accordance with Sections 3.3.A. and 3.3.B. Individual wastewater systems include, but are not limited to, cesspools, septic tanks and household aerobic units.

“Injection Well” means a driven or drilled shaft into the ground which receives treated wastewater and permits such wastewater to seep through its bottom or sides to gain access to the underground formation.

“NPDES” means the National Pollutant Discharge Elimination System and shall have the same meaning as defined in Title 11, Administrative Rules, Chapter 55, “Water Pollution Control.”

“Non-Domestic Wastewater” means all wastewater excluding domestic wastewater. “Owner” means a person who has legal title to a treatment works or individual wastewater system.

“Person” shall have the same meaning as defined in HRS, Chapter 342-1(6), Environmental Quality.

“Private” means not owned nor operated by a Federal, State, or County authority.

“Public” means owned or operated by a Federal, State, or County authority.

“Seepage Pit” means an excavation in the ground which receives the discharge from treatment units or individual wastewater systems and permits the effluent to seep through its bottom or sides to gain access to the underground formation.

“Septic Tank” means a watertight receptacle which receives the discharge of domestic sewage, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge outside the tank into a subsurface disposal system and to allow the residual solids so retained in the tank to be periodically removed for disposal in a separate system in accordance with these regulations.

“Standard Methods” means the latest edition of “Standard Methods for the Examination of Water and Wastewater” as published by the American Water Works Association, American Public Health Association and the Water Pollution Control Federation.

“State Waters” shall have the same meaning as defined in HRS, 342-31(6).

“Subsurface Disposal System” means a disposal system which permits effluent to reach the underground geologic formation such as a seepage pit, cesspool, injection well, tile field, disposal trench or any combination thereof used in the disposal of wastewater including any wastewater transmission lines, pumps, power or other equipment associated with the disposal of wastewater.

“Treatment Unit” means any plant, facility, or equipment used in the treatment of wastewater including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment.

“Treatment Works” means any treatment unit and its associated collection system and disposal system, excluding individual wastewater systems.

“U.S. EPA” means the United States Environmental Protection Agency.

“Wastewater” means any liquid waste, whether treated or not, and whether animal, mineral or vegetable including agricultural, industrial and thermal wastes.

“Wastewater Sludge” means the accumulated solids removed from wastewater by any liquid-solids separation process. Such solids may be part of the raw wastewater or generated by a wastewater treatment process or any combination thereof.

“Water Pollution” shall have the same meaning as defined in HRS, Chapter 342-31(7).

2. Effects of County Government Ordinances (Delegation)

- 2.1 When a county government has adopted an ordinance governing the waste disposal management, design, construction, and operation of private wastewater treatment works or individual wastewater systems and the provisions of the ordinance and method of enforcement by the county government are approved in writing by the Director, said ordinance, and not these rules, shall apply in such county. However, the Director shall retain authority over matters of water quality management and effluent limitations.

3. General Requirements

- 3.1 All public wastewater treatment works and all wastewater treatment works for which an NPDES permit has been issued, are exempt from the requirements of this rule. Also any public wastewater treatment works utilizing a private reclamation or irrigation system for effluent disposal may be exempted by the Director in writing from any or all of the requirements of this rule provided there is a showing by the applicant for such an exemption that the purpose of this part is met by the alternative requirements.

- 3.2 A building shall not be constructed, used or occupied as a dwelling, a public building, or a place of assembly, unless sanitary wastewater facilities of such a building are connected to a public or private treatment works or individual wastewater system. No private treatment works or individual wastewater system shall be constructed, used or occupied unless the appropriate requirements of this part are met and such construction for the intended purpose is in the public interest as defined in HRS, Section 342-6(C).

- A. Treatment works receiving domestic wastewater shall meet the requirements of Sections 4 and 5.
- B. Individual wastewater systems shall meet the requirements of Section 6.
- C. Buildings generating non-domestic wastewater shall meet the specific requirements of Sections 4 and 5 as determined to be applicable by the Director and any other requirement deemed to be appropriate to serve the interest and purpose of this chapter. Wherever applicable, the Director shall use the effluent requirements for non-domestic wastewater as set forth by the U.S. Environmental Protection Agency.

- 3.3 No person shall operate a new or existing treatment works unless that person or the owner of the treatment works is authorized by the Director in accordance with the provisions of this part.
- 3.4 Individual Wastewater Systems may be utilized in lieu of treatment works for:
 - A. Developments of density not greater than one (1) dwelling unit per 5,000 square feet of ultimate development; or
 - B. Developments with buildings other than dwellings but involving the generation of domestic wastewater at a rate of less than 400 gpd per 5,000 square feet of ultimate development. Whenever applicable, the flow computations of the development shall be based on the "Quantities of Sewage Flows" indicated in Table I.
- 3.5 Any building or facility which is located within the State Agricultural Land Use District, County Agricultural Zoned Districts or Conservation Districts is exempt from the provisions of Sections 4, 5 and 6 provided that such buildings or facilities are incidental to the operation of an agricultural enterprise or are consistent with the conservation district use intent. However, the owner shall submit to the Director's approval plans or engineering reports or both for the wastewater treatment works or individual wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Such information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the treatment works or individual wastewater system and for determining the public interest as defined in HRS, Section 342-6(C).

TABLE I
QUANTITIES AS SEWAGE FLOWS

Type of Establishment	Gallons Per Persons Per Day (Unless Otherwise Noted)
Airports (per passenger)	5
Bathhouses and swimming pools	10
Camps:	
Campground with central comfort stations	35
With flush toilets, no showers	25
Factories (gallons per person, per shift, exclusive of industrial wastes)	35
Picnic Parks (toilets waste only) (per picnicker)	5
Picnic Parks with bathhouses, showers, and flush toilets	10
Schools:	
Day, without gyms, cafeterias, or showers	15
Day, with gyms, cafeterias, and showers	25
Day, with cafeterias, but without gyms, or showers	20

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Service Stations (per vehicle served)	10
Swimming pools and bathhouses	10
Theaters:	
Movie (per auditorium seat)	5
Drive-in (per car space)	5
Travel trailer parks without individual water and sewer hook-ups (per space)	50
Travel trailer parks with individual water and sewer hook-ups (per space)	100
Workers:	
Construction (at semi-permanent camps)	50

Day, at schools and offices (per shift) 15

- 3.6 Whenever the Director finds that any treatment works or individual wastewater system creates or contributes to any nuisances, harborage of vectors, unsanitary conditions including wastewater spills or overflows onto the ground or into surface waters or contaminates or pollutes any state waters, the Director shall initiate enforcement action against the owner of the treatment works or individual wastewater system to have such conditions removed or corrected.
- 3.7 No person shall construct or use any treatment works or individual wastewater system involving the subsurface disposal of wastewater in areas where such disposal methods may contaminate an existing or potential potable water source, except as approved in writing or by rule by the respective County Board of Water Supply or Department of Water Supply and as concurred to by the Director. Any person claiming to have approval shall, during the earliest stages of project planning, supply written evidence of such approval and the basis of such approval upon request of the Director.
- 3.8 Before abandoning, retiring, or permanently discontinuing use of a treatment works or individual wastewater system, the owner shall render it safe by removing it; filling it completely with earth, sand, gravel, rubble, or other similar material; or both.
- 3.9 If the appropriate county does not issue a building permit for a building within twelve (12) months after the Director approves construction of a treatment works to serve said building or if the appropriate county revokes or rescinds a building permit and such a building is to be served by a treatment works, the Director's approval to construct such treatment works is automatically rescinded. Reapproval of any treatment works for which the Director's approval has been rescinded pursuant to this paragraph shall be based on applicable regulations in effect at the time request for reapproval is made.

4. Treatment Works

4.1 Intent

It is the intention of this section to set forth minimum requirements for the following general purposes: (a) to clarify responsibilities of owners, engineers and the Department; (b) to set minimum distance requirements so that minor nuisances are avoided; (c) to set minimum requirements to protect public health, safety, and welfare, and to protect the treatment works from malicious damage or unauthorized entry; (d) to emphasize the need for proper operation and maintenance.

This section also gives the engineer designing the treatment works flexibility and design responsibility. Choice of equipment, types of treatment processes used, structural integrity, electrical components, disposal system designs, and all other major aspects of treatment works design are the responsibility of the engineer.

4.2 General Requirements for Treatment Works

A. No person shall construct or expand a treatment works unless the owner submits the following documents to the Director's satisfaction:

- (1) A statement by the owner that the proposed project is consistent with the respective County wastewater or water quality management plans.
- (2) Construction plans prepared by or under the supervision of the engineer indicating the following:

- (a) Acreage and tax map key number(s) of the project site.
 - (b) Plot plan drawn to scale showing the location of the treatment works and its distance from existing and/or proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies of water, drinking water sources and existing public sewers within 1,000 feet of the property line.
 - (c) Sufficient details to show compliance with all requirements of Section 4 except Sections 4.2.G. and 4.2.H.
- (3) A written declaration signed and dated by the engineer that the treatment works was designed to meet all applicable effluent requirements of Section 5.
 - (4) Certification by the owner of a treatment works that the treatment works shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to Section 4.2.G. of this chapter. The owner shall make the said operation and maintenance manual available to the operator of the treatment works and will further certify that, upon sale or transfer of ownership of the treatment works, such sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the said operation and maintenance manual.
- B. The owner shall provide the treatment works with a calibrated facility for measuring and preferably recording the wastewater flow which is treated and disposed of.
 - C. The owner shall provide standby power or other provisions for all lift stations to prevent surface overflows of wastewater during a primary power outage.
 - D. The owner shall provide measures to control public accessibility to each treatment unit to prevent accidents, drownings, vandalism and interference with the treatment process. At a minimum, such provisions shall include:
 - (1) Fencing or other secured enclosures at least six (6) feet in height for treatment units with exposed water surfaces or equipment, or
 - (2) Completely enclosed treatment units with unexposed water surfaces and equipment. Access openings to completely enclosed treatment unit(s) and equipment must be secured and properly identified, and
 - (3) Enclosures must have sufficient headroom clearance and conform to applicable county building codes.
 - E. The following distance requirements apply to treatment works:
 - (1) Treatment units, except as provided in Section 4.2.E.(3), shall not be less than twenty-five (25) feet from any property lines nor less than ten (10) feet from any building and swimming pools.
 - (2) Disposal systems, excluding effluent irrigation systems, shall not be less than five (5) feet from a property line nor less than five (5) feet from any building.
 - (3) Completely enclosed, locked, and ventilated equipment rooms, used to house items such as blowers, motors, pumps, electrical controls, and chemical feeders, shall not be less than five (5) feet from property lines or less than ten (10) feet from dwelling unit(s).
 - F. No person shall use the area adjacent to or directly above a treatment works for purposes or activities which may hinder or interfere with the operation and maintenance of the treatment unit. Air space directly above a treatment works shall not be used for dwellings, places of business, or work places.
 - G. At least ninety (90) days prior to the date of final inspection of the treatment works pursuant to Section 4.2.H., the owner shall submit the following documents to the Director's satisfaction:
 - (1) A written declaration signed and dated by the engineer responsible for the preparation of the operation and maintenance manual for the treatment works, that said operation and maintenance manual meets the provisions of Section 4.2.G.(2) and that if the treatment works is operated in accordance with the manual, all applicable effluent requirements will be met.
 - (2) An operation and maintenance manual prepared by the engineer pursuant to Section 4.2.G.(1). The engineer shall be responsible for the scope and depth of coverage of the manual. However, the manual must, as a minimum, provide the details on the following:
 - (a) Operation and maintenance instruction for each treatment unit or process under normal and emergency conditions of power outage or malfunction.
 - (b) Operation and maintenance instructions for the disposal system.

- (c) List of required sampling frequencies and analyses to be conducted by the operator.
 - (d) Troubleshooting, corrective, and preventive measures to be taken to maintain process control and treatment performance.
 - (e) Start-up procedures.
 - (f) Applicable state effluent requirement.
 - (g) Instructions on wasting and disposal of wastewater sludge.
 - (h) Manpower requirements needed to operate and maintain the treatment works.
- H. No person shall operate a new treatment works until the Director has inspected and authorized it.
- (1) Any discrepancy between the constructed treatment works and information supplied pursuant to this section is sufficient reason to withhold approval to operate the treatment works.
 - (2) Prior to operation of the treatment works the owner shall resolve all discrepancies recorded as a result of the inspections conducted pursuant to Section 4.2.H., of this chapter.
- 4.3 Treatment Unit Requirements
- A. As a minimum, the design of treatment units shall include the following:
- (1) For treatment units receiving wastewater from dwellings, an average flow of at least 200 gallons per bedroom per day and a raw wastewater BOD₅ loading of at least 0.34 lb. of BOD₅ per bedroom per day.
 - (2) For treatment units receiving domestic wastewater from buildings other than dwellings, an average flow of at least the quantities shown in the "Quantities of Sewage Flows" of Table I shall be utilized whenever applicable.
- B. For treatment units utilizing the activated sludge process, the "Aeration Tank and Permissible Loadings" as set forth in Chapter 70, Section 72.422 of the Recommended Standards for Sewage Works, Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, 1973, Revised Edition, shall be used as the basis of design.
- C. For treatment units utilizing non-activated sludge processes, design data and other pertinent data shall be submitted to the Director as a matter of record. The responsibility for providing the proper design remains with the engineer.
- D. For treatment units utilizing final settling tanks, the detention time and surface overflow rates of final settling tanks following various activated sludge processes shall be designed as set forth in Chapter 70, Section 72.344 of Recommended Standards for Sewage Works, Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, 1973, Revised Edition.
- 4.4 The design details of all wastewater effluent disposal systems shall comply with this section unless otherwise prohibited by other, federal, state or county rules, regulations or ordinances.
- A. Subsurface disposal systems
- (1) Subsurface disposal systems shall at least consist of a primary disposal component and a 100 percent back-up disposal component.
 - (2) The primary disposal component and the back-up disposal component shall each be designed to handle peak flow at the operating capacity determined to be applicable by the engineer considering the clogging that normally occurs over a period of time, provided the design capacity shall not be less than six (6) times the average flow.
 - (3) The engineer shall submit a written declaration that each disposal component was designed and tested to accommodate the wastewater flow as required in Section 4.4.A.(2) and will not contaminate or pollute the waters of any beaches, shores, ponds, lakes, streams or shellfish growing waters. Such declaration shall be made in coordination with determinations or actions taken relative to Sections 3.2, 3.6, and 4.2.A.(2).
- B. Effluent irrigations systems
- (1) The owner of a treatment works utilizing an effluent irrigation system shall submit to the Director information in sufficient detail and scope to enable estimate of public health risks including details of the area to be irrigated, types of vegetation to be irrigated, methods and controls of irrigation, public accessibility to the irrigated area, impact assessment on adjacent areas, and other details to show that the engineer recognizes the public health factors and that the system will comply with Section 4.4.B.(2) to (6).

- (2) The owner(s) of a treatment works utilizing an effluent irrigation system shall provide for public health protection to the maximum extent feasible as prescribed by the Director in the design, construction, and operation of the system.
 - (3) No person shall operate an effluent irrigation system in such a manner that results in excessive runoff from the irrigated areas or excessive ponding due to irrigation.
 - (4) The owner shall provide positive measures or controls to eliminate direct public contact with the effluent.
 - (5) The owner shall provide positive measures to prevent the accidental human consumption of effluent from piping and appurtenances.
 - (6) The owner shall provide adequate storage systems or back-up disposal systems to prevent any overflows or discharges from the system when the irrigation is not in operation or when wastewater effluent quantities exceed irrigation requirements.
- C. For treatment works utilizing other disposal systems, design data and other pertinent data shall be submitted to and approved by the Director on a case by case basis. Decisions by the Director shall be guided by the provisions of Section 1.2, 1.3, and other applicable sections of this part.
- 4.5 Wastewater Sludge Disposal
- A. Intent
This section describes the acceptable disposal methods for wastewater sludge. The Director shall approve each wastewater sludge disposal plan including the necessary treatment and transportation of the sludge upon a showing by the owner that the disposal method will not result in the contamination of underground drinking water sources or surface waters, or create public health hazards, nuisances, or vector propagation. The plan will specify the manner of sludge disposal to be used pursuant to Section 4.5.C.
 - B. No person shall place or dispose of wastewater sludge into pits, subsurface disposal systems, or state waters.
 - C. Wastewater sludge shall only be disposed of in the following manner:
 - (1) By a private, county, or state solid waste disposal facility which has a permit pursuant to Title 11, Administrative Rules, Chapter 58, to accept wastewater sludge, or
 - (2) By reclamation or reuse for agricultural purposes except for direct contact with edible food crops, or
 - (3) By incineration which meets all applicable requirements of Title 11, Administrative Rules, Chapter 60, or
 - (4) By a private, county, or state facility which has specific written authorization to dispose of sludge pursuant to the applicable provisions of HRS, Chapter 342.
5. Effluent Requirements Applicable to Treatment Works
- 5.1 Treatment works utilizing subsurface disposal systems shall at least meet the requirements of this section. Nothing in this section shall be construed to prevent the engineer from applying more stringent requirements if he determines that the particular design and circumstances for which he is responsible warrants the more stringent requirements.
 - A. Biochemical Oxygen Demand (BOD₅)
The BOD₅ in the effluent from a treatment unit shall not exceed 30 milligrams per liter based on a 30 days arithmetic average of composite samples. However, no effluent grab sample shall exceed 60 milligrams per liter BOD₅ at any instant.
 - B. Suspended solids The suspended solids in effluent from a treatment unit shall not exceed 30 milligrams per liter based on a 30 day arithmetic average of composite samples. However, no effluent grab sample shall exceed 60 milligrams per liter suspended solids at any instant.
 - C. The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods.
 - D. For the purposes of this section, the 30 day arithmetic average of composite samples shall be based upon no less than four (4) composite measurements made within a 30 consecutive calendar day period. The arithmetic average shall be the sum of all the composite sample values divided by the number of composite samples made during the 30 consecutive calendar day period.
 - 5.2 Treatment works utilizing effluent irrigation systems shall meet the following requirements:
 - A. Section 5.1 shall apply, except as provided for in Section 4.4.B. of this part.

- B. Continuous disinfection The median number of total coliform organisms in the effluent from a treatment unit shall not exceed a monthly average of 23/100-milliliters, unless otherwise specified by the Director on the basis of restrictions to public accessibility and public health considerations. The sampling frequency shall be prescribed by the Director considering the relevant factors identified pursuant to Section 4.4. In no case shall the sampling frequency be less than once/week grab sampling.
- C. The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods.

6. Individual Wastewater Systems

6.1 General Requirements for Individual Wastewater Systems

- A. Individual wastewater systems shall not be allowed in areas where such systems are prone to failure and where the consequences of failure may be the:
 - (1) contamination of existing or potential drinking water source;
 - (2) contamination of surface water bodies; or
 - (3) creation of public health hazards or public nuisance.

In making the determination of whether such systems should be allowed or not, the Director shall consider such factors as the record of performance of such systems in the area, the density of the existing and future development, the nature of the activity, the hydrologic characteristics of the area, and the public interest.

- B. A single individual wastewater system shall service (a) no more than one (1) dwelling with two (2) or less dwelling units or (b) a building other than a dwelling which involves the generation of domestic wastewater at a rate less than 800 gallons per day. The design flow for individual wastewater systems serving dwellings shall be based on at least 200 gallons per bedroom per day. The design flow for individual wastewater systems serving buildings other than dwellings shall be based on the "Quantities of Sewage Flows," indicated in Table I, where applicable. Otherwise, the design flow shall be determined on the basis of rational extrapolation considering such factors as experience with similar activities, water usage, and number of fixture units, or other factors, as approved by the Director. Such estimates shall be conservative and many include a margin of safety if the Director deems such inclusion to be in the public interest, considering risks of failure or malfunction.
- C. No individual wastewater system shall be constructed unless the plans and specifications thereof are submitted to and approved in writing by the Director.
- D. No individual wastewater system shall be placed in operation until it has been inspected and approved in writing by the Director.

6.2 Spacing of Individual Wastewater Systems

- A. No individual wastewater system shall be located at any point having less than the minimum distances indicated in Table II unless otherwise approved by the Director.

TABLE II

Minimum Horizontal Distance From	Cesspool (ft)	Septic Tank (ft)	Seepage Pit (ft)	Sub-Surface Disposal Field (ft)	Household Aerobic Unit (ft)	Injection Well (ft)
Wall line of any roof structure or building	10	5	5	5	5	
Property line	9	5	9	5	5	
Stream, the ocean at mean sea level, pond, lake	50	50	50	50	50	50
Large trees	10	5	10	10	5	

Seepage pit	18	12	5
Cesspool	18	18	5

6.3 Minimum Requirements

A. Cesspools

- (1) Each cesspool shall be at least six (6) feet in diameter, clear opening, and should have a minimum sidewall of at least ten (10) feet below the inlet pipe, provided, however, that when a stratum of gravel or equally pervious material of at least four (4) feet thickness is found, or a lava tube is encountered which provides adequate drainage, the depth of such sidewall may be reduced. The ultimate depth required shall be determined by the Director based on actual soil materials encountered on the site and on the record of experience with the performance of cesspools in the area. Multiple cesspools, three (3) diameters apart from outer edges, may be used. Sidewall depth reduction may be allowed when multiple cesspools are utilized.
- (2) Cesspool sidewalls shall be properly protected against cave-in by means of approved types of concrete rings, hollow tile blocks or other approved materials. Where natural geological formations are encountered which are sufficiently stable to prevent caving of sidewalls, such as rock, white coral, clay or other similar composition, the stable material may be used as sidewall lining.
- (3) A structurally sound concrete cover protruding at least six (6) inches beyond the perimeter of the cesspool and resting on firm ground shall be provided. The top of such cover shall be at least twelve (12) inches below the finished ground surface. At least one (1) covered manhole twelve (12) inches in minimum dimension must be provided in the cesspool cover for inspection, rodding or the emptying of the contents when required.

B. Septic Tank System

- (1) Where a septic tank is followed by a subsurface disposal field, the lot size shall be at least 15,000 sq. ft. in area and the lot topography shall permit the construction of an operable subsurface disposal field with the required absorption area.
- (2) Liquid capacity of septic tanks at the time of construction shall conform to Table III.
- (3)
 - (a) Subsurface disposal trenches or fields shall be constructed of clay field tile approximately twelve (12) inches in length and not less than four (4) inches in diameter, laid with one-half (1/2) inch open joints extending around the bottom half of the pipe. Other types of drain lines may be used when acceptable to the Director. All bends used in the disposal field shall have one (1) tight joint to each end of the bend.
 - (b) Before drain lines are laid, crushed stone, gravel, slag or similar filter materials acceptable to the Director and having adequate voids varying in size from three-quarter (3/4) to two and one-half (2-1/2) inches, shall be placed in the trench to the depth and grade required by this section. After drain lines have been placed, the upper half of each open joint shall be covered with roofing felt and the level of the filter material raised no higher than the center line of the drain before inspection. Drain lines shall be completely encased in filter material only after approval by the Director; untreated building paper, straw or similar material then shall be placed over the filter bed to prevent closure of voids with earth backfill.
 - (c) Subsurface disposal trenches or fields shall be constructed as follows:
 - Minimum number of drain lines per field - 1
 - Maximum length of each line - 100 feet
 - Minimum bottom width of trench - 18 inches
 - Maximum bottom width of trench - 36 inches
 - Minimum spacing of lines center to center - 6 feet
 - Minimum depth of each cover over lines - 12 inches
 - Preferred depth of cover lines - 18 inches
 - Maximum grade of lines - 6 inches per 100 feet
 - Minimum grade of lines - 3 inches per 100 feet

Minimum filter material under drain lines - 12 inches
 Minimum filter material over drain lines - 2 inches
 Minimum spacing between trenches or leaching beds: shall be four (4) feet plus two (2) feet for each additional foot of depth in excess of one (1) foot below the bottom of the drain line.

- (d) Where not otherwise specified, the construction and design of a septic tank and subsurface tile system shall conform to the Manual of Septic Tank Practice, U.S. Public Health Service, Publication No. 526.
- (4) A seepage pit whenever approved for use shall not be less than four (4) feet in diameter and not less than ten (10) feet in depth or three (3) times the volume of the septic tank, whichever is greater. Multiple seepage pits, three (3) diameters apart from outer edges, but not less than twelve (12) feet apart, may be used to fulfill the minimum volume required with corresponding adjustment in depth. All seepage pits shall conform to the construction requirements for cesspools as set forth in section 6.3.A.(2) and 6.3.A.(3) of these regulations.
- (5) Injection well disposal systems shall not be allowed.

TABLE III
LIQUID CAPACITY OF SEPTIC TANKS (GALLONS)

<u>No. of Bedrooms</u>	<u>Minimum Tank Capacity (Gallons)</u>
<u>2 or less</u>	<u>750</u>
<u>3</u>	<u>1,000</u>
<u>4</u>	<u>1,200</u>
<u>5 or more</u>	<u>1,350 gallons + 150 gallons for each additional bedrooms.</u>

C. Household Aerobic Units

- (1) Household aerobic units must be approved by the Director. Such approval shall be based upon the "Criteria for Evaluation and Testing," as set forth in Publication 586 issued by the National Academy of Sciences - National Research Council, Washington, D.C., entitled, "REPORT ON INDIVIDUAL HOUSEHOLD AEROBIC TREATMENT SYSTEM," 1958, and upon the submission of data for an operating unit which is representative of the device. Such performance data shall have been obtained by an agency such as a university or an independent research laboratory acceptable to the Director or from the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan.
- (2) Each household aerobic unit shall discharge its effluent into a seepage pit or pits, which shall be not less than four (4) feet in diameter and not less than ten (10) feet in depth or three (3) times the volume of the aeration compartment, whichever is greater. Multiple seepage pits, three (3) diameters apart from outer edges may be used to fulfill the minimum volume required with corresponding adjustment in depth. All seepage pits shall conform to the construction requirements for cesspools as set forth in Sections 6.3.A.(2) and 6.3.A.(3) of these regulations. In rocky or other poor drainage area, or in areas with high water tables, subsurface disposal fields may be required in lieu of seepage pits.

7. Penalties

Any person who violates any provision of this section shall be subject to the provisions and remedies for violations provided for in Chapters 321 and 342, Hawaii Revised Statutes.

8. Severability

If any provision of this section or the application to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this section, shall not be affected thereby.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 283

S.B. NO. 561

A Bill for an Act Relating to Income Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Taxation of trusts, beneficiaries; credit. (a) There shall be excluded from gross income any intangible income, such as dividends and interest, earned by a trust sited in this State to the extent that, during the taxable year of such trust, the beneficial interest in the trust shall be held by a beneficiary or beneficiaries residing outside this State. This exclusion shall not apply to income received from real property held in a land trust formed under chapter 558.

(b) Any resident beneficiary of a trust with a situs in another State may claim a credit for income taxes paid by the trust to such other State on any income received which is attributable to assets other than intangibles.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1984.

(Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 284

S.B. NO. 470

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 208, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1) The original lessee shall be a native Hawaiian, not less than twenty-one years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quit claimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years.
- (3) The lessee shall occupy and commence to use or cultivate the tract as his home or farm or occupy and commence to use the tract for

aquaculture purposes, as the case may be, within one year after the lease is made.

- (4) The lessee shall thereafter, for at least such part of each year as the department shall by regulation prescribe, so occupy and use or cultivate the tract on his own behalf.
- (5) The lessee shall not in any manner transfer to, [or mortgage, pledge,] or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, [mortgage, pledge,] or otherwise hold, his interest in the tract. Such interest shall not, except in pursuance of such a transfer[, mortgage, or pledge] to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet his interest in the tract or improvements thereon.
- (6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

- [(6)] (7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may in its discretion pay such taxes and have a lien therefor as provided by section 216 of this Act.

- [7] (8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years from date of lease.”

SECTION 2. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) There are established in the treasury of the State eight special funds¹ to be known respectively as the Hawaiian home development fund, the Hawaiian home administration account, the Hawaiian loan guarantee fund, the Hawaiian home interest fund, the borrowed money fund, the Hawaiian home trust fund, the Hawaiian home education fund, and the native Hawaiian rehabilitation fund.

- (1) Hawaiian home development fund. Moneys transferred to this fund shall be available with the prior written approval of the governor for offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands; for improvements, additions, and repairs to all assets owned or leased by the department excluding structures or improvements that the department is obligated to acquire under section 209 of this Act; for engineering, architectural, and planning services to maintain and develop properties; for such consultant services as may be contracted for under this Act; for purchase or lease of necessary equipment; for acquisition or lease of real property and interest therein; and for improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds, the administration account, or the operating fund.
- (2) Hawaiian home administration account. The entire receipts derived from any leasing of the available lands defined in section 204 of this Act and transfers from the Hawaiian home interest fund shall be deposited into this account. Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into this fund. The moneys in this account shall be expended by the department for salaries and all other administration expenses of the department in conformity with general law applicable to all departments of the State, and no sums shall be expended for structures and other permanent improvements. This account shall be subject to the following conditions and requirements:
 - (A) The department shall, when required by the governor but not later than November 15 preceding each regular session of the legislature, submit to the state director of finance its budget estimates of expenditures for the next fiscal period in the manner required by general law.
 - (B) The department’s budget as approved by the governor shall be included in the governor’s budget report and shall be transmitted to the legislature for its approval.
 - (C) Upon legislative approval of a budget, the amount appropriated shall be made available to the department. If no budget is approved by the legislature prior to its adjournment, sums accruing to this account shall not be expended for any other purpose but shall remain available for future use. Any amount in this account which is in excess of the amount approved by

- the legislature or made available for the fiscal period may be transferred to the Hawaiian home development fund.
- (3) The Hawaiian loan guarantee fund. There may be created a fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to those holding leases or licenses issued under section 207 of this Act. The department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made.
 - (4) Hawaiian home interest fund. All interest moneys from loans or investments received by the department from any fund except as provided for in each respective fund, shall be deposited into this fund. At the end of each quarter, all moneys in this fund shall be transferred to the Hawaiian home development fund, the Hawaiian home operating fund, the Hawaiian home administration account, the Hawaiian home trust fund, and any loan fund in accordance with rules adopted by the department. Moneys transferred to the Hawaiian home administration account shall be used to fund salaries and other administrative expenses related to loan services and delinquent collection activities.
 - (5) Borrowed money fund. The department may borrow from government agencies or private lending institutions and deposit borrowed moneys into this fund to be used for the purpose enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees upon loans made to them from this fund shall be deposited into this fund; any additional interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home interest fund.
 - (6) Hawaiian home trust fund. All moneys deposited into this fund shall be available for transfers into any other fund or account authorized by the Act or for any public purpose deemed by the commission to further the purposes of the Act. Public purpose, as used herein, includes the formation of an account within the Hawaiian home trust fund as a reserve for loans insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee loans. Notwithstanding any other law to the contrary, the department is expressly authorized to deposit the reserve for loans in any duly organized bank in the State or elsewhere in the United States with automatic fund transfer capabilities and at such reserve amounts as shall be reasonably required by the federal agencies as a condition for participation in their respective insurance or guarantee programs.
 - (7) Hawaiian home education fund. Moneys transferred to this fund may be drawn upon from time to time by the department of education, with prior written approval of the governor, for such educational projects as shall be developed and directed by the department of education and department of Hawaiian home lands; provided that such projects shall be directed primarily to the educational improvement of the children of lessees, the funds to be used primarily at the preschool and elementary grade levels.

- (8) Native Hawaiian rehabilitation fund.
- (A) Pursuant to Article XII, Section 1, of the State Constitution, thirty per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, shall be deposited into this fund. The department shall use this money solely for the rehabilitation of native Hawaiians which shall include, but not be limited to, the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.
- (B) Any payment of principal, interest, or other earnings arising out of the loan or investment money from the fund shall be credited to and deposited into this fund.
- (C) Sections 214, 215, 216, and 217 of this Act shall not apply to administration of this fund. The department is authorized to adopt rules necessary to administer and carry out the purposes of this fund."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. The provisions of these amendments are declared to be severable, and if any section, sentence, clause or phrase of these legislative amendments or any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

Note

1. A “,” is missing.

ACT 285

S.B. NO. 1127

A Bill for an Act Relating to Dental Hygienists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 447-3, Hawaii Revised Statutes, is amended to read as follows:

“§447-3 Employment of and practice by dental hygienists. (a) Any licensed dentist, legally incorporated eleemosynary dental dispensary or infirmary, private school, or welfare center, the State or any county, may employ licensed dental hygienists.

(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal

surfaces of teeth, which chemical agents have been approved by the board of dental examiners and may use such mouth washes as are approved by the board, but shall not perform any repair work or the preparation thereof, or any other operation on the teeth or tissues of the mouth; provided[,] that nothing herein shall prohibit a dental hygienist from using or applying topically any chemical agent which has been approved in writing by the department of health for any of the purposes set forth in part V of chapter 321, [entitled "Dental Health".] and other procedures delegated by the dentist in accordance with the rules [and regulations] of the board of dental examiners. [He] In addition, a licensed, certified dental hygienist may take dental impressions for study casts or administer intra-oral infiltration local anesthetics under the direct supervision of a dentist; provided that the board of dental examiners shall establish a certification process not later than June 30, 1986, which shall include the establishment of criteria for a comprehensive course work, the completion of which shall be a prerequisite to a licensed dental hygienist taking a certification examination.

(c) The licensed certified dental hygienist may operate in the office of any licensed dentist, or legally incorporated eleemosynary dental dispensary or infirmary, private school, or welfare center, or in any building owned or occupied by the State or any county, but only under the aforesaid employment and under the direct or general supervision of a licensed dentist; provided[,] that in the private practice of dentistry, the hygienist shall be under the direct supervision of a licensed dentist. No dental hygienist may establish or operate any separate care facility which exclusively renders dental hygiene services."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

A Bill for an Act Relating to the Uniform Securities Act (Modified).

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485-1, Hawaii Revised Statutes, is amended to read as follows:

"§485-1 Definitions. When used in this chapter the following terms, unless the text otherwise indicates, have the following meaning:

- (1) "Commissioner" means the commissioner of securities of the State.
- (2) "Salesman" means any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Salesman" does not include an individual who represents an issuer in (A) effecting transactions in a security exempted by clauses (1), (2), (3), or (10) of section 485-4, (B) effecting transactions exempted by section 485-6, or (C) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State. A partner, officer, or director of a dealer or issuer, or a person

- occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition.
- (3) "Dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Dealer" does not include (A) a salesman, (B) an issuer, (C) a person who has no place of business in this State if (i) he effects transactions in this State exclusively with or through the issuers of the securities involved in the transactions; other dealers; or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or to buy into this State in any manner to persons other than those specified in clause (i), whether or not the offeror or any other offerees is then present in this State, or (D) any person licensed as a real estate broker or real estate salesman under the laws of the State while effecting transactions in a security exempted by section 485-6(14).
 - (4) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.
 - (5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.
 - (6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (A) a bank, savings institution, or trust company; (B) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (C) a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for them; (D) a publisher of any bona fide newspaper, news magazine, or business of financial publication of general, regular, and paid circulation; (E) a person whose advice, analyses, or reports relate only to securities exempted by section 485-4(1); (F) a person who has no place of business in this State if (i) his only clients in this State are other investment advisers, dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct business communications into this State in any manner to more than five clients other than those specified in clause (i), whether or not he or any of the persons to whom the communications are directed is then present in this State; (G) a person who is employed by a mutual fund which is registered with the Securities and Exchange Commission; or (H) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

- (7) “Investment adviser representative” means any individual other than an investment adviser who represents an investment adviser in the business of advising others, either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.
- [(7)] (8) “Issuer” means any person who issues or proposes to issue any security, except that (A) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an incorporated¹ investment trust not having a board of directors (or persons performing similar functions) or of the fixed restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (B) with respect to certificates of interest in oil, gas, or mining titles or leases, there is not considered to be any “issuer”.
- [(8)] (9) “Nonissuer” means not directly or indirectly for the benefit of the issuer.
- [(9)] (10) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.
- [(10)] (11) (A) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.
- (B) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.
- (C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.
- (D) A purported gift of assessable stock is considered to involve an offer and sale.
- (E) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- (F) The terms defined in this subsection do not include (i) any bona fide pledge or loan; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by stockholders, pursuant to the articles of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (iv) any act incident to a

judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

- [(11)] (12) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after June 7, 1957.
- [(12)] (13) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, variable annuity contract, voting trust certificate, certificate of deposit for a security, certificate of interest in an oil, gas, or mining title or lease, option on commodity futures contracts or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or fixed annuity contract.
- [(13)] (14) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

SECTION 2. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

"§485-14 Registration of dealers, investment advisers, [and] salesmen[,] and investment adviser representatives. (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, [or] salesman, or investment adviser representative unless registered under this chapter.

(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer an applicant must be of good repute and have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesman or experience as a security salesman on a part-time basis found by the commissioner of securities to be substantially equivalent thereto, provided that the foregoing experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.

(c) Application for registration as a dealer. An application for registration as a dealer in writing shall be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, and shall state the principal office of the applicant wherever situated, and the location of the principal office and branch offices in the State, if any, the name and style of doing business, the names, residence, and business of principals, copartners, officers, and directors, specifying as to each his capacity and title, the general plan and character of business, the length of time the dealer has been engaged in business and information as to the time, place, and character of experience as a securities salesman. The commissioner may also require such additional information as to the applicant's previous history, record, and association as he deems necessary to establish the good repute in business of the applicant. There shall be filed with such application an irrevocable written consent to the service

of process upon the commissioner in actions against the dealer in manner and form provided in section 485-12.

(d) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser shall be of good repute, shall have complied with provisions mandatory of this section, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the applicant's knowledge of the securities business; provided that [an applicant who has evidence of successfully passing an examination required by the Securities and Exchange Commission or by any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or who was registered as an investment adviser by the Securities and Exchange Commission as of January 1, 1983, shall be exempt from this requirement.] the Commissioner may by rule or regulation set forth exemptions to the examination requirement. Every person required to take such an examination at or before the time of the examination, shall pay to the commissioner a fee of \$100.

(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, shall be filed in the office of the commissioner accompanied by (1) an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12, (2) the applicant's photograph, and (3) a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:

- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser's principal business office and branch offices, if any; the names and addresses of the investment adviser's partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of such individual; and the number of the investment adviser's employees;
- (2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser's partners, officers, directors, and persons performing similar functions and of any controlling person thereof;
- (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
- (4) A balance sheet certified by an independent public accountant and other certified financial statements[;] if the investment advisor has custody of or discretionary authority over client money, securities or other assets, or an unaudited, verified balance sheet and financial statements if the investment advisor has no custody of or discretionary authority over client money, securities or other assets;
- (5) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;
- (6) The basis or bases upon which the investment adviser is compensated;
- (7) Whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;

- (8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser; and
- (9) Such other information as to the applicant's previous history, record, and association as the commissioner deems necessary to establish the good repute of the applicant.

The commissioner may use a uniform registration form adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934; provided such form encompasses the information required under this section.

If an applicant is currently registered by the United States Securities and Exchange Commission or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, the commissioner may accept a certified copy of the registration application the applicant submitted to obtain such registration in lieu of the application required by this section.

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for such registration, then he shall register the applicant as a dealer upon payment of the fee hereinafter provided and upon such dealer's filing a bond in the sum of \$5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salesmen registered by him while acting for him. The bond shall be executed as surety by a surety company authorized to do business in the State; provided that no bond is required of or from any such applicant if the applicant at the time of making his application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than \$5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than \$5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of his intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than \$5,000 no more than one such sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond any dealer may deposit and keep deposited with the commissioner cash in the amount of \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same.

(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for such registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided and upon such investment adviser filing a bond in the sum of [\$10,000] \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities or other assets. The bond shall be conditioned upon the faithful compliance with this

chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State[.], provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, the investment adviser shall file with the commissioner a certificate of insurance which indicates that such investment adviser's business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client.

(h) Eligibility for registration as a salesman. To be eligible for registration under this chapter a salesman shall be of good repute, shall have complied with the provisions mandatory of this section, shall be designated as a salesman by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test his knowledge of the securities business. Every person required to take such an examination shall, at or before the time he takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as a salesman by, or shall act as a salesman for, more than one registered dealer.

(i) Registration of salesmen. An information statement, containing such information as the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as a salesman by a registered dealer. If the commissioner finds a salesman designated by any registered dealer to be eligible for registration as a salesman, he shall register the person as a salesman upon the payment of the fee hereinafter provided.

(j) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter an investment adviser representative shall be of good repute, shall have complied with the provisions mandatory of this section, shall be designated as a representative by a registered investment adviser and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test his knowledge of the investment advisory and securities business; provided that the commissioner may by rule or regulation set forth exemptions to the examination requirement. Every person required to take such an examination shall, at or before the time he takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as an investment adviser representative by, or shall act as an investment adviser representative for, more than one registered investment adviser.

(k) Registration of investment adviser representative. An information statement, containing such information as the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as an investment adviser representative by a registered investment adviser. If the commissioner finds an investment adviser representative designated by any investment adviser

to be eligible for registration as an investment adviser representative, he shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided.

[(j)] (l) Recording; duration; renewal; fee. The name and addresses of all persons found eligible for registration as dealers, investment advisers, [or] salesmen, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, [and] salesmen, and investment adviser representatives kept in the office of the commissioner which shall be open to public inspection. Except as hereinafter provided, every registration under this section shall expire on December 31 in each odd-numbered year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the odd-numbered year. Any applicant for renewal of a dealer [or], investment adviser, [or] salesman, or investment adviser representative registration [license] who does not submit his application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser [license] registration who submits his application after December 31 of the odd-numbered year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser [or] salesman, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, [or] registered salesman, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any dealer, investment adviser, salesman, or investment adviser representative, the dealer's, investment adviser's, salesman's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each biennial renewal shall be \$50 in the case of dealers and investment advisers and \$10 in the case of salesmen[,], and investment adviser representatives.

[(k)] (m) Changes. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser's business may be made from time to time by written application setting forth the facts with respect to such change.

[(l)] (n) Announcement of registration application. The commissioner, by rule, may require an applicant for initial registration as a dealer, investment adviser, [or] salesperson, or investment adviser representative to publish an announcement of the application in one or more newspapers of general circulation in this State.

[(m)] (o) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of his intention so to do. The notice shall contain the name of the dealer, shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

[(n)] (p) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond or

deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in his discretion, which amount, however, shall not be less than \$5,000, nor more than \$25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salesmen in the manner herein prescribed in the case of dealers.

[(o)] (q) Capital requirement for dealers and investment advisers[.] who have custody of or discretionary authority over client money, securities, or other assets. The commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than \$5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. The commissioner may by rule require a net worth requirement which shall not be less than \$5,000 for investment advisors.”

SECTION 3. Section 485-15, Hawaii Revised Statutes, is amended to read as follows:

“§485-15 Denial, revocation of dealers’, investment advisers’, [and] salesmen’s, and investment adviser representative’s registration; suspension during investigation, etc. Upon the finding of errors in a registration statement or the filing of complaints by consumers or by any government agency, the commissioner may conduct an investigation of the applicant or registrant and registration under section 485-14 may be refused or any registration granted may be revoked by the commissioner of securities if after a reasonable notice and a hearing the commissioner determines that the applicant or registrant so registered:

- (1) Has violated this chapter or any rule made hereunder;
- (2) Has made a material false statement in the application for registration;
- (3) Has been guilty of a fraudulent act in connection with any sale of securities, or has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of law; or
- (4) Has demonstrated his unworthiness to transact the business of dealer, investment adviser, [or] salesman[.], or investment adviser representative.

In cases of charges against a salesman or investment adviser representative notice thereof shall also be given the dealer or investment adviser employing such salesman[.] or investment adviser representative. Pending the hearing the commissioner may order the suspension of the dealer’s, investment adviser’s, [or] salesman’s, or investment adviser representative’s registration; provided the order states the cause for the suspension.

Until the entry of a final order the suspension of the dealer’s or investment adviser’s registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it appears that the order of suspension has been violated after notice.

In the event the commissioner determines to refuse or revoke a registration as hereinabove provided, he shall enter a final order herein with his findings on the register of dealers, investment advisers, [and] salesmen[.], and investment adviser representatives; and suspension or revocation of the registration of a dealer or investment adviser shall also suspend or revoke the registration of all his salesmen[.] or investment adviser representatives.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any

member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, investment adviser, [or] salesman[.], or investment adviser representative.”

SECTION 4. Section 485-19, Hawaii Revised Statutes, is amended to read as follows:

“§485-19 Injunctions. Whenever it shall appear to the commissioner of securities either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertising, or distribution of any securities within the State, including any security exempted under section 485-4, and including any transaction exempted under section 485-6, any person, as defined in this chapter:

- (1) Has employed or employs, or is about to employ any device, scheme, or artifice to defraud or for obtaining money or property by means of any false pretense, representation, or promise;
- (2) Or that any such person has made, makes, or attempts to make in the State fictitious or pretended purchases or sales of securities;
- (3) Or has engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities (A) which is in violation of law, (B) or which is fraudulent, (C) or which has operated or which would operate as a fraud upon the purchaser; any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities, practices, transactions, and courses of business are declared to be and are hereinafter referred to as fraudulent practices;
- (4) Or that any person is acting as dealer, investment adviser, [or] salesman, or investment adviser representative within the State without being duly registered as such dealer, investment adviser, [or] salesman, or investment adviser representative as provided in this chapter;

the commissioner may investigate and whenever he believes from evidence satisfactory to him: that any such person has engaged in, is engaged, or is about to engage in any of the practices or transactions hereinbefore referred to as and declared to be fraudulent practices; or is selling or offering for sale any securities in violation of this chapter or is acting as a dealer, investment adviser, [or] salesman, or investment adviser representative without being duly registered as provided in this chapter, the commissioner may, in addition to any other remedies, bring suit in the name and on behalf of the State against such person and any other person or persons concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this chapter, to enjoin such person and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter.

In any such court proceedings the commissioner may apply for and on due showing be entitled to have issued the court’s subpoena requiring forthwith the appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or things complained of in the application for injunction. In the suit the circuit courts sitting without a jury have jurisdiction of the subject matter and a judgment may be entered awarding such injunction as may be proper.”

SECTION 5. Section 485-25, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
- (1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
 - (2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract;
 - (3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change;
 - (4) That the investment adviser and investment adviser representative shall disclose to the client in a separate disclosure statement the capacity in which the investment adviser [is] and investment adviser representative are acting and the compensation to be received in situations where (A) the investment adviser’s is acting as principal for the investment adviser’s own account and knowingly sells any security to or purchases any security from a client for whom he is acting as investment adviser, or, (B) the investment adviser is acting as broker for a person other than the client and knowingly effects any sale or purchase of securities, real estate, insurance contracts, annuities contracts, or any types of real or personal property for the account of the client; and
 - (5) That the investment adviser and investment adviser representative shall provide the disclosure statement described in subsection (c)(4) and obtain the written consent of the client to the transactions described in the disclosure statement prior to the closing of the transactions.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. “Assignment”, as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor’s outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 8, 1985.)

Note

1. So in original.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-4, Hawaii Revised Statutes, is amended to read as follows:

“§304-4 Powers of regents; official name. (a) The board of regents shall have management and control of the general affairs, and exclusive jurisdiction over the internal organization and management, of the university. It may appoint a treasurer and such other officers as it deems necessary. It may authorize any officer, elected or appointed by it, to approve and sign on its behalf any voucher or other document which the board may approve and sign. It may purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university and expend such sums of money as may be from time to time placed at the disposal of the university from whatever source. All lands, buildings, appliances, and other property so purchased or acquired shall be and remain the property of the university to be used in perpetuity for the benefit of the university.

(b) The board may charge a resident tuition fee for regular courses of instruction at any University of Hawaii campus, including any community college; provided that the tuition fee for nonresident students, both undergraduate and graduate, shall be not less than two times the tuition fee for resident students, but in no event less than two times the undergraduate tuition fee for resident students at the Manoa Campus.

The board may also charge other fees for special programs of instruction, as well as laboratory fees or course fees or fees for student activities, each of which shall be the same for resident and nonresident students. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

The nonresident tuition differential shall not be applicable to East-West Center student grantees pursuing baccalaureate or advanced degrees, United States military personnel stationed in Hawaii on active duty and their authorized dependents during the period such personnel are stationed in the State, nor to students from any Pacific island or Asian district, commonwealth, territory, or insular jurisdiction, state, or nation which does not provide public institutions of higher learning, nor to employees of the university, their spouses and dependents.

[The board may waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident, who are well qualified or in need of financial assistance, not to exceed five per cent of the total full-time enrollment of the previous fall semester for each campus in the system.] The board may waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants. The board may enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition differential. The board may waive the nonresident tuition differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State.

(c) The board shall adopt the necessary rules defining residence for tuition purposes herein; provided that the basic rule shall be that a student shall qualify for the resident tuition fee only if the following criteria are met:

- (1) The adult student, or in the case of a minor student, the student's parents or guardians, has been a bona fide resident of this State for at least twelve consecutive months next preceding the student's first day of officially scheduled instruction for any semester or term in

which the student is enrolling at the particular college or campus; and

- (2) The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus by the student's parents or guardians who are nonresidents of the State.

(d) The official name of the board shall be Board of Regents, University of Hawaii, and the board shall adopt and use a common seal by which all official acts shall be authenticated."

SECTION 2. Section 304-15, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 304-16, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 304-17, Hawaii Revised Statutes, is amended to read as follows:

“§304-17 [Number and allocation of financial] Financial aids. (a) “Financial aid” as used in this section, means the tuition waivers authorized in [section 304-4 and the scholarships authorized in section 304-15.] subsections (b) and (c). A financial aid unit shall consist of a tuition waiver [or scholarship] awarded for the regular academic year or a semester thereof, and providing full coverage of tuition and other fees as authorized by the board. The board shall have the power to divide a unit, among two or more students or among students whose financial need will not substantiate a full unit. The total units of state financial aid in any given academic year shall not exceed thirteen per cent of the total full-time enrollment in the previous fall semester, except that the projected enrollment for each entering class of a new campus shall be calculated as part of its full-time undergraduate enrollment until such campus shall have graduated its first class. The allocation of the total number of units of financial aid shall be adjusted annually, based upon the ratio between full-time students enrolled at the baccalaureate degree granting campuses and in the community college system.

[Scholarships] Tuition waivers awarded to financially needy students in college transfer programs in the community colleges shall be continued upon their transfer into baccalaureate programs provided they continue to qualify, with the [scholarship] tuition waiver then to count against the quota for the baccalaureate degree granting campus. A [scholarship] tuition waiver awarded to a student who concurrently registers and enrolls at two or more campuses of the University of Hawaii during the same semester shall be counted against the quota for the campus at which the student is considered by the university to be seeking a certificate or degree. Each [Hawaii State scholarship] tuition waiver shall be granted for a period of one academic year, and may be renewed each year for all recipients who maintain a satisfactory standard of scholarship and deportment, and who continue to demonstrate financial need. The board may reaward to a new recipient the unused portion of a [Hawaii State scholarship] tuition waiver if the original awardee has left school, or for some reason ceases to remain qualified to receive financial aid. No student shall receive [state scholarship grants] tuition waivers for a period longer than four academic years while pursuing a professional or advanced degree, bachelor's degree, associate degree, or a certificate, as the case may be.

(b) The board of regents may waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident, who are well qualified

or in need of financial assistance, not to exceed fifteen per cent of the total full-time enrollment of the previous fall semester for each campus in the system. Two per cent of these tuition waivers shall be used for the purpose of subsection (c). These tuition waivers shall be awarded in accordance with guidelines established by the board of regents.

(c) Tuition waivers in the amount provided in subsection (b) may also be awarded to highly qualified, full-time students at any University of Hawaii campus whose presence advances the university's unique mission as a bridge between east and west, and also enhances the leadership role the university and the State have assumed in the Pacific and Asian regions. These tuition waivers shall be awarded in accordance with guidelines established by the board of regents."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 288

H.B. NO. 460

A Bill for an Act Relating to Attorney's Fees, Costs, and Expenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow judgment creditors to recover attorney's fees, costs, and expenses incurred in obtaining or attempting to obtain satisfaction of money judgments. Where a judgment debtor fails to voluntarily satisfy the judgment, the judgment creditor must incur further expenses to satisfy the judgment. Recovery of the additional expenses is currently not provided for by law. It is unfair to the judgment creditor, having already made a costly investment in time and expense in obtaining a judgment, to incur unrecoverable additional expenses, because of the judgment debtor's inaction.

SECTION 2. Section 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§607- Attorney's fees, costs, and expenses; judgment creditors. In addition to any other attorney's fees, costs, and expenses which may or are required to be awarded, and notwithstanding any law to the contrary, the court in any civil action may award to a judgment creditor, from a judgment debtor, reasonable attorney's fees, costs, and expenses incurred by the judgment creditor in obtaining or attempting to obtain satisfaction of a money judgment, whether by execution, examination of judgment debtor, garnishment, or otherwise. The court may award attorney's fees which it determines is reasonable, but shall not award fees in excess of the following schedule:

- 25 per cent on first \$1,000 or fraction thereof.
- 20 per cent on second \$1,000 or fraction thereof.
- 15 per cent on third \$1,000 or fraction thereof.
- 10 per cent on fourth \$1,000 or fraction thereof.
- 5 per cent on fifth \$1,000 or fraction thereof.
- 2.5 per cent on any amount in excess of \$5,000.

The above fees shall be assessed on the amount of judgment, exclusive of costs and all other attorney's fees."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 289

H.B. NO. 479

A Bill for an Act Relating to the State Fish.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§5- State fish. The humuhumu-nukunuku-a-pua'a (Rhinecanthus rectangularus), also known as the rectangular triggerfish, is established and designated as the official fish of the State."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval and shall be repealed five years after the date of approval.

(Approved June 8, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 290

H.B. NO. 488

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow long term health care facility and hospital patients to have animals visit them. Animals have been found to be therapeutically valuable for patients, especially for the elderly and mentally ill.

SECTION 2. Chapter 323, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§323- Animal therapy. Animals of the kind commonly kept as household pets may be brought into long term health care facilities for the purpose of visiting patients therein. The institution shall determine whether an

animal is suitable for visitation, the location where the visit may take place, and the policies governing the visit. At the discretion of the institution, the animal owner may be required to produce written documentation from a veterinarian attesting to the animal's good health, before visitation is permitted."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 291

H.B. NO. 813

A Bill for an Act Relating to County Bonds and Financing Solid Waste Processing and Disposal and Electric Generating Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Facilities for solid waste processing and disposal and electric generation; financing. In addition to any other powers provided by law, any county may issue general obligation bonds to finance a facility for the processing and disposal of solid waste or generation of electric energy, or both, pursuant to section 47-2.1, and provide for interest on such bonds which will accrue during the construction period. Any such facility shall be and constitute an undertaking as defined in section 49-1 and all revenues derived from the services and commodities furnished by such undertaking, including the disposal of solid waste and the sale of steam and electric energy and recovered materials, shall constitute revenues of such undertaking.

Any law to the contrary notwithstanding, and particularly section 47-7, bonds issued pursuant to this section to finance a facility for the processing and disposal of solid waste or generation of electric energy, or both, may be sold at competitive or negotiated sale at such price or prices, may bear interest at such rate or rates payable at such time or times, may be made redeemable before maturity at the option of the county, the holder, or both, at such price or prices and upon such terms and conditions, all as the governing body of the county or, if authorized by the governing body of the county, the director of finance may determine.

If bonds issued pursuant to this section for the processing and disposal of solid waste and generation of electric energy are issued bearing interest at rates which vary from time to time and with a right of the holders to put such bonds, all as provided in the proceedings authorizing the issuance thereof, any county may contract for such support facility or facilities and remarketing arrangements as are required to market such bonds to the greatest advantage of the county upon such terms and conditions as the governing body of the county shall approve by resolution. The county may enter into such contracts or agreements with the entity or entities providing a support facility as aforesaid as the governing body of the county shall approve by resolution; provided that any such contract or agreement shall provide, in essence, that any amounts due and owing by the county under such contract or agreement on an annual basis shall

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be subject to annual appropriations by the county, and any obligation issued pursuant to the terms of such contract or agreement in the form of bonds, notes, or other evidences of indebtedness shall only arise at such time as moneys or securities have been irrevocably set aside for the full payment of a like principal amount of bonds issued pursuant to this section.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 292

H.B. NO. 1275

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-3, Hawaii Revised Statutes, is amended to read as follows:

“**§269-3 Employment of assistants.** (a) The chairman of the public utilities commission may appoint and employ such clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as he finds necessary for the performance of the commission’s functions and define their powers and duties. The chairman may appoint and at pleasure dismiss a chief administrator and such hearings officers as may be necessary. Notwithstanding section 103-3, the chairman shall appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission and define their powers and duties and fix their compensation. The chief administrator, hearings officers, and attorneys shall be exempt from chapters 76 and 77. Other employees[, except the public utilities commission assistants,] shall be appointed as may be needed by the chairman in accordance with chapters 76 and 77.

[(b) For each county with a population less than 100,000, the chairman of the public utilities commission shall appoint a person who shall be designated a public utilities commission assistant, who shall reside in the county to which he is appointed and who shall be exempt from chapters 76 and 77.

The public utilities commission assistant shall report directly to the public utilities commission and shall be responsible for receiving complaints from consumers and meeting with the public utilities and transportation companies in their respective counties. In the event such complaints cannot be resolved to the satisfaction of the assistant, he shall report the matter directly to the public utilities commission. The assistant shall make arrangements for and be present at all public hearings called by the public utilities commission within the respective counties.

The chairman of the commission may direct the public utilities commission assistant of the respective counties to inquire into the operations, operating rights, rates, or direct inquiry and investigation into public utilities or transportation activities regulated under governing statutes, or hold conferences with the parties involved and submit a written report of the results of such inquiry or investigation to the commission setting forth his findings of fact and

recommendations on the subject matter and serve a copy upon the person, public utility, or transportation company.

(c) (b) Notwithstanding [the provisions of] section 91-13, the commission may consult with its assistants appointed under authority of this section in any contested case or agency hearing concerning any issue of facts. Neither the commission nor any of its assistants shall in such a proceeding consult with any other person or party except upon notice and an opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law."

SECTION 2. Public utilities commission assistants serving on the public utilities commission staff on the effective date of this Act shall become civil service employees as of such date without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 1985.)

ACT 293

S.B. NO. 245

A Bill for an Act Relating to the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The revisor of statutes, as authorized by section 23G-16, Hawaii Revised Statutes, shall edit and prepare for publication the 1985 Replacement to the Hawaii Revised Statutes, to contain such volumes as necessary to include all the laws in the 1976 Replacement volumes, as amended and supplemented by the 1977 Regular Session through the 1985 Regular Session of the Legislature of the State of Hawaii, in force at the time of publication.

The order of the publication of specific volumes shall be determined by the revisor of statutes.

SECTION 2. Notwithstanding section 23G-14, Hawaii Revised Statutes, the revisor of statutes shall not publish a 1985 Supplement to the Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$636,900, or so much thereof as may be necessary, to the Legislative Reference Bureau for the publication of the 1985 Replacement volumes to the Hawaii Revised Statutes. The bureau may employ such temporary technical and clerical assistants as may be necessary for the purposes of this Act. Funds appropriated for the 1985 Supplements by any other act of the 1985 Legislature shall be reappropriated for the purposes of this Act.

SECTION 4. As of the close of business on June 30, 1988, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

ACT 294

S.B. NO. 1144

A Bill for an Act Relating to Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§459- List of specific topical ocular pharmaceutical agents. The following pharmaceutical agents may be used for examination purposes only:

- (1) Proparacaine HCL 0.5%;
- (2) Benoxinate HCL 0.4%;
- (3) Tropicamide 0.5% and 1.0%;
- (4) Cyclopentolate 0.5% and 1.0%;
- (5) Phenylephrine HCL 2.5%; and
- (6) Hydroxyamphetamine Hydrobromide 1%.”

SECTION 2. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

“§459-1 Optometry; practice of, defined. The practice of optometry, for the purpose of this chapter, is defined to be the recognition and analysis of visual dysfunction of the human eye; the employment of trial frame [and] or trial lenses, and any objective or subjective means or methods, other than the use of [drugs,] medicine[,] or surgery, but including the use of topically applied pharmaceutical agents known as topical anesthetics, cycloplegics, and mydriatics, for non-therapeutic purposes only, for the purpose of determining the refractive powers, visual, [and] muscular, or other anomalies of human eyes; [and] or the prescribing [or employment], fitting or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular [insufficiencies] anomalies of human eyes. Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or [holds himself out as being] claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked [certificate of registration] and unsuspended license as provided in this chapter; provided[,] that an orthoptist may give visual training, including exercises, under the supervision of [an oculist] a physician or optometrist. The use of topically applied pharmaceutical agents shall be granted to an optometrist licensed under this chapter who has met the requirements under section 459-7.

If while examining a patient a licensed optometrist finds, by history or examination, any ocular abnormality or any evidence of systemic disease requiring further diagnosis and possible treatment by a licensed physician, the optometrist shall refer that patient to an appropriate licensed physician.”

SECTION 3. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

“§459-7 Examination[; certificate of registration]. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the

practice of optometry before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant is at least eighteen years of age, is a graduate of a high school, is a graduate of an American optometric college, school, or university recognized and approved by the board of examiners in optometry and [the American optometric association,] accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Office of Education, shall take an examination before the board upon complying with the following requirements:

(1) Applications for examination shall be made out and filed in writing with the secretary of the board; and

(2) Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.

(b) Each applicant shall file, in writing, with the secretary at least thirty days prior to the date selected by the board for examination, the following credentials:

- (1) A diploma or certificate of graduation from an American optometric college or school recognized and approved by the board;
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of optometric examiners, and the secretary of the state optometric association of that state; and
- (3) An unretouched unmounted recent photograph of the applicant.

(c) The applicants shall be given due notice of the date and place of examination. No applicant who fails to obtain an average of seventy per cent in every subject upon which the applicant is examined shall be passed by the board. If an applicant, because of the applicant's failure to pass an examination is refused a license, the applicant, within one year, shall be permitted to take a second examination without additional fee. If an applicant fails the second time, the applicant shall be required to file a new application and to pay a reexamination fee. If an applicant fails the third time or any subsequent time, the applicant shall be required to file a new application and to pay the application and examination fees and to take a complete examination.

An appeal to the circuit court, of the circuit within which the applicant resides, may be taken from any decision of the board by any applicant who is refused or denied a certificate.

Every candidate who passes an examination shall be registered as possessing the qualifications required by this chapter, and shall receive from the board a proper certificate of registration upon payment of a registration fee. Before any certificate is issued it shall be numbered and recorded on a book kept by the secretary of the board of examiners in optometry.

(d) Each registered optometrist shall pay a biennial license fee between December 1, and December 31 of each odd-numbered year, to the board for a renewal of the optometrist's registration certificate for the biennium. The failure of any regular licensed optometrist to pay the biennial license fee in advance on or before December 31 of each odd-numbered year, during the time the optometrist's license remains in force, shall ipso facto, work a revocation and forfeiture of the license. Any person whose license is so revoked and forfeited shall pay a penalty fee for the restoration of the license, and, in addition, all delinquent biennial license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within

three years, the license shall not be restored unless the regular examination for applicants is passed.

(e) Each registered optometrist shall submit proof to the board of examiners that the optometrist did, on or before December 31 of each even-numbered year, during the time the license remains in force, meet the requirement of continuing education in programs as set and approved by the board. The board shall adopt rules for the certification of the administration of the continuing education program.

(f) Certificates of registration shall be endorsed authorizing licensed optometrists to use pharmaceutical agents for examination purposes. A certificate shall certify that an optometrist has complied with the following requirements:

- (1) Successful completion of instruction in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on ocular pharmacology. The systemic effects and reactions to topical pharmaceutical agents used for examinations shall be studied, as well as the emergency management and referral of any adverse reactions that may occur. Instruction shall also include review of systemic and ocular diseases and clinical techniques and instruments used with these pharmaceutical agents for examination purposes. The course of study shall be approved by the board, and shall be offered by an institution which is accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Office of Education; and
- (2) Successful completion of an examination approved by the board which tests for those subjects outlined in the course of instruction in (1) above."

SECTION 4. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

"§459-9 Refusal to permit examination or issue certificate; grounds for. The board of examiners in optometry may refuse to admit persons to its examinations or to issue the certificates for any of the following causes:

- (1) Presentation to the board of any certificate or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing an examination;
- (2) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or habits of intemperance, or drug addiction calculated to destroy the accuracy of the work of an optometrist;
- (3) Advertising in the following manner:
 - (A) By any means whatsoever, directly or indirectly, to offer lens, lenses, glasses, or frames or fittings thereof at a discount or as a premium for the purchase of any article of merchandise;
 - (B) By means of false and deceptive statements or by statements which tend to deceive or defraud; or to claim superiority over fellow optometrists; or to publish reports of cases or certificates of same in any public advertising media;
 - (C) In conjunction with any nonlicensed person or groups of individuals by permitting the use of [his] the person's name, professional title, or profession;

- (4) Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist or from any company or corporation;
- (5) Making of a house-to-house canvass either in person or through solicitors or associates for the purpose of selling, advertising, or soliciting the sale of eyeglasses, spectacles, lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, or lenses from house-to-house or on the streets or highways notwithstanding any law for the licensing of peddlers;
- (6) Renting space, subleasing departments, or otherwise occupying space to practice optometry on the premises of a commercial (mercantile) concern. Optometric practices must be under the registered optometrist's ownership and under [his] the optometrist's exclusive control. It must not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files must be the sole property of the optometrist. The office must be definite and apart from the space occupied by any commercial (mercantile) concern so that all signs are separate and distinct from the commercial (mercantile) concern and all entrances to the premises must be separate and definite in character such that there could be no misleading interpretation that [his] the optometrist's practice is in any way associated with a commercial (mercantile) concern;
- (7) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other such allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any such intended or prospective wearer or user;
- (8) Using any name in connection with [his] the optometrist's practice other than the name under which [he] the optometrist is licensed to practice, or failing to comply with the following provisions, to wit: all signs, cards, stationery, or other advertising must clearly identify the individual optometrist using or presenting the same and must be free from any ambiguity or possibility of misinterpretation as to such identity;
- (9) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services[.];
- (10) Utilizing pharmaceutical agents without first being certified as provided in section 459-7 or utilizing pharmaceutical agents for purposes other than those specified in section 459-1; or
- (11) Failure to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician."

SECTION 5. Section 461-15, Hawaii Revised Statutes, is amended to read as follows:

“§461-15 Miscellaneous permits. It shall be unlawful:

- (1) For any person to sell or offer for sale at public auction, or to sell or offer for sale at private sale in a place where public auctions are conducted, any drugs without first having obtained a permit from the board of pharmacy [so to do;] to do so;
- (2) For any person to in any manner distribute or dispense samples of any drugs or medical supplies without first having obtained a permit from the board [so to do;] to do so; provided[,] that nothing in this paragraph shall interfere with the furnishing of samples or drugs directly to physicians, druggists, dentists, [and] veterinarians, and optometrists for use in their professional practice;
- (3) For wholesalers to sell, distribute, or dispense any drug, except to a pharmacist, physician, dentist, [or] veterinarian, or optometrist who is allowed to use pharmaceutical agents under chapter 459 or to a generally recognized industrial, agricultural, manufacturing, or scientific user of drugs for professional or business purposes; provided that it shall be unlawful for wholesalers to sell, distribute, or dispense any pharmaceutical agent which is not listed under section 459- to any optometrist; and
- (4) For any person, as principal or agent, to conduct or engage in the business of preparing, manufacturing, compounding, packing, or repacking any drug without first having obtained a permit from the board [so to do.] to do so.”

SECTION 6. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§459- Adverse effects, temporary reporting requirements. The Board of Examiners in Optometry shall promulgate rules and regulations as will require a licensed optometrist to report findings of adverse effects experienced by any of the optometrist’s patients from his use of pharmaceutical agents during an examination. This requirement shall expire on June 30, 1988.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 295

S.B. NO. 1223

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 202, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) The provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of^f first deputy and private secretary to the chairman of the commission. The department may hire [a] temporary staff [consisting of

qualified aides in finance and funding, planning and development, legal matters, agriculture and ranching, and other individuals] on a contractual basis not subject to chapters 76, 77, and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account, development, [or] operating funds[.], or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department. All other positions in the department shall be subject to chapters 76 and 77, Hawaii Revised Statutes[, and employees having tenure, according to the employment practices of the department, immediately prior to June 20, 1963, and occupying positions in accordance with the State's position classifications and compensation plans shall be given permanent appointment status under chapter 76 without a reduction in pay or the loss of seniority, prior service credit, vacation, or sick leave earned heretofore. An employee with tenure who does not occupy a position under chapters 76 and 77, Hawaii Revised Statutes, shall be appointed to the position after it has been classified and assigned to an appropriate salary range by the director of personnel services and such employee shall not suffer a reduction in pay or loss of seniority and other credits earned heretofore.]

All vacancies and new positions which are covered by chapters 76 and 77, Hawaii Revised Statutes, shall be filled in accordance with sections 76-23 and 76-31, Hawaii Revised Statutes, provided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. The provisions of this amendment are declared to be severable, and if any section, sentence, clause or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

1. Prior to amendment, "the" appeared here.

ACT 296

H.B. NO. 463

A Bill for an Act Relating to Workers' Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the workers' compensation law to make the system both effective and efficient. This Act is based upon certain findings in the Study of the Workers' Compensation

Program of the State of Hawaii by Haldi Associates, Inc. as submitted by the Legislative Auditor and the Report of the Workers' Compensation Program Commission dated January 1982 and incorporates those reforms deemed necessary.

The legislature also finds that aligned with these concerns to reduce workers' compensation costs, employers and organizations that represent employees should make an effort to lessen work-connected injuries and illnesses through cooperative endeavors in accident prevention programs.

SECTION 2. Section 386-25, Hawaii Revised Statutes, is amended to read as follows:

“§386-25 Vocational rehabilitation. (a) The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner.

(b) The director shall refer employees who may have or have suffered permanent disability as a result of work injuries and who in his opinion can be physically or vocationally rehabilitated to the department of social services and housing or to private providers of rehabilitation services for such physical and vocational rehabilitation services as are feasible. A referral shall be made upon recommendation of the rehabilitation unit established under section 386-71.5 and after the employee has been deemed physically able to participate in rehabilitation by the employee's attending physician. The unit shall include appropriate professional staff and shall have the following duties and responsibilities:

- (1) To foster, review, and approve rehabilitation plans developed by certified providers of rehabilitation services, whether they be private or public;
- (2) To adopt rules consistent with this section which shall expedite and facilitate the identification, notification, and referral of industrially injured employees to rehabilitation services, and establish minimum standards for providers providing rehabilitation services under this section;
- (3) To certify private and public providers of rehabilitation services in accordance with the minimum standards established; and
- (4) To coordinate and enforce the implementation of rehabilitation plans.

[(b)] (c) Enrollment in a rehabilitation plan or program shall not be mandatory and the approval of a proposed rehabilitation plan or program by the injured employee shall be required. After securing such approval the director shall select a certified provider of rehabilitation services for the injured employee after consultation with the employee and the employer.

[(c)] (d) An injured employee's enrollment in a rehabilitation plan or program shall not affect the employee's entitlement to temporary total disability compensation if the employee earns no wages during the period of enrollment. If the employee receives wages for work performed under the plan or program, the employee shall be entitled to temporary total disability compensation in an amount equal to the difference between the employee's average weekly wages at the time of injury and the wages received under the plan or program, subject to the limitations on weekly benefit rates prescribed in section [386-31.] 386-31(a). The employee shall not be entitled to such compensation for any week during

this period where the wages equal or exceed the average weekly wages at the time of injury.

[(d)] (e) The director shall adopt rules for additional living expenses necessitated by the rehabilitation program, together with all reasonable and necessary vocational training.

[(e)] (f) If the rehabilitation unit determines that physical and vocational rehabilitation are not possible or feasible, it shall certify such determination to the director.

[(f)] (g) The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by his entrance upon a course of physical or vocational rehabilitation as herein provided.

(h) Vocational rehabilitation services for the purpose of developing a vocational rehabilitation plan shall be approved by the director and the director shall periodically review progress in each case."

SECTION 3. Section 386-31, Hawaii Revised Statutes, is amended to read as follows:

"§386-31 Total disability. (a) Permanent total disability. Where a work injury causes permanent total disability the employer shall pay the injured employee a weekly benefit equal to sixty-six and two-thirds per cent of his average weekly wages, subject to the following limitation:

Beginning January 1, 1975, and during each succeeding [12] twelve -month¹ period thereafter, not more than the state average weekly wage last determined by the director, rounded to the nearest dollar, nor less than \$38 or [25] twenty-five per cent of the foregoing maximum amount, rounded to the nearest dollar, whichever is higher.

In the case of the following injuries, the disability caused thereby shall be deemed permanent and total:

- (1) The permanent and total loss of sight in both eyes;
- (2) The loss of both feet at or before the ankle;
- (3) The loss of both hands at or above the wrist;
- (4) The loss of one hand and one foot;
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;
- (6) An injury to the skull resulting in incurable imbecility or insanity.

In all other cases the permanency and totality of the disability shall be determined on the facts. No adjudication of permanent total disability shall be made until after two weeks from the date of the injury.

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability but not including the first [two] three calendar days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if his average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of his average weekly wages. [In case the total disability exceeds five days, the compensation shall be allowed from the date of disability.]

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto without waiting for a decision from the director, unless such right is controverted by the employer in his initial report of industrial injury. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the

occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

The payment of such benefits shall only be terminated upon order of the director or if the employee is able to resume work [or if the employee has filed a false claim]. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work [or because he has filed a false claim], the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that he may make a written request to the director for a hearing if he disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision[.] as specified in section 386-86.

An employer or insurance carrier who fails to comply with this section shall pay \$250 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

- (1) In any case where the director determines based upon a review of medical records and reports and other relevant documentary evidence that an injured employee's medical condition may be stabilized and the employee is unable to return to the employee's regular job the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of medical stabilization and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings any person aggrieved by the director's decision and order may appeal under section 386-87. A preliminary decision of the director shall inform the injured employee and the employer of the following responsibilities, benefits, and limitations on vocational rehabilitation benefits which are designed to facilitate the injured employee's early return to suitable gainful employment:
 - (A) That the injured employee may invoke the employee's rights under section 378-2, 378-32, or 386-142, or all of them, in the event of unlawful discrimination or other unlawful employment practice by the employer.
 - (B) That after termination of temporary total disability benefits an injured employee who resumes work may be entitled to permanent partial disability benefits which if awarded shall be paid regardless of the earnings or employment status of the disabled employee at the time.
- (2) In any case in which the rehabilitation unit determines that an injured employee is not a feasible candidate for rehabilitation and that the employee is unable to resume the employee's regular job, it

shall promptly certify the same to the director. Soon thereafter the director shall conduct a hearing to determine whether the injured employee remains temporarily totally disabled, or whether the employee is permanently partially disabled, or permanently totally disabled."

SECTION 4. Section 386-1, Hawaii Revised Statutes, is amended by adding a new definition of "health care provider" to be appropriately inserted and to read as follows:

" "Health care provider" means a person qualified by the director to render health care and service and who has a license for the practice of:

- (1) Medicine under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- (4) Osteopathy under chapter 460;
- (5) Naturopathy under chapter 455;
- (6) Optometry under chapter 459;
- (7) Podiatry under chapter 463E; and
- (8) Psychology under chapter 465."

SECTION 5. Chapter 386, Hawaii Revised Statutes, is amended by adding two new sections to Part II, subpart A, to be appropriately designated and to read as follows:

§386- Guidelines on frequency of treatment and reasonable utilization of health care and services. The director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers which are considered necessary and appropriate under this chapter. The guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall promulgate updated medical fee schedules referred to in section 386-21 and where deemed appropriate shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986 in accordance with chapter 91.

§386- Qualification and duties of health care providers. (a) All health care providers rendering health care and services under this chapter shall be qualified by the director and shall remain qualified by satisfying the requirements established in this section. The director shall qualify any person initially who has a license for the practice of:

- (1) Medicine under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- (4) Osteopathy under chapter 460;
- (5) Naturopathy under chapter 455;
- (6) Optometry under chapter 459;
- (7) Podiatry under chapter 463E; or
- (8) Psychology under chapter 465.

(b) To remain a qualified provider under this chapter a health care provider shall:

- (1) Comply with guidelines established by the director on the frequency of treatment and reasonable utilization of health care and services;

- (2) Conform to limitations established by the director for charges on services under medical fee and other fee schedules;
- (3) File timely reports required under section 386-96;
- (4) Avoid unnecessary and unreasonable referrals of injured employees to other health care providers;
- (5) Refrain from ordering unnecessary and unreasonable diagnostic tests and studies;
- (6) Remain available as a treating health care provider to injured employees and as an advisor to the director in proceedings under this section; and
- (7) Comply with all requirements established under this chapter and by rules and decisions adopted and issued by the director pursuant to this chapter.

(c) Any health care provider who fails to comply with subsections (a) and (b) may be subject to such sanctions deemed just and proper by the director which may include:

- (1) Disallowance of fees for services rendered to an injured employee;
- (2) Forfeiture of payments for services rendered to an injured employee under this chapter;
- (3) Fines of not more than \$1,000 for each violation;
- (4) Suspension as a qualified provider; and
- (5) Disqualification as a provider of services under this chapter.

(d) No sanction shall be imposed by the director under this section except upon submission of a written complaint which shall specifically allege that a violation of this section occurred within two years of the date of the complaint. A copy of the complaint shall be sent to the health care provider charged promptly upon receipt by the director. The director may establish an advisory panel of health care providers consisting of three members, one selected by the complainant, another selected by the health care provider charged, and the third selected by the director who shall assist the director in any case arising under this section. Fees for services rendered by members of the advisory panel shall be paid for by the special compensation fund. No member of the advisory panel shall be liable in damages for libel, slander, or other defamation of character of any party for any action taken while acting within their capacities as members of the advisory panel.

The director shall issue, where a sanction is ordered under this section, a written decision of findings following a hearing held upon not less than² twenty days written notice to the complainant and the health care provider charged. No violation shall be found unless the director determines that the violator acted in bad faith. Any person aggrieved by a decision of the director may appeal the decision under section 386-87.

(e) In any case arising under this section, the injured employee treated by the health care provider charged with a violation of this section shall not be a party to the proceeding and shall not appear unless called as a witness before the director or the appellate board. Charges for services rendered by the health care provider alleged to be in violation of this section shall be suspended pending action by the director and the appellate board in cases on appeal.

In any case in which fees for services rendered by a health care provider are disallowed by the director, the health care provider shall be ordered to forfeit payment."

SECTION 6. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

“§386-94 Attorneys, physicians, other health care providers,³ and other fees. Claims of attorneys and physicians and other health care providers for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person shall not be valid unless approved by the director of labor and industrial relations or, if an appeal is had, by the appellate board or court deciding the appeal. Any claims so approved shall be a lien upon such compensation in the manner and to the extent fixed by the director, the appellate board or the court.

Any person who receives any fee, other consideration or gratuity on account of services so rendered, without approval of such fee, other consideration or gratuity in conformity with the preceding paragraph shall be fined not more than \$1,000, or imprisoned not more than one year, or both.”

SECTION 7. Section 386-98, Hawaii Revised Statutes, is amended to read as follows:

“§386-98 Penalties for [false representations] fraud.³ [If for the purpose of obtaining any benefit or payment under this chapter, either for himself or for any other person, anyone wilfully makes a false statement or representation, he shall be fined not more than \$1,000.] No person shall wilfully make a false statement or representation for the purpose of directly obtaining any compensation or payment or for the purpose of avoiding on behalf of employer or carrier any compensation or payment under this chapter. Any person who violates this section shall be subject to one or more of the following:

- (1) a fine of not more than \$2,500.00 for each violation;
- (2) suspension or termination of benefits in whole or in part;
- (3) suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;

No penalty shall be imposed except upon consideration of a written complaint which specifically alleges a violation of this section occurring within two years of the date of said complaint. A copy of said complaint specifying the alleged violation shall be served promptly upon the person charged. The director or Board shall issue, where a penalty is ordered, a written decision stating all findings following a hearing held not less than twenty days after written notice to the person charged. Any person aggrieved by the decision may appeal said decision under section 386-87 and 386-88.”

SECTION 8. Section 386-86, Hawaii Revised Statutes, is amended to read as follows:

“§386-86 Proceedings upon claim. If a claim for compensation is made, the director [of labor and industrial relations] shall make such further investigation as [he deems] deemed necessary and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating [his] the findings of fact and conclusions of law. The director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.”

SECTION 9. Section 386-89, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) On the application of any party in interest, supported by a showing of substantial evidence, on the ground of a change in or of a mistake in a determination of fact related to the physical condition of the injured employee, the director may, at any time prior to [ten] eight years after date of the last payment of compensation, whether or not a decision awarding compensation has been issued, or at any time prior to [ten] eight years after the rejection of a claim, review a compensation case and issue a decision which may award, terminate, continue, reinstate, increase, or decrease compensation. No compensation case may be reviewed oftener than once in six months and no case in which a claim has been rejected shall be reviewed more than once if on such review the claim is again rejected. The decision shall not affect any compensation previously paid, except that an increase of the compensation may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, a decrease of the compensation may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased compensation shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the director. In the event any such decision increases the compensation in a case where the employee has received damages from a third party pursuant to section 386-8 in excess of compensation previously awarded, the amount of such excess shall constitute a pro tanto satisfaction of the amount of the additional compensation awarded. This subsection shall not apply when the employer’s liability for compensation has been discharged in whole by the payment of a lump sum in accordance with section 386-54.”

SECTION 10. Chapter 431, Hawaii Revised Statutes, is amended by adding the following new sections to be appropriately designated and to read as follows:

“§431- Standing to intervene in rate-filing and rate-making proceedings. In any proceeding on workers’ compensation insurance rate-filing and rate-making before the insurance commissioner under the casualty rating law of Hawaii, section 431-691 et seq., an insured who is covered by a workers’ compensation insurance shall have full rights to participate as a party in interest.

§431- Actuaries, accountants, and other staff. There shall be established within the office of the insurance commissioner a unit to assist the insurance commissioner in workers’ compensation insurance rate-filing and rate-making proceedings under the casualty rating law of Hawaii, section 431-691, et seq. The insurance commissioner may employ or contract actuaries, accountants, investigators, clerks, stenographers, and other assistants as may be necessary for the purpose of assisting the insurance commissioner in workers’ compensation insurance rate-filing and rate-making proceedings, not subject to chapters 76 and 77.

§431- Additional powers for workers’ compensation rate-filing and rate-making. Whenever it appears to the insurance commissioner that an insurance carrier or other interested persons regulated by the casualty rating law of Hawaii affecting workers’ compensation insurance rates has: (1) violated or failed to comply with any provision of this chapter or of any state or federal law; or (2) failed to comply with any rule, regulation, or other requirement of any other state or federal agency which affects workers’ compensation insurance rates; or (3) failed to comply with any provision of its charter or franchise; or (4) set or applied any rates, classifications, charges, or rules affecting workers’ compensation insurance that are unreasonable or are unreasonably discriminatory, or (5) failed to give appropriate consideration to investment income earned or realized

by insurers, including investment income earned from unearned premium and loss reserve funds in making rates; or (6) failed to recognize good safety performance records of employers in setting premium rates and levels, the insurance commissioner may institute proceedings for appropriate relief including but not limited to proceedings to roll-back current rates.”

SECTION 11. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

HAWAII WORKERS’ COMPENSATION STATE FUND

§ -1 **Definitions.** As used in this chapter:

“Board” means the fund’s board of directors.

“Fund” means the Hawaii workers’ compensation state fund.

§ -2 **Fund’s establishment.** (a) There is established a workers’ compensation state insurance fund to be known as the “Hawaii workers’ compensation state fund”.

(b) The fund shall be a nonprofit organization under the control of a board of directors and placed within the department of budget and finance for administrative purposes, except as otherwise provided herein. The fund shall pay taxes and license fees like other insurance carriers.

(c) The fund’s assets shall consist of legislative appropriations and all of the fund’s real and personal property.

(d) Except for a state loan at its inception, the fund shall be self-supporting. The fund shall repay the State for the loan with interest within ten years.

(e) The department of budget and finance shall have custody of the fund’s assets as determined by the board.

(f) The fund’s principal office shall be in Honolulu, Hawaii. The board may establish branch offices in other locations.

§ -3 **Fund’s purpose.** The fund’s purpose is to sell workers’ compensation insurance at the lowest actuarially responsible price as determined by the fund’s board. The fund shall commence operation on the effective date of this Act, but the workers’ compensation insurance sold initially by the fund shall provide insurance coverage for work injuries occurring from July 1, 1986.

The fund may serve as a model for the workers’ compensation insurance industry to determine minimum insurance premium rates. It shall be competitive with other private workers’ compensation insurance carriers.

§ -4 **Number, appointment, term.** (a) The board shall be composed of five directors, who shall be appointed by the governor, upon the Hawaii workers’ compensation state fund becoming operational as provided in Sec. -13.

(b) A director’s term of office shall be five years and each director shall hold office until the appointment and qualification of the director’s successor.

The terms of the first five directors, who shall be appointed by July 1, 1986, shall expire as follows:

- (1) One for one year;
- (2) One for two years;
- (3) One for three years;
- (4) One for four years; and
- (5) One for five years.

Thereafter, each director shall be appointed for a term of five years.

(c) A vacancy on the board shall be filled by appointment of the governor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person’s predecessor.

(d) Each director shall receive necessary travelling and board expenses incurred in the performance of duty as a director and a fee of \$100 for each day of actual attendance at board meetings, but not to exceed \$500 a month.

(e) Within one year after appointment, each director shall be a policyholder or an employee of a policyholder of the fund and shall continue in such status during the director's term of office.

No person who has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier shall be a director.

(f) The board shall determine the content and sale of workers' compensation insurance policies.

(g) The board shall discharge its duties:

- (1) In accordance with the fund's purpose;
- (2) With the care, skill, prudence, and diligence under the circumstances that a prudent director, acting in a like capacity and familiar with such matters would use in conducting a similar enterprise and purpose;
- (3) By diversifying the fund's investments to minimize the risk of losses, unless it is prudent not to do so;
- (4) In accordance with governing legal documents;
- (5) By having an annual audit of the fund by a certified public accountant and by making copies of such audit available to the governor and the state legislature;
- (6) By securing fidelity bonds for the directors and in its discretion for other agents dealing with the fund's assets at the fund's expense;
- (7) By purchasing liability insurance for errors and omissions for the board, each director, and any other fiduciary employed or contracted by the fund to cover liability or losses caused by the act or omission of a fiduciary;
- (8) By maintaining proper books of accounts and records of the fund's administration;
- (9) By carrying out the reporting and disclosure requirements required by law; and
- (10) By determining an actuarially responsible schedule of premium rates with consideration of the fund's investment income or refunds, or both, to policyholders.

(h) Except as otherwise provided by law, the fund may:

- (1) Transact workers' compensation insurance policies required or authorized by state law to the same extent as any other insurer.
 - (A) The fund may insure Hawaii employers against their liability for compensation or damages for injury or death under the United States Longshoremen's and Harbor Workers' Compensation Act or other federal or maritime laws like any other private insurer;
 - (B) The fund may insure an out-of-state employer against its liability for damages under the State's law for bodily injury or death occurring within the State of Hawaii if the fund also sold workers' compensation insurance to the employer as an in-state employer.
- (2) Allocate fiduciary responsibilities among the directors and designate other persons to carry out fiduciary responsibilities.
- (3) Collect, receive, hold, and disburse all money payable to or by the fund.

- (4) Deposit the fund's money in banks or depositories selected by the board. Withdrawals from such banks or depositories shall be made or authorized only upon the signatures of at least two persons approved by the board.
- (5) Pay money from the fund to effectuate the fund's purpose and administration, including costs incurred to establish the fund.
- (6) Employ persons to administer the fund, including, but not limited to, legal counsels, accountants, insurance consultants, administrators, actuaries, investment managers, adjustors, and any other expert and clerical employees and pay compensation and expenses in connection therewith, without the restrictions or requirements affecting public officers and employees under title 7, Hawaii Revised Statutes.
- (7) By August 1, 1986, appoint an administrator, establish an administration office, and secure real and personal property to maintain such office to administer the fund.
- (8) Provide for the fund's administration, jointly, with other similar funds or similar purposes, to reduce expenses of administration.
- (9) Select the department of budget and finance or other organization to serve as custodial trustee to collect, receive, hold, or disburse money payable to or by the fund.
- (10) Invest the fund's principal and income without distinction between principal and income and keep the fund's assets invested in real or personal property or other securities. The board may retain cash temporarily awaiting investment or to meet contemplated payments without liability for interest thereon.

The board may manage the fund's assets, except to the extent that such authority to manage the fund's assets is delegated to other qualified investment managers.

The board may appoint investment managers to manage, acquire, or dispose of any of the fund's assets. An investment manager may be designated as an "investment agent".

An investment manager is any fiduciary, who has been designated by the board to manage, acquire, or dispose of the fund's assets, a bank as defined by law, or an insurance company qualified to perform services under laws of more than one state. Such investment manager shall acknowledge in writing that it is a fiduciary under the fund.

The board may, but not by way of limitation:

- (A) Sell the fund's securities. No purchaser of the fund's securities is bound to see to the application of the purchase money or inquire as to the validity of such sale;
- (B) Vote in behalf of any stocks, bonds, or securities of any corporation or issuer held in the fund or request any action to such corporation or issuer. The board may give general or special proxies or powers of attorney with or without powers of substitution.
- (C) Participate in reorganizations, recapitalizations, consolidations, mergers, and similar transactions for stocks, bonds, or other securities of any corporation which are held in the fund and may accept and retain any property received thereunder for the fund.

The board may exercise any subscription rights and conversion privileges for the fund's stocks or securities.

- (D) Compromise, compound, and settle any debt or obligation due to or from the fund. The board may reduce the amount of principal and interest, damages, and costs of collection in settling such debts.
 - (E) Cause securities held by it to be registered in its own name or in the name of a nominee without indicating that such securities are held in the fiduciary capacity and to hold any securities in bearer form. The fund's records, however, shall show that such investments are part of the fund.
 - (F) In order to expedite the purchase and sale of securities, the board may delegate their investment powers to investment managers of the fund. The purchase or sale of any securities by such managers shall be in the name selected by the board. The authority of such managers to purchase or sell such securities for the fund shall be evidenced by written authority executed by the fund's administrator. The board shall require such managers to keep them currently informed as to the nature and amount of the investments made for the fund by them. The board may enter into appropriate agreements with such managers setting forth their investment powers and limitations. The board may terminate the services of such managers. Such managers shall be subject to the board's instructions.
- (11) Borrow money from any source and secure repayment thereof by pledging any of the fund's assets.
 - (12) Buy, sell, exchange, lease, convey, and otherwise acquire or dispose of any real or personal property under proper terms and sign and deliver any necessary instrument of conveyances or transfer, or both, in connection therewith.
 - (13) Enter into any agreement to carry out this chapter and to administer the fund.
 - (14) Pay taxes or assessments assessed against the fund.
 - (15) Require any employer or policyholder or any employee to furnish the board with such information necessary for the fund's administration.
 - (16) Delegate its authority to the administrator or any authorized representative to maintain any legal proceedings necessary to protect the fund or the directors or to secure payment due to the fund. In connection therewith the board or the administrator or their representative may compromise, settle, or release claims on behalf of or against the fund or the board.
 - (17) Promote safety programs to employer clients, including, but not limited to, the following activities:
 - (A) Analysis of reports of industrial accidents of employer clients to help determine the cause of these accidents;
 - (B) Conduct of studies for the purpose of risk and hazard identification and assessment by safety and medical professionals;
 - (C) Conduct of educational programs designed to prevent frequently recurring industrial accidents; and

- (D) Inspection of work sites and investigation of unsafe working conditions to promote job safety and elimination of hazards.
- (18) Provide the terms and conditions of an insurance policy.
- (19) Provide that any written instrument be executed for the fund by the administrator or the administrator's agent.
- (20) Pay for reasonable expenses to educate the directors and fund personnel, including but not limited to travelling, room and board, and tuition expenses.

§ -5 Board meetings. (a) The board's quorum to transact business shall consist of at least three directors. Unless a quorum is present, no business shall be transacted.

(b) Each director shall have one vote. All board actions and decisions shall be by majority vote.

(c) Directors shall determine the time and place of the board's regular meetings. The fund's administrator shall notify directors of the time and place of meetings.

(d) Special meetings may be held at the call of the chairperson or any two directors upon giving at least seven days' written notice to all other directors. Unless otherwise specified in the call and notice, meetings shall be held at the fund's principal office.

(e) Directors shall elect a chairperson, secretary, and treasurer and other officers as it decides.

(f) Directors may also exercise their powers by written assent of all directors.

§ -6 Limitation of liability of directors. If an investment manager has been appointed under this chapter, no director shall be liable for the acts or omissions of such investment manager or be under an obligation to invest or otherwise manage any assets of the fund, which are subject to management by the investment manager.

§ -7 Liability and rights of parties and third persons. (a) Neither the State nor any policyholder nor any director or employee of the fund shall be liable to make any payments to the fund or pay any expenses of the fund, except as provided under this chapter.

No policyholder shall have any right to the return of any money paid to the fund, except as determined by the directors or by law.

(b) The board may refund premiums to policyholders; provided that such refunds do not jeopardize the fund's actuarial responsibility.

§ -8 Termination and merger. (a) The fund may be terminated only by law.

(b) Any assets remaining in the fund after the termination of the fund and any assets acquired or disbursed as a result of merger, consolidation, amalgamation, affiliation, exchange of credits, or otherwise, shall be used by the board solely for the purposes under this chapter and for administrative expenses incident thereto.

§ -9 Governing law. The interpretation of this chapter shall be governed by the laws of Hawaii.

§ -10 Administrator's appointment and duties. The board shall appoint and may remove the fund's administrator and fix the administrator's salary. The administrator shall manage and conduct the fund's business affairs under the board's direction and policies. The administrator shall perform other duties prescribed by the board.

§ -11 Exemptions. The fund shall be exempt from the application of title 7, title 8, and title 9, Hawaii Revised Statutes, in conducting the fund's business.

§ -12 There is established an interim committee of eight persons, four to be designated by the speaker of the house of representatives and four to be designated by the president of the senate who shall review the provisions of Section 11 of this Act. This committee shall select a consultant to advise the committee regarding feasible means to implement a workers' compensation state insurance fund. The interim committee shall submit a report to the legislature twenty days before the regular session of 1986. There is hereby appropriated to the legislative reference bureau the sum of \$100,000, or so much thereof as may be necessary to underwrite the expenses of the consultant.

§ -13 **State Fund Operational.** The Hawaii Workers' Compensation State Fund shall become operational upon funding by special appropriation by the legislature."

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the following sums:

(1) \$100,000, or so much thereof as may be necessary for fiscal year 1985-1986, and \$100,000, or so much thereof as may be necessary for fiscal year 1986-1987, to the department of commerce and consumer affairs to effectuate the purposes of Section 10 of the Act relating to the insurance commissioner. The sum appropriated shall be expended by the department of commerce and consumer affairs.

(2) \$707,400, or so much thereof as may be necessary for fiscal year 1985-1986, and \$742,770, or so much thereof as may be necessary for fiscal year 1986-1987, for personnel and other related costs to implement Sections 3, 5, and 7 of this Act. The sum appropriated shall be expended by the department of labor and industrial relations.

SECTION 13. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§386- Deductible option for medical benefits in insurance policy. (a) Each workers' compensation insurance policy issued by every insurer shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of \$100, \$150, \$200, \$300, \$400, or \$500. The insured employer, if choosing to exercise the option, shall choose only one of the amounts as the deductible.

(b) If an insured employer exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for the medical benefits paid for each claim of work injury suffered by an injured employee. The insurer shall not be liable for the deductible.

The insurer shall pay the entire cost of medical bills directly to the provider of services and then seek reimbursement from the insured for the deductible amount.

Deductible medical benefit amounts shall be reported by insurers as required by section 386-95 and shall be included in the total average annual compensation paid by all insurance carriers in determining the charge against employers not insured under section 386-121(a)(1) for the purpose of the special compensation fund."

SECTION 14. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employer" to read as follows:

" "Employer" means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the

State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to the employer's liabilities, shall pay the deductible as provided for under section 386- , shall collect the amount of the deductible from the employer, and be entitled to [his] rights and remedies under this chapter as far as applicable."

SECTION 15. Section 386-21, Hawaii Revised Statutes, is amended to read as follows:

"§386-21 Medical care, services,³and supplies. (a) Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires.The liability for the medical care, services, and supplies shall be subject to the deductible under section 386- .

(b) Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render such care. If the services of a specialist are indicated, the employee may select any such physician or surgeon practicing in the State. The director [of labor and industrial relations] may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of such physician or surgeon, the injured employee shall give proper notice of his selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, he may do so in accordance with rules prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if he does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. Such selection, however, shall not deprive the employee of his right of subsequently selecting a physician or surgeon for continuance of needed medical care.

(c) The liability of the employer for [required] medical care, medical services, and medical supplies shall be limited to the charges computed as set forth in the section. The director shall make determinations of such charges and promulgate fee schedules based upon such determinations as are set forth in this section. For the calendar year 1974 and for each succeeding calendar year thereafter the charges shall be limited to the amounts determined in [Regulation XXXI] applicable regulations of the department which became effective on August [[]13,[] 1971, and amendments thereto, adjusted to reflect increases or decreases in the Consumer Price Index for the Honolulu region prepared by the Bureau of Labor Statistics of the United States Department of Labor which have occurred in the last twelve months ending August 31 of the year preceding.

The adjustments in charges provided for in this section shall be computed annually and rounded to the next higher multiple of [ten] 10 cents in each case.

Notwithstanding the foregoing, the director shall review and if necessary revise [said Regulation XXXI] the applicable regulations every three years, the review and revision to be conducted in accordance with section 91-3. The first review and revision shall be completed no later than December 1, 1974, to be effective January 1, 1975, and subsequent reviews or revisions shall be made at each three year interval thereafter. In making such reviews and revisions and [promulgating] adopting fee schedules pursuant thereto, the director shall establish reasonable fees for medical care, medical services, and medical supplies

and may take into consideration in making such determination the charges made in the State for similar treatment of injuries which are not compensable under this chapter. The director may at any time, in the foregoing manner, establish an additional fee schedule or schedules to cover charges for medical care, medical services, and medical supplies not previously regulated pursuant to [the provisions of] this section.

The liability of the employer may exceed the amount set forth in such fee schedule or schedules[,] only under conditions prescribed by the director.

(d) If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed the physician or surgeon, or medical, surgical, or hospital services or supplies, the director may [in his discretion] consider such refusal or obstruction on the part of the injured employee to be a waiver [by him] in whole or in part of [his] the right to medical care, services, and supplies, and may [in his discretion] suspend the weekly benefit payments, if any, to which the employee is entitled so long as such refusal or obstruction continues.

(e) Such funds as are periodically necessary to the department to implement the foregoing provisions may be charged to and paid from the special compensation fund provided by section 386-151."

SECTION 16. Section 386-22, Hawaii Revised Statutes, is amended to read as follows:

"§386-22 Artificial member and other aids. Where an injury results in the amputation of an arm, hand, leg, or foot, or the enucleation of an eye, or the loss of natural or artificial teeth, or the loss of vision which may be partially or wholly corrected by the use of lenses, the employer shall furnish an artificial member to take the place of each member lost and, in the case of correctible loss of vision, a set of suitable glasses. Where it is certified to be necessary by a licensed physician or surgeon chosen by agreement of the employer and the employee, the employer shall furnish such other aids, appliances, apparatus, and supplies as are required to cure or relieve the effects of the injury. When a licensed physician or surgeon, chosen as above, certifies that it is necessitated by ordinary wear, the employer shall repair or replace such artificial members, aids, appliances, or apparatus.

Where an employee suffers the loss of or damage to any artificial member, aid, appliance, or apparatus by accident arising out of and in the course of his employment, the employer shall repair or replace the member, aid, appliance, or apparatus whether or not the same was furnished initially by the employer.

The liability of the employer for artificial members, aids, appliances, apparatus, or supplies as is imposed by this section shall be limited to such charges as prevail in the same community for similar equipment of a person of a like standard of living when the equipment is paid for by that person[.] and shall be subject to the deductible under section 386- ."

SECTION 17. Section 386-23, Hawaii Revised Statutes, is amended to read as follows:

"§386-23 Services of attendant. When the director of labor and industrial relations finds that the service of an attendant for the injured employee is constantly necessary he may award a monthly sum of not more than the product of four times the effective maximum weekly benefit rate prescribed in section 386-31, as the director may deem necessary, for the procurement of such service.

Payment for the services of an attendant shall be the liability of the employer, but shall be subject to the deductible under section 386- .”

SECTION 18. Section 386-56, Hawaii Revised Statutes, is amended to read as follows:

“§386-56 Payment from the special compensation fund in case of default. Where an injured employee or his dependents fail to receive prompt and proper compensation and this default is caused through no fault of the employee, the director [of labor and industrial relations] shall pay the full amount of all compensation awards and benefits from the special compensation fund to the employee or dependent.

The employer, upon order of the director, shall reimburse the special compensation fund for the sums paid therefrom under this section, and the fund, represented by the director, shall be subrogated to all the rights and remedies of the individual receiving the payments.

In case a defaulting employer moves to another state without reimbursing the special compensation fund, the director shall be authorized to contract, on a contingent fee basis, with a private collection agency in that state to effect collection from [said] the employer.”

SECTION 19. Section 386-124, Hawaii Revised Statutes, is amended to read as follows:

“§386-124 The insurance contract. Every policy of insurance issued by an insurer of an employer referred to in section 386-1 which covers the liability of the employer for compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and provide for the deductible under section 386- , at the option of the insured. The policy also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of the compensation. Payment in whole or in part of compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be of a standard form, the form to be designated and approved by the insurance commissioner [of the State]. No policy of insurance different in form from the designated and approved form shall be approved by the director [of labor and industrial relations].”

SECTION 20. Section 431-693, Hawaii Revised Statutes, is amended to read as follows:

“§431-693 Making of rates. (a) All rates shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within and outside this State[.]; provided that if the claim does not exceed the selected deductible amount pursuant to section 386- , and the employer reimburses the insurer for that amount, such claims shall not be calculated in the employer's experience rating or risk category. Due consideration shall also be given to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide and those specially applicable to

this State, and to all other relevant factors within and outside this State; including, without limitation of the foregoing, that in the case of workers' compensation insurance, due consideration shall be given to investment income earned or realized by insurers, including investment income earned from unearned premium and loss reserve funds.

- (2) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (3) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (4) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (5) No insurer authorized to do business in this State shall issue any policy which provides or makes available to any risks preferred rates based upon any grouping of persons, firms, or corporations by way of membership, license, franchise, contract, agreement, or any other method or means, other than common majority ownership of such risks, or except where:
 - (A) A common stock ownership in and management control of such risks are held by the same person, corporation, or firm;
 - (B) Permitted or authorized by filings in existence as of January 1, 1957, under sections 431-691 to 431-707, as such filings may be amended from time to time;
 - (C) Health care providers, as defined in section 671-1 who could have joined the patients' compensation fund as it existed in chapter 671, part III, prior to May 31, 1984, join together in one or more groups of related or unrelated health care providers; or
 - (D) Otherwise expressly provided by law.

(b) Except to the extent necessary to meet the provisions of [item (4) of] subsection [(a) of this section,] (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(c) In cases of workers' compensation insurance, all rates made in accordance with this section shall give due consideration for good safety records of employers. By premium reductions, dividends, or both, insurance carriers shall recognize good safety performance records of employers in the State of Hawaii."

SECTION 21. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§386- Standing to intervene in appeals. In any proceeding before the appellate board under section 386-87, a pre-paid health care plan contractor, as defined in section 393-3, Hawaii Revised Statutes, may participate as a party in interest for the sole purpose of asserting its subrogation rights or other

reimbursement right against any employer or insurance carrier for medical benefits which were previously paid by the contractor provided however any reimbursement shall be in accordance with the appropriate health care provider fee schedule. A pre-paid health care plan contractor shall not have a right to intervene or participate on any other contested issue including the issue of compensability or entitlement to benefits before the appellate board.”

SECTION 22. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 23. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 25. This Act shall take effect upon approval; provided that the provisions affecting entitlement to compensation or modification of benefit provisions shall apply only to those cases in which the work-connected accident or injury arises after the effective date of this Act.

(Approved June 12, 1985.)

Notes

1. Hyphen should be underscored.
2. So in original.
3. Underscoring missing.
4. Edited pursuant to HRS §23G-16.5.

ACT 297

H.B. NO. 558

A Bill for an Act Relating to Motor Vehicle Accident Reparations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 294-30, Hawaii Revised Statutes, is amended to read as follows:

“§294-30 Claimant’s attorney’s fees. (a) A person making a claim for no-fault benefits may be allowed an award of a reasonable sum for attorney’s [fee] fees, [based upon actual time expended, which shall be treated separately from the claim and be paid directly by the insurer to the attorney,] and [all] reasonable costs of suit in an action brought by or against an insurer who denies all or part of a claim for benefits under the policy, unless the court or the commissioner, upon judicial or administrative proceedings, respectively, determines that the claim was fraudulent, excessive, or frivolous. Reasonable attorney’s fees, based upon actual time expended, shall be treated separately from the claim and be paid directly by the insurer to the attorney.

(b) A person who has effected a tort recovery, whether by suit or settlement, and who is sued by the insurer to recover fifty per cent of the no-fault benefits paid, may be allowed reasonable attorney’s fees and reasonable costs of suit.

[(b)] (c) A person suing in tort, as permitted under this chapter, may enter into any arrangement with an attorney.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

ACT 298

H.B. NO. 1063

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Under existing law, public and private open area types of recreational uses are permissible uses within the agricultural districts. Such open area types of recreational uses include daycamps, picnic grounds, parks and riding stables, but not dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps. Inasmuch as golf course and golf driving range activities are primarily day-time recreational activities, do not generate noise, and do not require extensive permanent improvements on the land so as to render it irretrievably lost for future agricultural uses, the legislative finds that golf course and golf driving range activities are compatible recreational uses in an agricultural district. Certain counties have long recognized that a golf course use is a compatible and permitted use within an agricultural district.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is hereby amended to read as follows:

“§205-2 **Districting and classification of lands.** There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the “forest and water reserve zones” provided in section 183-41 are renamed “conservation districts” and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 183-41, shall constitute the boundaries of the conservation districts; provided that thereafter the

power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where shall¹ farms are intermixed with the low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the Special Permit Procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities[.], including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

1. Should probably read "small".

A Bill for an Act Relating to the Registration of Aircraft.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 261, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§261- Aircraft registration. Unless an aircraft is exempted by this section, no person shall operate or cause or authorize to be operated any aircraft at an airport owned or controlled by the department, unless the aircraft has a certificate of registration issued in accordance with rules adopted by the department. Aircraft exempt from registration required by this section include:

- (1) Aircraft operating primarily in interstate or foreign commerce;
- (2) Aircraft owned or operated by the United States;
- (3) Aircraft in transit through the State; and
- (4) Aircraft operated by any scheduled airline carrier which is a lessee of the State under an airport-airline lease at the Honolulu International Airport and which is commonly referred to as signatory airline.

§261- Annual registration fee. The department shall assess and collect an annual registration fee of \$10 from each operator of aircraft required to be registered under section 261- .

§261- Failure to register. (a) All aircraft, unless exempted, shall be registered within the time prescribed by rules adopted by the director.

(b) Failure to comply with the registration requirements shall subject the operator of the aircraft to:

- (1) A penalty of not more than \$100 per aircraft;
- (2) The denial of the use of the airport facilities; and
- (3) Removal of the aircraft to a location designated pursuant to rules adopted by the director.

(c) The director is authorized to adopt rules pursuant to chapter 91 to effectuate the purposes of sections 261- to 261- .”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. **SHORT TITLE.** This Act shall be known and may be cited as the General Appropriations Act of 1985.

SECTION 2. **DEFINITIONS.** Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.

(b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the Legislature, Office of Hawaiian Affairs, and Judiciary), the political subdivision of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations, where used to denote the expending agency, shall mean the following:

AGR Department of Agriculture
 AGS Department of Accounting and General Services
 ATG Department of the Attorney General
 BUF Department of Budget and Finance
 CCA Department of Commerce and Consumer Affairs
 DEF Department of Defense
 EDN Department of Education
 GOV Office of the Governor
 HHL Department of Hawaiian Home Lands
 HTH Department of Health
 LBR Department of Labor and Industrial Relations
 LNR Department of Land and Natural Resources
 LTG Office of the Lieutenant Governor
 PED Department of Planning and Economic Development
 PER Department of Personnel Services
 SOC Department of Social Services and Housing
 TRN Department of Transportation
 TAX Department of Taxation
 UOH University of Hawaii
 COH County of Hawaii
 CCH City and County of Honolulu
 COM County of Maui
 COK County of Kauai

(c) "Source of funding" means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

A general fund
 B special funds
 C general obligation bond fund
 D general obligation bond fund with debt service cost to be paid from special funds
 E revenue bond funds
 J federal aid interstate funds
 K federal aid primary funds
 L federal aid secondary funds
 M federal aid urban funds
 N other federal funds
 R private contributions
 S county funds
 T trust funds
 U interdepartmental transfers

W revolving funds

X other funds

(d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.

(e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the sources of funding specified to the expending agencies designated for the fiscal biennium beginning July 1, 1985, and ending June 30, 1987. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
ECONOMIC DEVELOPMENT					
1. PED102 - COMMERCE AND INDUSTRY					
		OPERATING	PED	32.00 * 9,495,682 A	32.00 * 8,380,287 A
			PED	1,300,000 R	1,400,000 R
			PED	3,100,000 W	3,100,000 W
			PED	95,000 X	95,000 X
		INVESTMENT CAPITAL	AGS	5,750,000 C	5,000,000 C
			PED	7,052,000 C	1,353,000 C
2. PED107 - FOREIGN TRADE ZONE SERVICES					
		OPERATING	PED	23.00 * 1,217,119 B	23.00 * 1,263,961 B
		INVESTMENT CAPITAL	PED	1,050,000 D	100,000 D
3. AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE					
		OPERATING	AGR	15.00 * 716,335 B	15.00 * 649,940 B
			AGR	2,000,000 W	2,000,000 W
4. AGR103 - PRICE & PRODUCTION CONTROLS FOR DAIRY PR					
		OPERATING	AGR	7.00 * 148,590 A	7.00 * 151,971 A
5. AGR121 - PLANT QUARANTINE					
		OPERATING	AGR	48.91 * 1,108,628 A	48.91 * 1,129,587 A
			AGR	202,442 U	U
6. AGR122 - PLANT PEST CONTROL					
		OPERATING	AGR	31.09 * 1,046,631 A	31.09 * 1,058,335 A
7. AGR131 - ANIMAL QUARANTINE					
		OPERATING	AGR	40.00 * 1,217,576 A	40.00 * 1,236,566 A
			AGR	77,308 U	77,308 U
8. AGR132 - ANIMAL DISEASE CONTROL					
		OPERATING	AGR	23.50 * 822,077 A	23.50 * 821,908 A
			AGR	38,512 T	40,977 T

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
9. LNR172 - FORESTRY - PRODUCTS DEVELOPMENT					
		OPERATING	LNR	23.00 * 817,479 A	23.00 * 879,559 A
			LNR	104,833 N	104,833 N
10. AGR151 - DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR					
		OPERATING	AGR	38.00 * 1,685,156 A	38.00 * 1,269,915 A
			AGR	264,810 B	265,564 B
			AGR	37,916 N	38,051 N
11. AGR189 - DATA COLLECTION FOR AGR					
		OPERATING	AGR	12.00 * 381,829 A	12.00 * 374,785 A
12. AGR192 - GENERAL ADMINISTRATION FOR AGR					
		OPERATING	AGR	33.00 * 982,441 A	34.00 * 993,490 A
		INVESTMENT CAPITAL	AGS	2,000,000 C	C
13. AGR102 - FINANCIAL ASSISTANCE FOR AQUACULTURE					
		OPERATING	AGR	25,000 W	25,000 W
14. LNR153 - COMMERCIAL FISHERY AND AQUACULTURE					
		OPERATING	LNR	11.00 * 1,669,919 A	11.00 * 1,683,468 A
		INVESTMENT CAPITAL	LNR	160,590 N 270,000 C	160,590 N C
15. PED120 - ENERGY DEVELOPMENT AND MANAGEMENT					
		OPERATING	PED	10.00 * 707,840 A	10.00 * 709,160 A
			PED	429,015 N	429,015 N
		INVESTMENT CAPITAL	PED	1,775,000 C	1,775,000 C
			PED	775,000 N	775,000 N
16. LNR141 - WATER DEVELOPMENT & IRRIGATION SERVICES					
		OPERATING	LNR	18.00 * 571,233 A	18.00 * 575,052 A
			LNR	327,000 B	327,000 B
		INVESTMENT CAPITAL	LNR	10,415,000 C	2,150,000 C

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
17.	PED130	ECON PLANNING & RESEARCH FOR ECON DEVPMT			
		OPERATING	PED	15.00 * 632,392 A	15.00 * 645,413 A
18.	PED142	GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			
		OPERATING	PED	25.00 * 974,608 A	25.00 * 891,420 A
EMPLOYMENT					
1.	LBR111	PLACEMENT SERVICES			
		OPERATING	LBR	3.00 * 61,122 A	3.00 * 61,739 A
			LBR	136.50 * 7,739,619 N	136.50 * 7,928,673 N
2.	LBR123	APPRENTICESHIP & OTHER TRAINING PROGRAMS			
		OPERATING	LBR	7.00 * 169,590 A	7.00 * 170,915 A
3.	LBR131	EMPLOYMENT AND TRAINING PROGRAMS			
		OPERATING	LBR	512,430 A	494,602 A
			LBR	15.00 * 10,368,927 N	15.00 * 10,977,357 N
4.	LBR135	COMMISSION ON MANPOWER AND FULL EMPLOYMENT			
		OPERATING	LBR	6.00 * 152,652 A	6.00 * 140,269 A
			LBR	145,270 N	149,622 N
5.	LBR143	OCCUPATIONAL SAFETY & HEALTH			
		OPERATING	LBR	50.50 * 1,301,527 A	50.50 * 1,279,578 A
			LBR	29.50 * 1,064,766 N	29.50 * 1,082,440 N
6.	LBR152	WAGE STANDARDS & FAIR EMPLOYMENT PRACTICE			
		OPERATING	LBR	29.00 * 771,641 A	29.00 * 777,315 A
			LBR	45,000 N	45,000 N

ACT 300

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
7. LBR161 - PUBLIC EMPLOYMENT					
		OPERATING	LBR	3.00 * 470,729 A	3.00 * 481,517 A
8. LBR162 - PRIVATE EMPLOYMENT					
		OPERATING	LBR	1.00 * 28,110 A	1.00 * 28,600 A
9. LBR171 - UNEMPLOYMENT COMPENSATION					
		OPERATING	LBR	2,126,750 A	2,262,862 A
			LBR	84,700,000 B	90,100,000 B
			LBR	279.85 *	279.85 *
			LBR	8,348,459 N	8,460,969 N
10. LBR183 - DISABILITY COMPENSATION					
		OPERATING	LBR	94.00 * 2,178,124 A	94.00 * 2,214,496 A
			LBR	8,835,000 B	9,235,000 B
11. SOC802 - VOCATIONAL REHABILITATION					
		OPERATING	SOC	32.70 * 2,534,924 A	32.70 * 2,649,645 A
			SOC	563,428 B	594,525 B
			SOC	93.30 *	93.30 *
			SOC	3,370,580 N	3,452,038 N
12. LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS					
		OPERATING	LBR	12.40 * 951,645 A	12.40 * 978,407 A
			LBR	26.60 * 1,207,103 N	26.60 * 1,228,706 N
13. LBR902 - GENERAL ADMINISTRATION					
		OPERATING	LBR	24.20 * 1,341,195 A	24.20 * 1,392,967 A
			LBR	38.30 * 1,604,117 N	38.30 * 1,631,552 N
14. LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOA					
		OPERATING	LBR	9.00 * 323,742 A	9.00 * 331,341 A

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
TRANSPORTATION FACILITIES					
1. TRN102 - HIA FACILITIES & SVCS					
		OPERATING	TRN	448.00 *	481.00 *
		INVESTMENT CAPITAL	TRN	32,264,800 B	30,791,314 B
			TRN	5,000,000 B	9,000,000 B
			TRN	20,420,000 E	41,960,000 E
			TRN	100,000 N	100,000 N
2. TRN104 - GENERAL AVIATION FACILITIES AND SERVICES					
		OPERATING	TRN	2.00 *	2.00 *
		INVESTMENT CAPITAL	TRN	250,505 B	344,885 B
			TRN	4,000,000 E	E
			TRN	1,000,000 N	N
3. TRN111 - GENERAL LYMAN FIELD FACILITIES & SERVICE					
		OPERATING	TRN	75.00 *	75.00 *
		INVESTMENT CAPITAL	TRN	3,796,851 B	4,101,993 B
			TRN	440,000 E	E
4. TRN114 - KE-AHOLE AIRPORT FACILITIES AND SERVICES					
		OPERATING	TRN	56.00 *	56.00 *
		INVESTMENT CAPITAL	TRN	2,802,564 B	2,550,039 B
			TRN	4,700,000 E	4,000,000 E
			TRN	500,000 N	N
5. TRN116 - WAIMEA-KOHALA AIRPORT FACILITIES & SERVICES					
		OPERATING	TRN	2.00 *	2.00 *
				168,139 B	142,370 B
6. TRN118 - UPOLU AIRPORT FACILITIES & SERVICES					
		OPERATING	TRN	22,869 B	5,720 B
7. TRN131 - KAHULUI AIRPORT FACILITIES AND SERVICES					
		OPERATING	TRN	74.00 *	74.00 *
		INVESTMENT CAPITAL	TRN	3,230,560 B	3,345,795 B
			TRN	5,000,000 B	5,000,000 B
			TRN	16,850,000 E	8,400,000 E
			TRN	1,500,000 N	1,400,000 N
8. TRN133 - HANA AIRPORT FACILITIES AND SERVICES					
		OPERATING	TRN	1.00 *	1.00 *
				103,998 B	45,389 B

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
9.	TRN141	MOLOKAI AIRPORT FACILITIES AND SERVICES			
				7.00 *	7.00 *
		OPERATING	TRN	436,664 B	303,539 B
		INVESTMENT CAPITAL	TRN	385,000 E	E
10.	TRN143	KALAUPAPA AIRPORT FACILITIES AND SERVICES			
				1.00 *	1.00 *
		OPERATING	TRN	91,613 B	73,182 B
11.	TRN151	LANAI AIRPORT FACILITIES AND SERVICES			
				3.00 *	3.00 *
		OPERATING	TRN	152,587 B	130,194 B
12.	TRN161	LIHUE AIRPORT FACILITIES AND SERVICES			
				66.00 *	67.00 *
		OPERATING	TRN	3,027,202 B	3,468,341 B
		INVESTMENT CAPITAL	TRN	4,000,000 B	B
			TRN	4,050,000 E	E
13.	TRN163	PORT ALLEN AIRPORT FACILITIES AND SERVICES			
		OPERATING	TRN	618 B	656 B
14.	TRN195	AIR TRANSPORTATION FACILITIES AND SERVICES SUPPORT			
				63.00 *	63.00 *
		OPERATING	TRN	61,734,183 B	64,606,696 B
		INVESTMENT CAPITAL	TRN	4,500,000 B	10,400,000 B
			TRN	5,540,000 E	6,500,000 E
			TRN	1,400,000 N	N
15.	TRN301	HONOLULU HARBOR FACILITIES AND SERVICES			
				129.00 *	129.00 *
		OPERATING	TRN	8,200,009 B	8,072,619 B
		INVESTMENT CAPITAL	AGS	1,000,000 C	C
			TRN	885,000 B	870,000 B
			TRN	800,000 E	E
16.	TRN303	BARBERS POINT HARBOR FACILITIES AND SERVICES			
				2.00 *	2.00 *
		OPERATING	TRN	188,856 B	187,007 B
		INVESTMENT CAPITAL	TRN	150,000 B	B
			TRN	7,150,000 E	4,950,000 E

PROGRAM APPROPRIATIONS

State of Hawaii

Item Prog. No. ID	Program	Expending Agency	Appropriations	
			Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
17. TRN305	- KEWALO BASIN FACILITIES AND SERVICES			
	OPERATING	TRN	3.00 * 426,027 B	3.00 * 433,987 B
18. TRN311	- HILO HARBOR FACILITIES AND SERVICES			
	OPERATING	TRN	10.00 * 830,835 B	10.00 * 838,592 B
	INVESTMENT CAPITAL	TRN	2,000,000 E	E
19. TRN313	- KAWAIHAE HARBOR FACILITIES AND SERVICES			
	OPERATING	TRN	5.00 * 292,314 B	5.00 * 314,714 B
20. TRN331	- KAHULUI HARBOR FACILITIES AND SERVICES			
	OPERATING	TRN	12.00 * 806,590 B	12.00 * 794,820 B
	INVESTMENT CAPITAL	TRN	820,000 B	200,000 B
21. TRN341	- KAUNAKAKAI HARBOR FACILITIES AND SERVICES			
	OPERATING	TRN	1.00 * 102,426 B	1.00 * 103,848 B
22. TRN361	- NAWILIWILI HARBOR FACILITIES AND SERVICES			
	OPERATING	TRN	11.50 * 567,669 B	11.50 * 584,343 B
	INVESTMENT CAPITAL	TRN	50,000 B	460,000 B
23. TRN363	- PORT ALLEN HARBOR FACILITIES AND SERVICE			
	OPERATING	TRN	1.00 * 85,968 B	1.00 * 104,041 B
24. TRN395	- WATER TRANSPORTATION FACILITIES AND SERVICES SUPPORT			
	OPERATING	TRN	51.00 * 13,633,347 B	51.00 * 15,193,093 B
	INVESTMENT CAPITAL	TRN	406,000 B	260,000 B

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
25. TRN501 - OAHU HIGHWAYS AND SERVICES					
		OPERATING	TRN	219.00 *	219.00 *
		INVESTMENT CAPITAL	TRN	18,051,367 B	16,712,972 B
			TRN	788,000 B	795,000 B
			TRN	21,667,000 D	27,781,000 D
			TRN	100,228,000 J	176,330,000 J
			TRN	9,997,000 K	6,860,000 K
26. TRN511 - HAWAII HIGHWAYS AND SERVICES					
		OPERATING	TRN	110.00 *	110.00 *
		INVESTMENT CAPITAL	TRN	4,871,085 B	6,225,290 B
			TRN	315,000 B	98,000 B
			TRN	2,646,000 D	1,980,000 D
			TRN	2,322,000 K	K
			TRN	312,000 L	L
			TRN	532,000 N	3,315,000 N
27. TRN531 - MAUI HIGHWAYS AND SERVICES					
		OPERATING	TRN	54.00 *	54.00 *
		INVESTMENT CAPITAL	TRN	3,109,533 B	3,674,808 B
			TRN	600,000 B	550,000 B
			TRN	2,135,000 D	1,490,000 D
			TRN	1,480,000 K	K
28. TRN541 - MOLOKAI HIGHWAYS AND SERVICES					
		OPERATING	TRN	12.00 *	12.00 *
		INVESTMENT CAPITAL	TRN	609,953 B	863,416 B
			TRN	60,000 B	580,000 B
			TRN	35,000 D	437,000 D
			TRN	37,000 N	1,138,000 N
29. TRN551 - LANAI HIGHWAYS AND SERVICES					
		OPERATING	TRN	3.00 *	3.00 *
		INVESTMENT CAPITAL	TRN	114,151 B	258,700 B
			TRN	30,000 B	300,000 B
30. TRN561 - KAUAI HIGHWAYS AND SERVICES					
		OPERATING	TRN	41.00 *	41.00 *
		INVESTMENT CAPITAL	TRN	3,386,896 B	2,643,085 B
			TRN	217,000 B	515,000 B
			TRN	3,904,000 D	2,700,000 D
			TRN	2,660,000 K	6,300,000 K
			TRN	2,865,000 N	N
31. TRN595 - LAND TRANSPORTATION FACILITIES AND SERVICES SUPPORT					
		OPERATING	TRN	49.00 *	49.00 *
		INVESTMENT CAPITAL	TRN	31,630,708 B	35,005,474 B
			TRN	848,000 B	882,000 B
			TRN	1,225,000 D	1,025,000 D
			TRN	3,288,000 N	3,354,000 N

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32. TRN597 - SAFETY ADMINISTRATION OF LAND TRANSPORTATION					
		OPERATING	TRN	19.50 * 605,748 B	19.50 * 618,695 B
				4.50 *	4.50 *
			TRN	131,893 N	133,092 N
33. TRN995 - OVERALL PROGRAM SUPPORT FOR TRANSPORTATION FACILITIES &					
		OPERATING	TRN	84.00 * 3,898,584 B	84.00 * 3,930,147 B
ENVIRONMENTAL PROTECTION					
1. HTH840 - SOLIDS, LIQUIDS, GASES, AND NOISE					
		OPERATING	HTH	46.50 * 1,154,678 A	46.50 * 1,124,321 A
				12.00 *	12.00 *
		INVESTMENT CAPITAL	HTH	1,086,184 N	1,086,184 N
			HTH	4,700,000 C	4,700,000 C
2. AGR846 - PESTICIDES					
		OPERATING	AGR	16.00 * 318,018 A	16.00 * 369,052 A
3. LNR401 - AQUATIC RESOURCES					
		OPERATING	LNR	16.00 * 387,047 A	16.00 * 394,824 A
			LNR	58,537 N	58,837 N
4. LNR402 - FORESTS AND WILDLIFE RESOURCES					
		OPERATING	LNR	53.00 * 1,427,647 A	53.00 * 1,448,660 A
			LNR	334,360 N	344,360 N
		INVESTMENT CAPITAL	LNR	914,000 C	1,485,000 C
5. LNR403 - MINERAL RESOURCES					
		OPERATING	LNR	3.00 * 111,266 A	3.00 * 111,638 A
6. LNR404 - WATER RESOURCES					
		OPERATING	LNR	13.00 * 920,970 A	13.00 * 927,436 A
		INVESTMENT CAPITAL	LNR	650,000 C	2,900,000 C
			LNR	X	2,000,000 X

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7. LNR405 - CONSERVATION & RESOURCES ENFORCEMENT					
		OPERATING	LNR	68.00 *	68.00 *
			LNR	1,877,707 A	1,897,072 A
			LNR	26,240 N	26,622 N
8. TRN903 - COASTAL AREAS					
		OPERATING	TRN	13,587 A	14,456 A
		INVESTMENT CAPITAL	TRN	350,000 C	C
9. HTH850 - POLICY DVLPMENT, COORD & ANLYS FOR NAT P					
		OPERATING	HTH	11.00 *	11.00 *
				533,501 A	518,691 A
10. LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT					
		OPERATING	LNR	31.50 *	31.50 *
			LNR	1,071,327 A	1,014,026 A
			LNR	26,262 N	27,381 N
11. HTH849 - HTH-NATURAL PHYSICAL ENVIRONMENT					
		OPERATING	HTH	11.00 *	11.00 *
				567,332 A	583,598 A
				3.00 *	3.00 *
			HTH	147,919 N	147,919 N
HEALTH					
1. HTH101 - TUBERCULOSIS					
		OPERATING	HTH	46.00 *	46.00 *
			HTH	1,340,989 A	1,373,655 A
				60,148 N	60,148 N
2. HTH111 - HANSEN'S DISEASE					
		OPERATING	HTH	73.00 *	73.00 *
			HTH	3,213,570 A	3,319,879 A
			HTH	155,000 B	160,000 B
		INVESTMENT CAPITAL	HTH	370,000 N	370,000 N
			AGS	107,000 C	C
3. HTH121 - VENEREAL DISEASE					
		OPERATING	HTH	10.00 *	10.00 *
				369,478 A	381,415 A
				4.00 *	4.00 *
			HTH	309,000 N	340,000 N

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4. HTH131 - OTHER COMMUNICABLE DISEASES					
		OPERATING	HTH	10.00 * 634,511 A	10.00 * 648,655 A
			HTH	1.00 * 215,000 N	1.00 * 217,000 N
5. HTH139 - SUPPORTING SERVICES FOR COMMUNICABLE DISEASES					
		OPERATING	HTH	5.00 * 206,511 A	5.00 * 208,720 A
6. HTH141 - DENTAL DISEASES					
		OPERATING	HTH	43.60 * 948,748 A	43.60 * 966,691 A
7. HTH151 - CHRONIC DISEASES					
		OPERATING	HTH	5.00 * 737,726 A	5.00 * 782,489 A
8. HTH160 - NUTRITION SERVICES					
		OPERATING	HTH	7.75 * 174,306 A	7.75 * 177,104 A
			HTH	7.00 * 3,057,000 N	7.00 * 3,213,000 N
9. HTH170 - EMERGENCY MEDICAL SERVICES					
		OPERATING	HTH	9.00 * 14,087,022 A	9.00 * 14,781,717 A
			HTH	271,793 N	271,793 N
10. HTH185 - FAMILY PLANNING					
		OPERATING	HTH	5.00 * 599,898 A	5.00 * 632,748 A
			HTH	5.00 * 961,946 N	5.00 * 961,946 N
11. HTH191 - SCHOOL HEALTH SERVICES					
		OPERATING	HTH	246.45 * 4,517,474 A	246.45 * 4,566,483 A
12. HTH801 - HEALTH CARE SERVICES					
		OPERATING	HTH	42.00 * 2,544,906 A	42.00 * 2,655,402 A
			HTH	46.00 * 1,551,782 N	46.00 * 1,556,509 N

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13. HTH211 - HILO HOSPITAL					
		OPERATING	HTH	958,250 A	882,851 A
			HTH	539.20 *	539.20 *
			HTH	19,805,033 B	19,805,033 B
14. HTH212 - HONOKAA HOSPITAL					
		OPERATING	HTH	625,498 A	703,487 A
			HTH	46.00 *	46.00 *
			HTH	1,152,458 B	1,147,411 B
15. HTH213 - KA'U HOSPITAL					
		OPERATING	HTH	594,265 A	821,265 A
			HTH	32.00 *	32.00 *
			HTH	579,262 B	579,262 B
16. HTH214 - KOHALA HOSPITAL					
		OPERATING	HTH	640,062 A	647,073 A
			HTH	36.50 *	36.50 *
			HTH	747,000 B	738,000 B
17. HTH215 - KONA HOSPITAL					
		OPERATING	HTH	2,230,642 A	2,031,273 A
			HTH	188.00 *	188.00 *
		INVESTMENT CAPITAL	AGS	5,672,721 B	5,672,721 B
				210,000 C	C
18. HTH221 - MAUI MEMORIAL HOSPITAL					
		OPERATING	HTH	446.00 *	446.00 *
			HTH	17,969,595 B	18,015,348 B
19. HTH222 - HANA MEDICAL CENTER					
		OPERATING	HTH	352,705 A	366,073 A
			HTH	7.00 *	7.00 *
			HTH	128,714 B	128,714 B
20. HTH223 - KULA HOSPITAL					
		OPERATING	HTH	1,054,158 A	1,129,981 A
			HTH	177.00 *	177.00 *
			HTH	3,841,745 B	3,783,387 B
21. HTH224 - LANAI HOSPITAL					
		OPERATING	HTH	106,471 A	106,547 A
			HTH	21.00 *	21.00 *
			HTH	677,100 B	694,136 B

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22.	HTH231	- KAUAI VETERANS MEMORIAL HOSPITAL			
		OPERATING	HTH	1,382,692 A	1,448,420 A
				138.00 *	138.00 *
			HTH	3,255,000 B	3,255,000 B
23.	HTH232	- SAMUEL MAHELONA MEMORIAL HOSPITAL			
		OPERATING	HTH	637,527 A	675,438 A
				145.00 *	145.00 *
			HTH	3,258,579 B	3,258,579 B
24.	HTH241	- MALUHIA HOSPITAL			
		OPERATING	HTH	814,828 A	968,363 A
				182.00 *	182.00 *
			HTH	4,556,630 B	4,556,630 B
25.	HTH242	- LEAHI HOSPITAL			
		OPERATING	HTH	2,222,039 A	2,344,973 A
				280.00 *	280.00 *
			HTH	6,066,994 B	6,066,994 B
26.	HTH401	- COMMUNITY BASED SERVICES FOR MENTAL HEALTH			
		OPERATING	HTH	326.50 *	326.50 *
				14,692,649 A	15,264,561 A
				3.00 *	3.00 *
			HTH	2,703,312 N	2,722,497 N
27.	HTH430	- HAWAII STATE HOSPITAL			
		OPERATING	HTH	418.00 *	418.00 *
		INVESTMENT CAPITAL	AGS	9,420,446 A	9,610,498 A
				C	15,000,000 C
28.	HTH495	- GENERAL SUPPORT FOR MENTAL HEALTH			
		OPERATING	HTH	30.00 *	30.00 *
				1,079,091 A	1,107,666 A
				1.00 *	1.00 *
			HTH	804,445 N	747,291 N
29.	HTH500	- IDENTIFICATION, EVALUATION & TREATMENT FOR DD			
		OPERATING	HTH	66.35 *	66.35 *
				2,707,763 A	2,867,430 A
30.	HTH501	- COMMUNITY BASED SERVICES FOR DD			
		OPERATING	HTH	57.00 *	57.00 *
				3,335,984 A	3,534,860 A

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31. HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL					
		OPERATING	HTH	478.00 *	478.00 *
			HTH	11,890,135 A	11,789,027 A
			HTH	39,000 N	39,000 N
		INVESTMENT CAPITAL	HTH	5,773,000 X	5,773,000 X
			AGS	135,000 C	C
32. HTH601 - VECTOR CONTROL					
		OPERATING	HTH	86.00 *	86.00 *
			HTH	1,748,409 A	1,758,145 A
			HTH	2.00 *	2.00 *
		INVESTMENT CAPITAL	HTH	37,827 X	37,827 X
			AGS	35,000 C	C
33. HTH611 - SANITATION & SUBSTANCE CONTROL					
		OPERATING	HTH	88.50 *	88.50 *
			HTH	2,055,761 A	2,161,206 A
34. HTH621 - DRINKING WATER QUALITY					
		OPERATING	HTH	3.00 *	3.00 *
			HTH	79,779 A	79,779 A
			HTH	1.00 *	1.00 *
			HTH	268,000 N	282,000 N
35. HTH701 - MEDICAL FACILITIES-STDs, INSPECTION & LICENSING					
		OPERATING	HTH	9.00 *	9.00 *
			HTH	287,629 A	292,465 A
			HTH	6.00 *	6.00 *
			HTH	225,203 N	225,203 N
36. HTH901 - LABORATORY SERVICES					
		OPERATING	HTH	54.50 *	54.50 *
			HTH	1,528,151 A	1,386,814 A
37. HTH902 - PUBLIC HEALTH NURSING SERVICES					
		OPERATING	HTH	148.00 *	148.00 *
			HTH	3,654,439 A	3,699,136 A
			HTH	4.00 *	4.00 *
			HTH	19,249 B	19,249 B
			HTH	308,897 N	308,897 N
38. HTH903 - RECORDS, DATA COLLECTION AND RESEARCH					
		OPERATING	HTH	36.00 *	36.00 *
			HTH	1,035,388 A	1,007,325 A
			HTH	67,000 N	67,000 N

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39. HTH908 - HEALTH EDUCATION					
		OPERATING	HTH	17.00 *	17.00 *
			HTH	713,373 A	730,092 A
			HTH	305,408 N	305,408 N
40. HTH906 - COMPREHENSIVE HEALTH PLANNING					
		OPERATING	HTH	6.00 *	6.00 *
			HTH	191,143 A	192,756 A
			HTH	11.50 *	11.50 *
			HTH	532,747 N	532,747 N
41. HTH907 - GENERAL ADMINISTRATION					
		OPERATING	HTH	123.00 *	123.00 *
			HTH	4,673,182 A	4,769,049 A
			HTH	15.00 *	15.00 *
			HTH	1,376,438 B	1,464,240 B
			HTH	5.50 *	5.50 *
			HTH	327,022 N	327,022 N
42. SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES					
		OPERATING	SUB	962,159 A	937,043 A
SOCIAL SERVICES					
1. SOC111 - SERVICES TO INDIVIDUALS AND FAMILIES					
		OPERATING	SOC	154.69 *	165.19 *
			SOC	9,033,147 A	9,697,825 A
			SOC	207.81 *	207.81 *
			SOC	13,285,841 N	13,285,841 N
			SOC	128,880 U	128,880 U
2. SOC201 - PAYMENTS TO ASSIST FAMILIES WITH DEPENDENTS					
		OPERATING	SOC	40,618,934 A	41,015,212 A
			SOC	44,254,445 N	45,218,694 N
3. SOC202 - PAYMENTS TO ASSIST THE AGED, BLIND AND DISABLED					
		OPERATING	SOC	5,752,997 A	5,765,737 A
4. SOC203 - CHILD FOSTER BOARD PAYMENTS					
		OPERATING	SOC	2,635,800 A	2,920,920 A
			SOC	77,436 N	77,436 N
5. SOC204 - OTHER GENERAL ASSISTANCE PAYMENTS					
		OPERATING	SOC	19,556,601 A	20,076,020 A

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6. SOC206 - OTHER FEDERAL ASSISTANCE PAYMENTS					
		OPERATING	SOC	4,046,751 N	4,146,468 N
7. SOC220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE					
		OPERATING	SOC	9.00 * 1,277,621 A	9.00 * 1,280,076 A
			SOC	26.50 * 1,845,158 B	26.50 * 1,927,800 B
			SOC	183.00 * 18,557,090 N	183.00 * 19,453,096 N
8. SOC225 - PRIVATE HOUSING DEVELOPMENT AND OWNERSHIP					
		OPERATING	SOC	15.00 * 1,480,177 B	15.00 * 1,543,545 B
9. SOC223 - BROADENED HOMESITE OWNERSHIP					
		OPERATING	SOC	1.00 * 409,096 B	1.00 * 432,034 B
10. SOC807 - TEACHER HOUSING					
		OPERATING	SOC	0.50 * 243,464 B	0.50 * 257,455 B
11. SOC229 - HOUSING ASSISTANCE ADMINISTRATION					
		OPERATING	SOC	14.00 * 825,490 B	14.00 * 865,853 B
			SOC	12.00 * 666,689 N	12.00 * 680,396 N
12. SOC227 - HOUSING FINANCE PROGRAM					
		OPERATING	SOC	4.00 * 567,016 B	4.00 * 570,166 B
13. SOC230 - HEALTH CARE PAYMENTS					
		OPERATING	SOC	107,382,084 A	115,220,542 A
			SOC	84,913,511 N	90,503,154 N
			SOC	6,291,219 U	6,693,856 U
14. SUB806 - VETERANS CEMETERIES AND BURIAL PAYMENTS					
		OPERATING	SUB	38,461 A	40,923 A

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15. SOC236 - ELIGIBILITY DETERMINATION					
		OPERATING	SOC	358.18 *	358.18 *
				8,223,106 A	7,703,944 A
				275.82 *	275.82 *
			SOC	14,252,203 N	9,480,812 N
16. SOC238 - DISABILITY DETERMINATION					
		OPERATING	SOC	51.00 *	51.00 *
				2,210,278 N	2,282,541 N
17. HHL602 - PLNNG, DEVPMT AND MGT FOR HAWN HOMESTD LAND					
		OPERATING	HHL	44.00 *	44.00 *
		INVESTMENT CAPITAL	HHL	1,559,874 B	1,586,967 B
				210,000 C	2,790,000 C
18. HHL625 - GENERAL SUPPORT FOR NATIVE HAWAIIANS					
		OPERATING	HHL	24.00 *	24.00 *
				907,243 B	919,493 B
19. GOV859 - PROGRESSIVE NEIGHBORHOODS PROGRAM					
		OPERATING	GOV	4.00 *	4.00 *
			GOV	684,675 A	201,438 A
				200,000 N	200,000 N
20. GOV860 - HAWAII OFFICE OF ECONOMIC OPPORTUNITY					
		OPERATING	GOV	1.00 *	1.00 *
				2,261,886 A	2,252,855 A
				3.00 *	3.00 *
			GOV	1,386,598 N	1,386,598 N
21. GOV861 - PLAN, PRGM DEV, & COORD OF SVCS FOR CHILDREN AND YOUTH					
		OPERATING	GOV	9.00 *	9.00 *
				255,617 A	261,684 A
22. GOV602 - PLAN, PRGM DEV & COORD OF SVCS FOR ELDERLY					
		OPERATING	GOV	5.80 *	5.95 *
				3,386,240 A	3,420,658 A
				8.20 *	9.05 *
			GOV	4,234,864 N	4,277,513 N

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23.	HTH520	PLAN, PRGM DEV & COORD OF SVCS FOR HANDICAPPED			
	OPERATING		HTH	2.00 * 174,798 A	2.00 * 177,632 A
24.	GOV803	PLAN, PRGM DEV & COORD OF SVCS FOR IMMIGRANTS			
	OPERATING		GOV	2.00 * 300,014 A	2.00 * 310,976 A
25.	SOC903	GENERAL SUPPORT FOR PUBLIC WELFARE			
	OPERATING		SOC	42.24 * 2,134,839 A	42.24 * 2,200,388 A
			SOC	53.76 * 2,974,488 N	53.76 * 3,054,415 N
			SOC	165,280 S	171,308 S
26.	SOC904	GENERAL ADMINISTRATION (DSSH)			
	OPERATING		SOC	154.87 * 3,338,891 A	154.87 * 3,686,657 A
			SOC	17.13 * 519,730 N	17.13 * 529,571 N
FORMAL EDUCATION					
1.	EDN105	REGULAR INSTRUCTION PROGRAM			
	OPERATING		EDN	6,368.50 * 169,860,553 A	6,468.50 * 171,456,704 A
			EDN	10,316,187 N	10,316,187 N
	INVESTMENT CAPITAL		AGS	20,000,000 A	20,000,000 A
			AGS	26,176,000 C	19,692,000 C
2.	EDN106	OTHER REGULAR INSTRUCTION			
	OPERATING		EDN	537.50 * 25,913,517 A	537.50 * 23,650,103 A
			EDN	1,501,120 B	1,571,710 B
			EDN	1,311,980 N	1,348,719 N
3.	EDN107	EXCEPTIONAL CHILD PROGRAM			
	OPERATING		EDN	895.00 * 23,479,267 A	898.50 * 23,893,366 A
			EDN	56,800 B	56,800 B
			EDN	3,704,042 N	4,004,042 N
4.	EDN108	COMPENSATORY EDUCATION			
	OPERATING		EDN	109.00 * 10,199,795 A	109.00 * 10,293,284 A
			EDN	11,290,868 N	11,420,989 N

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5. EDN203 - SCHOOL ADMINISTRATION					
		OPERATING	EDN	821.00 *	821.00 *
		INVESTMENT CAPITAL	AGS	23,153,482 A 1,320,000 C	23,261,006 A C
6. EDN204 - INSTRUCTIONAL MEDIA					
		OPERATING	EDN	263.50 * 8,501,498 A	263.50 * 8,544,779 A
7. EDN205 - INSTRUCTIONAL DEVELOPMENT					
		OPERATING	EDN	99.00 * 5,131,255 A	99.00 * 5,133,054 A
			EDN	1,136,596 N	1,158,459 N
8. EDN206 - COUNSELING					
		OPERATING	EDN	313.00 * 9,047,719 A	313.00 * 9,240,805 A
9. EDN207 - STUDENT ACTIVITIES					
		OPERATING	EDN	35.00 * 4,075,802 A	35.00 * 3,876,930 A
10. EDN208 - PSYCHOLOGICAL & SCHOOL SOCIAL WORK SERVICES					
		OPERATING	EDN	247.50 * 7,815,902 A	247.50 * 7,829,275 A
11. EDN303 - STATE ADMINISTRATION					
		OPERATING	EDN	220.00 * 8,597,842 A	220.00 * 8,580,056 A
			EDN	780,838 N	784,974 N
		INVESTMENT CAPITAL	AGS	40,000 C	300,000 C
12. EDN304 - DISTRICT ADMINISTRATION					
		OPERATING	EDN	218.00 * 8,006,363 A	218.00 * 7,977,734 A
13. EDN305 - SCHOOL FOOD SERVICES					
		OPERATING	EDN	187.00 * 10,508,247 A	187.00 * 10,669,890 A
			EDN	696.50 * 10,386,763 B	696.50 * 10,949,190 B
			EDN	16,675,907 N	17,614,669 N
		INVESTMENT CAPITAL	AGS	2,603,000 C	2,808,000 C
14. EDN306 - SAFETY AND SECURITY SERVICES					
		OPERATING	EDN	2,328,770 A	2,338,053 A

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15. EDN307 - PHYSICAL PLANT OPERATIONS & MAINTENANCE					
		OPERATING	EDN	1,014.10 * 27,834,019 A	1,014.10 * 28,065,044 A
16. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE					
		OPERATING	AGS	230.00 * 19,088,862 A	230.00 * 19,731,652 A
17. AGS808 - STUDENT TRANSPORTATION					
		OPERATING	AGS	9.00 * 18,120,995 A	9.00 * 20,209,756 A
18. EDN406 - ADULT EDUCATION					
		OPERATING	EDN	23.00 * 2,495,113 A	23.00 * 2,504,160 A
			EDN	354,202 B	377,197 B
			EDN	473,832 N	502,263 N
19. EDN407 - PUBLIC LIBRARIES					
		OPERATING	EDN	490.55 * 12,987,023 A	490.55 * 13,062,753 A
			EDN	482,000 N	482,000 N
		INVESTMENT CAPITAL	AGS	2,326,000 C	2,000,000 C
20. UOH101 - INSTRUCTION - UOH, MANOA					
		OPERATING	UOH	1,528.96 * 53,426,689 A	1,529.46 * 53,779,124 A
			UOH	6.00 * 4,318,458 B	6.00 * 4,396,234 B
			UOH	277,785 N	277,785 N
		INVESTMENT CAPITAL	AGS	501,000 C	6,329,000 C
21. UOH102 - ORGANIZED RESEARCH - UOH, MANOA					
		OPERATING	UOH	501.97 * 21,410,325 A	501.97 * 21,586,984 A
			UOH	34.42 * 1,272,297 N	34.42 * 1,310,062 N
			UOH	3,176,785 W	3,487,728 W
		INVESTMENT CAPITAL	AGS	1,157,000 E	E
			UOH	12,000 C	C

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22. UOH103 - PUBLIC SERVICE - UOH, MANOA					
		OPERATING	UOH	90.41 * 3,502,563 A	90.41 * 3,504,187 A
			UOH	12.00 * 2,188,125 B	12.00 * 2,249,232 B
			UOH	43.64 * 1,412,404 N	43.64 * 1,453,529 N
			UOH	50,224 W	52,430 W
23. UOH104 - ACADEMIC SUPPORT - UOH, MANOA					
		OPERATING	UOH	362.10 * 14,203,069 A	362.10 * 14,059,295 A
			UOH	9.50 * 966,082 B	9.50 * 996,104 B
			UOH	6.00 * 1,081,620 W	6.00 * 1,157,015 W
24. UOH105 - STUDENT SERVICES - UOH, MANOA					
		OPERATING	UOH	164.25 * 6,173,256 A	164.25 * 5,281,661 A
			UOH	0.25 * 272,038 B	0.25 * 286,713 B
			UOH	842,000 N 113.75 *	842,000 N 113.75 *
			UOH	25,690,728 W 33.00 *	27,076,711 W 33.00 *
			UOH	5,145,623 X	5,349,978 X
25. UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA					
		OPERATING	UOH	393.50 * 20,741,639 A	393.50 * 21,651,570 A
			UOH	12.00 * 828,147 B	12.00 * 850,132 B
			UOH	9.00 * 2,605,831 W	9.00 * 2,739,963 W
		INVESTMENT CAPITAL	AGS	4,401,000 C	1,563,000 C
			PED	395,000 C	500,000 C
26. UOH211 - INSTRUCTION - UOH, HILO					
		OPERATING	UOH	198.50 * 6,816,036 A	199.50 * 6,727,807 A
			UOH	475,088 B	478,970 B
			UOH	103,223 N	103,223 N
			UOH	224,425 W	236,320 W
		INVESTMENT CAPITAL	AGS	100,000 C	4,501,000 C
27. UOH213 - PUBLIC SERVICE - UOH, HILO					
		OPERATING	UOH	48,969 A	49,244 A
			UOH	186,471 B	190,223 B

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28. UOH214 - ACADEMIC SUPPORT - UOH, HILO					
		OPERATING	UOH	46.00 * 1,849,337 A	47.00 * 1,899,952 A
			UOH	5.00 * 234,533 B	5.00 * 239,799 B
29. UOH215 - STUDENT SERVICES - UOH, HILO					
		OPERATING	UOH	26.00 * 1,120,331 A	26.00 * 1,134,897 A
			UOH	394,543 N 6.00 *	394,543 N 6.00 *
		INVESTMENT CAPITAL	UOH	900,454 W 131,039 X	945,775 W 137,329 X
			AGS	800,000 C 400,000 E	C E
30. UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO					
		OPERATING	UOH	47.00 * 2,396,868 A	47.00 * 2,346,104 A
			UOH	89,624 B	91,610 B
31. UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	128.00 * 4,245,488 A	130.00 * 4,318,908 A
			UOH	180,828 N	180,828 N
		INVESTMENT CAPITAL	UOH	285,830 W	297,988 W
			AGS	2,030,000 C	1,860,000 C
32. UOH302 - PUBLIC SERVICE - HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	7.00 * 609,876 A	7.00 * 616,386 A
			UOH	250,074 B	254,373 B
33. UOH303 - ACADEMIC SUPPORT - HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	28.00 * 820,312 A	28.00 * 813,453 A
34. UOH304 - STUDENT SERVICES - HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	22.00 * 588,744 A	22.00 * 591,708 A
			UOH	111,000 N	111,000 N
			UOH	6,081 W	6,362 W

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35.	UOH305	INSTITUTIONAL SUPPORT - HONOLULU CC			
		OPERATING	UOH	37.00 *	38.00 *
			UOH	1,552,132 A	1,609,990 A
			UOH	47,459 B	49,974 B
			UOH	100,877 W	106,224 W
36.	UOH311	INSTRUCTION - KAPIOLANI COMMUNITY COLLEGE			
		OPERATING	UOH	114.10 *	114.10 *
			UOH	4,414,917 A	4,444,925 A
			UOH	88,562 N	88,562 N
			UOH	4.00 *	4.00 *
		INVESTMENT CAPITAL	AGS	422,961 W	440,827 W
			AGS	11,146,000 C	C
37.	UOH312	PUBLIC SERVICE - KAPIOLANI COMMUNITY COLLEGE			
		OPERATING	UOH	2.00 *	2.00 *
			UOH	74,800 A	75,616 A
			UOH	1.00 *	1.00 *
			UOH	1,000,000 B	1,000,000 B
38.	UOH313	ACADEMIC SUPPORT - KAPIOLANI COMMUNITY COLLEGE			
		OPERATING	UOH	18.00 *	19.00 *
			UOH	734,159 A	738,339 A
39.	UOH314	STUDENT SERVICES - KAPIOLANI COMMUNITY COLLEGE			
		OPERATING	UOH	22.00 *	22.00 *
			UOH	565,101 A	568,473 A
			UOH	91,020 N	91,020 N
			UOH	9,148 W	9,510 W
40.	UOH315	INSTITUTIONAL SUPPORT - KAPIOLANI CC			
		OPERATING	UOH	32.00 *	33.00 *
			UOH	1,376,041 A	1,484,023 A
			UOH	7,289 B	7,675 B
			UOH	89,046 W	93,765 W
41.	UOH321	INSTRUCTION - LEEWARD COMMUNITY COLLEGE			
		OPERATING	UOH	148.00 *	148.00 *
			UOH	4,868,368 A	4,890,239 A
			UOH	54,561 N	54,561 N
			UOH	1.00 *	1.00 *
			UOH	185,733 W	193,317 W

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
42.	UOH322	PUBLIC SERVICE - LEEWARD COMMUNITY COLLEGE			
	OPERATING	UOH	5.00 *	5.00 *	
			135,415 A	136,611 A	
		UOH	1.00 *	1.00 *	
			299,027 B	305,943 B	
43.	UOH323	ACADEMIC SUPPORT - LEEWARD COMMUNITY COLLEGE			
	OPERATING	UOH	27.00 *	27.00 *	
			948,329 A	945,262 A	
44.	UOH324	STUDENT SERVICES - LEEWARD COMMUNITY COLLEGE			
	OPERATING	UOH	32.00 *	32.00 *	
		UOH	875,793 A	871,263 A	
		UOH	37,112 B	38,675 B	
		UOH	125,000 N	125,000 N	
		UOH	10,899 W	11,392 W	
45.	UOH325	INSTITUTIONAL SUPPORT - LEEWARD CC			
	OPERATING	UOH	45.50 *	45.50 *	
			1,755,844 A	1,768,839 A	
46.	UOH331	INSTRUCTION - WINDWARD COMMUNITY COLLEGE			
	OPERATING	UOH	42.50 *	42.50 *	
		UOH	1,313,252 A	1,319,891 A	
		UOH	12,847 W	13,528 W	
47.	UOH332	PUBLIC SERVICE - WINDWARD COMMUNITY COLLEGE			
	OPERATING	UOH	2.00 *	2.00 *	
		UOH	77,880 A	79,295 A	
			150,000 B	150,000 B	
48.	UOH333	ACADEMIC SUPPORT - WINDWARD COMMUNITY COLLEGE			
	OPERATING	UOH	12.00 *	12.00 *	
			512,051 A	481,348 A	
49.	UOH334	STUDENT SERVICES - WINDWARD COMMUNITY COLLEGE			
	OPERATING	UOH	9.00 *	9.00 *	
		UOH	265,633 A	267,498 A	
		UOH	48,117 N	48,117 N	
		UOH	3,716 W	3,911 W	

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				Fiscal Year O 1985-86 F	Fiscal Year O 1986-87 F
50.	UOH335	- INSTITUTIONAL SUPPORT - WINDWARD CC			
		OPERATING	UOH	16.00 * 597,964 A	16.00 * 611,633 A
			UOH	1.00 * 62,684 W	1.00 * 65,104 W
51.	UOH501	- INSTRUCTION - MAUI COMMUNITY COLLEGE			
		OPERATING	UOH	67.00 * 2,180,398 A	67.00 * 2,207,119 A
			UOH	26,090 N 2.00 *	26,090 N 2.00 *
		INVESTMENT CAPITAL	UOH AGS	203,117 W 81,000 C	211,834 W 2,305,000 C
52.	UOH502	- PUBLIC SERVICE - MAUI COMMUNITY COLLEGE			
		OPERATING	UOH	2.50 * 133,103 A	2.50 * 133,973 A
			UOH	0.50 * 93,904 B	0.50 * 96,392 B
53.	UOH503	- ACADEMIC SUPPORT - MAUI COMMUNITY COLLEGE			
		OPERATING	UOH	14.00 * 461,165 A	14.00 * 431,465 A
54.	UOH504	- STUDENT SERVICES - MAUI COMMUNITY COLLEGE			
		OPERATING	UOH	9.50 * 327,763 A	9.50 * 328,931 A
			UOH	2.00 * 166,051 B	2.00 * 174,696 B
			UOH	118,000 N	118,000 N
			UOH	4,848 W	5,105 W
55.	UOH505	- INSTITUTIONAL SUPPORT - MAUI COMMUNITY COLLEGE			
		OPERATING	UOH	19.00 * 956,711 A	19.00 * 951,737 A
		INVESTMENT CAPITAL	PED	130,000 C	C
56.	UOH601	- INSTRUCTION - KAUAI COMMUNITY COLLEGE			
		OPERATING	UOH	50.00 * 1,505,506 A	50.00 * 1,500,439 A
			UOH	1,735 N	1,735 N
			UOH	65,813 W	66,413 W

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
57. UOH602 - PUBLIC SERVICE - KAUAI COMMUNITY COLLEGE					
		OPERATING	UOH	0.50 * 18,039 A	0.50 * 18,131 A
			UOH	22,197 B	22,835 B
58. UOH603 - ACADEMIC SUPPORT - KAUAI COMMUNITY COLLEGE					
		OPERATING	UOH	10.50 * 456,917 A	10.50 * 426,995 A
59. UOH604 - STUDENT SERVICES - KAUAI COMMUNITY COLLEGE					
		OPERATING	UOH	10.00 * 271,899 A	10.00 * 273,052 A
			UOH	36,000 N	36,000 N
			UOH	3,231 W	3,402 W
60. UOH605 - INSTITUTIONAL SUPPORT - KAUAI CC					
		OPERATING	UOH	25.50 * 1,320,676 A	25.50 * 1,335,754 A
			UOH	24,238 B	25,523 B
61. UOH701 - INSTRUCTION - WEST OAHU COLLEGE					
		OPERATING	UOH	10.00 * 345,495 A	10.00 * 347,142 A
62. UOH704 - ACADEMIC SUPPORT - WEST OAHU COLLEGE					
		OPERATING	UOH	3.50 * 153,310 A	3.50 * 153,889 A
63. UOH705 - STUDENT SERVICES - WEST OAHU COLLEGE					
		OPERATING	UOH	3.00 * 100,387 A	3.00 * 102,067 A
64. UOH706 - INSTITUTIONAL SUPPORT - WEST OAHU COLLEGE					
		OPERATING	UOH	5.00 * 330,641 A	5.00 * 338,567 A
65. UOH901 - ACADEMIC SUPPORT - UOH, SYSTEM-WIDE SUPPOR					
		OPERATING	UOH	39.50 * 3,795,681 A	39.50 * 4,308,985 A
			UOH	850,000 B	894,016 B

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			Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
66.	UOH902 - STUDENT SERVICES - UOH, SYSTEM-WIDE SUPPOR			
	OPERATING	UOH	4.00 * 596,892 A	4.00 * 628,824 A
67.	UOH903 - INSTITUTIONAL SPPT - UOH, SYSTEM-WIDE SPPT			
	OPERATING	UOH	183.75 * 6,221,403 A	183.75 * 6,316,848 A
		UOH	6.00 * 562,344 B	6.00 * 584,891 B
	INVESTMENT CAPITAL	AGS	500,000 C	C
68.	UOH904 - VOCATIONAL EDUCATION, STATEWIDE COORDINAT			
	OPERATING	UOH	7.00 * 220,938 A	7.00 * 222,130 A
		UOH	4.00 * 337,131 N	4.00 * 337,131 N
69.	UOH905 - STATEWIDE PLAN & COORD FOR POST-SECONDAR			
	OPERATING	UOH	1,123,723 A	1,136,358 A
70.	UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT			
	OPERATING	UOH	31.00 * 3,032,534 A	31.00 * 2,904,047 A
		UOH	16.00 * 1,002,855 B	16.00 * 1,017,988 B
		UOH	19.60 * 918,744 N	19.60 * 918,744 N
		UOH	3.00 * 248,998 W	3.00 * 259,309 W
CULTURE AND RECREATION				
1.	LNR801 - HISTORICAL AND ARCHAEOLOGICAL PLACES			
	OPERATING	LNR	26.00 * 915,114 A	26.00 * 916,518 A
	INVESTMENT CAPITAL	LNR	820,000 C	1,430,000 C
2.	UOH881 - AQUARIA			
	OPERATING	UOH	11.00 * 432,896 A	11.00 * 446,942 A

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
3. CCA701 - HAWAII PUBLIC BROADCASTING					
		OPERATING	CCA	36.00 * 1,656,933 A	36.00 * 1,616,871 A
			CCA	1.00 *	1.00 *
		INVESTMENT CAPITAL	AGS	1,374,466 W 360,000 C	1,443,068 W 3,886,000 C
4. AGS881 - PERFORMING AND VISUAL ARTS EVENTS					
		OPERATING	AGS	12.00 * 2,237,297 A	12.00 * 2,105,502 A
			AGS	560,574 N	540,064 N
			AGS	15,000 R	15,000 R
5. AGS818 - ETHNIC GROUP PRESENTATIONS					
		OPERATING	AGS	55,634 A	58,692 A
			AGS	7,500 B	7,500 B
6. LNR804 - FOREST RECREATION					
		OPERATING	LNR	32.00 * 775,075 A	32.00 * 802,018 A
			LNR	266,160 N	270,234 N
		INVESTMENT CAPITAL	LNR	176,000 C	116,000 C
7. LNR805 - AQUATIC RECREATION					
		OPERATING	LNR	8.00 * 153,845 A	8.00 * 155,916 A
			LNR	254,152 N	262,820 N
8. LNR806 - PARKS RECREATION					
		OPERATING	LNR	109.00 * 2,750,439 A	110.00 * 2,808,839 A
		INVESTMENT CAPITAL	LNR	4,549,000 C	3,512,000 C
9. TRN801 - OCEAN-BASED RECREATION					
		OPERATING	TRN	51.50 * 4,129,283 B	51.50 * 4,463,114 B
		INVESTMENT CAPITAL	TRN	1,050,000 C	1,000,000 C
			TRN	1,875,000 D	2,245,000 D
10. AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM					
		OPERATING	AGS	37.00 * 2,128,909 B	37.00 * 2,403,724 B
		INVESTMENT CAPITAL	AGS	2,352,000 C	6,505,000 C

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11. LNR809 - GENERAL ADMIN FOR CULTURE AND RECREATION					
		OPERATING	LNR	22.00 * 467,536 A	22.00 * 473,100 A
			LNR	2,121,412 N	2,123,045 N
		INVESTMENT CAPITAL	LNR	275,000 C	160,000 C
			LNR	N	50,000 N
PUBLIC SAFETY					
1. SOC394 - INTAKE SERVICE CENTERS					
		OPERATING	SOC	70.00 * 1,673,854 A	70.00 * 1,711,961 A
2. SOC401 - JUVENILE CORRECTIONAL FACILITIES					
		OPERATING	SOC	83.50 * 2,940,053 A	83.50 * 2,884,515 A
3. SOC402 - HIGH SECURITY FACILITY					
		OPERATING	SOC	133.00 * 3,319,057 A	133.00 * 3,354,661 A
4. SOC403 - KULANI CORRECTIONAL FACILITY					
		OPERATING	SOC	68.33 * 2,337,561 A	68.33 * 2,310,437 A
		INVESTMENT CAPITAL	AGS	167,000 C	294,000 C
5. SOC404 - WAIAWA CORRECTIONAL FACILITY					
		OPERATING	SOC	27.50 * 641,977 A	27.50 * 652,954 A
		INVESTMENT CAPITAL	AGS	375,000 C	2,780,000 C
6. SOC405 - HAWAII COMMUNITY CORRECTIONAL CENTER					
		OPERATING	SOC	40.50 * 1,122,899 A	40.50 * 1,090,945 A
		INVESTMENT CAPITAL	AGS	210,000 C	1,765,000 C
7. SOC406 - MAUI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	SOC	44.50 * 1,192,079 A	44.50 * 1,228,338 A
8. SOC407 - OAHU COMMUNITY CORRECTIONAL CENTER					
		OPERATING	SOC	594.10 * 18,339,752 A	594.10 * 18,504,908 A
		INVESTMENT CAPITAL	AGS	448,000 C	947,000 C

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9.	SOC408	KAUAI COMMUNITY CORRECTIONAL CENTER			
		OPERATING	SOC	37.50 * 1,019,095 A	37.50 * 1,051,717 A
10.	SOC409	HAWAII WOMEN'S CORRECTIONAL FACILITY			
		OPERATING	SOC	54.00 * 1,778,031 A	54.00 * 1,758,749 A
11.	SOC410	HALAWA MEDIUM SECURITY FACILITY			
		OPERATING	SOC	4.00 * 60,473 A	4.00 * 80,296 A
		INVESTMENT CAPITAL	AGS	11,500,000 C	C
12.	UOH859	SOCIAL REHABILITATION OF CONFINED ADULTS			
		OPERATING	UOH	6.00 * 226,708 A	6.00 * 231,123 A
			UOH	34,027 N	34,027 N
			UOH	3,231 W	3,402 W
13.	SOC411	ADULT PAROLE DETERMINATIONS			
		OPERATING	SOC	2.00 * 85,482 A	2.00 * 85,981 A
14.	SOC413	ADULT PAROLE SUPERVISION AND COUNSELING			
		OPERATING	SOC	19.00 * 406,670 A	19.00 * 409,019 A
15.	SOC414	CRIMINAL INJURIES COMPENSATION			
		OPERATING	SOC	3.00 * 99,350 A	3.00 * 101,069 A
16.	SOC493	GENERAL ADMINISTRATION- CONFINEMENT			
		OPERATING	SOC	26.00 * 942,900 A	26.00 * 927,864 A
			SOC	219,781 B	233,847 B
		INVESTMENT CAPITAL	AGS	3,000,000 C	C
17.	ATG231	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION			
		OPERATING	ATG	24.00 * 760,107 A	24.00 * 771,931 A

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
18. LNR810 - PREVENTION OF NATURAL DISASTERS					
				3.00 *	3.00 *
		OPERATING	LNR	117,380 A	118,822 A
		INVESTMENT CAPITAL	LNR	300,000 C	2,700,000 C
			LNR	S	1,000,000 S
19. DEF110 - AMELIORATION OF PHYSICAL DISASTERS					
				142.40 *	142.40 *
		OPERATING	DEF	5,661,809 A	5,782,722 A
				6.10 *	6.10 *
		INVESTMENT CAPITAL	DEF	1,490,932 N	1,534,689 N
			AGS	3,541,000 C	1,315,000 C
			AGS	3,700,000 N	1,430,000 N
INDIVIDUAL RIGHTS					
1. AGR810 - TESTING AND CERTIFICATION OF CONSUMER GOOD					
				26.25 *	26.25 *
		OPERATING	AGR	620,098 A	605,208 A
				26.25 *	26.25 *
			AGR	781,716 N	784,606 N
2. CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL AND TRANS					
				20.00 *	20.00 *
		OPERATING	CCA	1,001,103 A	1,032,820 A
				4.00 *	4.00 *
			CCA	258,485 X	265,083 X
3. CCA104 - BANKING SERVICES					
				26.00 *	26.00 *
		OPERATING	CCA	825,432 A	789,403 A
4. CCA106 - INSURANCE SERVICES					
				31.00 *	31.00 *
		OPERATING	CCA	1,249,238 A	765,441 A
5. CCA105 - PROFESSIONAL, VOCATIONAL AND PERSONAL SVCS39					
				42.00 *	42.00 *
		OPERATING	CCA	1,417,073 A	1,442,076 A
6. BUF901 - TRANSPORTATION, COMMUNICATIONS, AND UTILIT					
				24.00 *	24.00 *
		OPERATING	BUF	890,389 A	856,217 A

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
7. CCA111 - BUSINESS REGISTRATION					
		OPERATING	CCA	24.00 *	24.00 *
			CCA	566,178 A	621,374 A
			CCA	272,472 B	275,867 B
8. AGR812 - MEASUREMENT STANDARDS					
		OPERATING	AGR	21.00 *	21.00 *
				536,107 A	537,740 A
9. CCA110 - OFFICE OF CONSUMER PROT - ADV AND TERMS OF S					
		OPERATING	CCA	27.00 *	27.00 *
				675,588 A	684,883 A
10. CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUM					
		OPERATING	CCA	49.00 *	49.00 *
			CCA	1,557,131 A	1,565,099 A
			CCA	1,100,395 B	1,114,505 B
11. BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS					
		OPERATING	BUF	72.00 *	72.00 *
				3,068,895 A	3,094,451 A
12. LNR111 - CONVEYANCES AND RECORDINGS					
		OPERATING	LNR	44.00 *	44.00 *
				885,655 A	885,990 A
13. SOC888 - COMMISSION ON THE STATUS OF WOMEN					
		OPERATING	SOC	39,546 A	39,968 A
GOVERNMENT-WIDE SUPPORT					
1. GOV100 - OFFICE OF THE GOVERNOR					
		OPERATING	GOV	43.00 *	43.00 *
		INVESTMENT CAPITAL	GOV	1,945,144 A	2,037,895 A
			GOV	3,000,000 C	3,000,000 C
2. LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR					
		OPERATING	LTG	24.00 *	24.00 *
				1,899,404 A	3,202,091 A

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
3.	BUF101	PROGM, PLANNG, ANALYSIS & BUDGETING			
		OPERATING	BUF	62.00 *	62.00 *
			BUF	27,338,682 A	33,663,909 A
			BUF	142,839 B	855,090 B
			BUF	93,544 N	372,641 N
			BUF	24,497 W	62,870 W
			BUF	2,767 X	5,916 X
4.	PED103	STATEWIDE PLAN AND COORDINATION			
		OPERATING	PED	46.00 *	46.00 *
		INVESTMENT CAPITAL	PED	1,812,216 A	1,832,660 A
			PED	17,000,000 C	C
5.	GOV102	OTHER POLICY DEVELOPMENT AND COORDINATION			
		OPERATING	GOV	10.00 *	10.00 *
				1,444,986 A	1,348,250 A
6.	TAX102	INCOME ASSESSMENT & AUDIT			
		OPERATING	TAX	123.00 *	123.00 *
				2,697,490 A	2,722,661 A
7.	TAX103	TAX COLLECTIONS ENFORCEMENT			
		OPERATING	TAX	75.00 *	75.00 *
				1,486,772 A	1,495,394 A
8.	TAX105	TAX SERVICES & PROCESSING			
		OPERATING	TAX	89.00 *	89.00 *
				2,768,976 A	2,740,448 A
9.	TAX107	SUPPORTING SERVICES-REVENUE COLLECTION			
		OPERATING	TAX	40.00 *	40.00 *
				2,312,022 A	2,412,313 A
10.	AGS101	ACCT SYSTEM DEVELOPMENT & MAINTENANCE			
		OPERATING	AGS	12.00 *	12.00 *
				315,684 A	314,473 A
11.	AGS102	EXPENDITURE EXAMINATION			
		OPERATING	AGS	23.00 *	23.00 *
				774,485 A	790,207 A
12.	AGS103	RECORDING AND REPORTING			
		OPERATING	AGS	15.00 *	15.00 *
				464,762 A	474,406 A

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PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
13. AGS104 - INTERNAL POST AUDIT					
		OPERATING	AGS	19.00 * 963,016 A	19.00 * 1,008,345 A
14. BUF110 - CASH AND DEBT MANAGEMENT					
		OPERATING	BUF	17.00 * 246,576,300 A	17.00 * 262,399,279 A
			BUF	25,209 B	25,222 B
			BUF	5,000 U	5,000 U
15. ATG100 - LEGAL SERVICES					
		OPERATING	ATG	118.00 * 6,880,975 A	118.00 * 5,834,329 A
			ATG	9.00 * 527,856 N	9.00 * 536,654 N
			ATG	26.00 * 1,435,857 U	26.00 * 1,440,402 U
16. BUF131 - ELECTRONIC DATA PROCESSING SERVICES					
		OPERATING	BUF	212.00 * 8,381,410 A	212.00 * 7,958,899 A
			BUF	25.00 * 1,031,972 U	25.00 * 1,050,019 U
17. AGS111 - RECORDS MANAGEMENT					
		OPERATING	AGS	24.00 * 475,252 A	24.00 * 459,330 A
18. PER102 - WORK FORCE ATTR, SELECT, CLASS & EFFECT					
		OPERATING	PER	90.00 * 2,697,999 A	90.00 * 2,607,926 A
			PER	1,275 B	1,355 B
19. PER191 - SUPPORTING SERVICES-PERSONNEL SERVICES					
		OPERATING	PER	12.00 * 485,395 A	12.00 * 474,659 A
20. BUF141 - RETIREMENT					
		OPERATING	BUF	25.38 * 139,469,644 A	25.38 * 127,719,119 A
			BUF	8.62 * 369,048 S	8.62 * 382,206 S

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal Year O 1985-86 F	Fiscal Year O 1986-87 F
21.	BUF142	GROUP LIFE INSURANCE, MED, HOSP & DNTL BN			
		OPERATING	BUF	11.00 * 473,269 A	11.00 * 493,018 A
22.	LNR101	PUBLIC LANDS MANAGEMENT			
		OPERATING	LNR	34.00 * 966,237 A	34.00 * 864,848 A
23.	AGS203	INSURANCE MANAGEMENT			
		OPERATING	AGS AGS	2.00 * 11,203,241 A 1,492,189 U	2.00 * 11,370,039 A 1,584,738 U
24.	AGS211	LAND SURVEY			
		OPERATING	AGS	28.00 * 726,267 A	28.00 * 701,955 A
25.	AGS221	CONSTRUCTION			
		OPERATING INVESTMENT CAPITAL	AGS AGS AGS PED	20.00 * 570,917 A 7,186,000 C 2,080,000 D 117,000 C	20.00 * 569,918 A 10,074,000 C D C
26.	AGS231	CUSTODIAL SERVICES			
		OPERATING	AGS AGS	144.50 * 7,020,206 A 328,898 U	144.50 * 7,314,498 A 349,948 U
27.	AGS232	GROUNDS MAINTENANCE			
		OPERATING	AGS	39.50 * 803,590 A	40.50 * 856,754 A
28.	AGS233	BUILDING REPAIRS AND ALTERATIONS			
		OPERATING	AGS	24.00 * 1,921,929 A	24.00 * 1,926,496 A
29.	AGS240	CENTRAL PURCHASING			
		OPERATING	AGS AGS	16.00 * 313,864 A 25,000 W	16.00 * 313,621 A 26,000 W
30.	AGS244	SURPLUS PROPERTY MANAGEMENT			
		OPERATING	AGS AGS	73,000 A 5.00 * 168,414 W	A 5.00 * 169,687 W

PROGRAM APPROPRIATIONS

State of Hawaii

Item No.	Prog. ID	Program	Expending Agency	Appropriations	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
31.	AGS251	MOTOR POOL			
		OPERATING	AGS	8.50 * 574,517 W	8.50 * 589,812 W
32.	AGS252	PARKING CONTROL			
		OPERATING	AGS	12.50 * 1,090,051 W	12.50 * 1,075,144 W
33.	AGS263	COMMUNICATION			
		OPERATING	AGS	19.00 * 2,646,798 A	19.00 * 2,313,463 A
			AGS	1,709,857 U	1,933,594 U
34.	ATG801	CAPITOL BUILDING SECURITY			
		OPERATING	ATG	47.00 * 918,135 A	47.00 * 925,622 A
35.	AGS301	OTHER STATE BUILDINGS SECURITY			
		OPERATING			
36.	AGS901	GENRL ADM SVCS - ACCOUNTING & GENERAL SV			
		OPERATING	AGS	42.00 * 1,048,916 A	42.00 * 1,052,226 A
37.	SUB101	GRANTS IN AID TO COUNTIES			
		OPERATING	SUB	19,447,551 A	19,447,551 A
38.	SUB201	CITY & COUNTY OF HONOLULU			
		OPERATING			
39.	SUB301	COUNTY OF HAWAII			
		OPERATING			
40.	SUB401	COUNTY OF MAUI			
		OPERATING			
41.	SUB501	COUNTY OF KAUAI			
		OPERATING			

PART III. PROGRAM APPROPRIATIONS PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation to commerce and industry (PED 102), the sum of \$500,000 in fiscal year 1985-86 shall be used to increase the revolving fund of the Hawaii capital loan program.

SECTION 5. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$1,000,000 in fiscal year 1985-86 and \$1,000,000 in fiscal year 1986-87 shall be provided to the Pacific International Center for High Technology Research (UOH 102); provided further that the department of planning and economic development shall expedite the transfer of funds; provided further that the funds shall be used for conducting independent high technology research; provided further that the Pacific International Center for High Technology Research shall submit an expenditure plan to the legislature twenty days before the convening of the 1986 Regular Session.

SECTION 6. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$750,000 in fiscal year 1985-86 and \$750,000 in fiscal year 1986-87 shall be used by the Hawaii Visitors Bureau for advertising in Asian and Pacific markets; provided further that \$250,000 in fiscal year 1985-86 and \$250,000 in fiscal year 1986-87 shall be used by the Hawaii Visitors Bureau for non personnel promotion and marketing in Asian and Pacific markets; provided further that \$525,000 in fiscal year 1985-86 and \$525,000 in fiscal year 1986-87 shall be used by the Hawaii Visitors Bureau for advertising in Western and other markets; provided further that \$100,000 in fiscal year 1985-86 and \$100,000 in fiscal year 1986-87 shall be used by the Hawaii Visitors Bureau for non personnel promotion and marketing in Western and other markets.

SECTION 7. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$50,000 in fiscal year 1985-86 and \$50,000 in fiscal year 1986-87 shall be used by the Hawaii visitors bureau for an annual visitor expenditure study.

SECTION 8. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$150,000 in fiscal year 1985-86 and \$150,000 in fiscal year 1986-87 shall be used for Aloha week festivities to be administered by the tourism office, department of planning and economic development.

SECTION 9. Provided that of the general fund appropriation for Commerce and Industry (PED 102) to be expended by the Tourism Branch, Department of Planning and Economic Development, the sum of \$100,000 in fiscal year 1985-86 shall be expended to review and analyze costs and benefits of tourism and to develop and establish a system to monitor and make recommendations to assure that tourism development and activities enhance, rather than adversely affect, the quality of life of Hawaii's residents; provided further that a report on such a system and appropriate recommendations shall be submitted by the department to the Legislature no later than twenty days prior to the convening of the 1986 regular session.

SECTION 10. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$60,000 in fiscal year 1985-86 and \$60,000 in fiscal year 1986-87 shall be used by the Hawaii Visitors Bureau to support sporting events; provided further that \$100,000 in fiscal year 1985-86 and \$100,000 in fiscal year 1986-87 shall be used by the Hawaii visitors bureau for promotion of Molokai as a visitor destination.

SECTION 11. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$35,000 in fiscal year 1985-86 shall be used for the Visitor Industry Education Council.

SECTION 12. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$295,000 in fiscal year 1985-86 and \$295,000 in fiscal year 1986-87 shall be used for industry and product promotional activities of the business development branch; provided further that the department of planning and economic development shall coordinate its promotional activities by developing an internal plan of goals and guidelines; provided further that the department shall seek to incorporate into its plan creative and innovative promotional projects to more effectively promote local industry and products.

SECTION 13. Provided that of the general fund appropriation to commerce and industry (PED 102), the sum of \$50,063 in fiscal year 1985-86 and \$51,731 in fiscal year 1986-87 shall be used for international marketing and promotion by the international services branch.

SECTION 14. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$20,000 in fiscal year 1985-86 and \$20,000 in fiscal year 1986-87 shall be used by the high technology development corporation for publication of a periodical on the potential of high technology activities in Hawaii.

SECTION 15. Provided that of the general funds appropriated to the High technology development corporation in Act 152, Session Laws of Hawaii 1983 which were deposited into the high technology research and development fund, no more than \$37,500 shall be used to fund high technology research and development projects.

SECTION 16. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$47,000 in fiscal year 1985-86, or so much thereof as may be necessary shall be used for educational and interpretive programs at the Richardson ocean center in the county of Hawaii; provided further that the sum of \$50,000 in fiscal year 1985-86, or so much thereof as may be necessary, shall be used for improvements to the Richardson ocean center in the county of Hawaii.

SECTION 17. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$45,000 for fiscal year 1985-86 and \$20,000 for fiscal year 1986-87 shall be used for the promotion of fresh seafood from Hawaii.

SECTION 18. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$285,000 in fiscal year 1985-86 and \$285,000 in fiscal year 1986-87 shall be used to offset operating expenditures of the hyperbaric treatment facilities in the ocean resources branch; provided further that any general fund surplus at the end of each fiscal year shall be lapsed.

SECTION 19. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$175,000 for fiscal year 1985-86 shall be used for construction of a farm produce cooling plant and fish processing operation on Molokai and to restore existing Molokai fish ponds to production; provided further that these funds are contingent upon receipt of federal funds on a federal to state 3 to 1 matching basis from the federal economic development administration; provided further that any unexpended or unencumbered general funds provided for these purposes as of June 30, 1986 shall be lapsed.

SECTION 20. Provided that of the general fund appropriation for fiscal year 1985-86 for commerce and industry (PED 102), the sum of \$100,000 shall be used to study the feasibility of a cargo distribution center in the county of Hawaii; provided further the department of planning and economic development shall contract for such services; provided further that the county of Hawaii shall match the state funding on a 2:1 State/county ratio.

SECTION 21. Provided that of the general fund appropriation for commerce and industry (PED 102), the sum of \$25,000 in fiscal year 1985-86 shall be used to promote and support Employee Stock Ownership Plans in Hawaii.

SECTION 22. Provided that of the general fund appropriation to commerce and industry (PED 102), \$100,000 in fiscal year 1985-86 shall be used for a feasibility study and site analysis for Hawaii film production facilities; provided further, the department of planning and economic development shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 Regular Session.

SECTION 23. Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$30,000 in fiscal year 1985-86 and \$30,000 in fiscal year 1986-87 shall be used for research on the biological control of webworms.

SECTION 24. Provided that in the animal quarantine program (AGR 131), the department of agriculture shall adjust the fees for the quarantine of cats and dogs so that revenues collected from this source will equal 100 per cent of all costs, excluding amortization of capital improvement costs of the quarantine on cats and dogs program.

SECTION 25. Provided that of the general fund appropriation for forestry-products development (LNR 172), the sum of \$100,000 in fiscal year 1985-86 and \$100,000 in fiscal year 1986-87 shall be used for the raising and planting of timber seedlings for the purpose of developing a commercial timber industry.

SECTION 26. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$300,000 in fiscal year 1985-86 and \$200,000 in fiscal year 1986-87 shall be used for the promotion of diversified agriculture.

SECTION 27. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$200,000 in fiscal year 1985-86 shall be used for the promotion of pineapples; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by the pineapple industry.

SECTION 28. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$100,000 in fiscal year 1985-86 shall be used for the promotion of papayas; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by private contributions.

SECTION 29. Provided that of the general fund appropriation to distribution systems improvement for agriculture (AGR 151), the sum of \$50,000 in fiscal year 1985-86 shall be used to grant relief to the Moloaa papaya farmers cooperative on the island of Kauai.

SECTION 30. Provided that the Department of Agriculture shall conduct an independent audit of the utilization of milk received by the milk processor in relation to the volume of production by the processor; provided further that the Department of Agriculture shall submit a report of its findings to the legislature twenty days before the beginning of the 1986 Regular Session.

SECTION 31. Provided that the department of agriculture shall submit a report reviewing the financial assistance for aquaculture program; provided further that the report shall include but not be limited to:

- (1) Long term plans for the financial assistance for aquaculture program for the period July 1, 1985 to June 30, 1990, including program goals and objectives, measures of effectiveness, program activities; and
- (2) An assessment of the effectiveness of the present program in meeting its goals and objectives, including the number of loans processed each year;

provided further, the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 32. Provided that for the water development and irrigation services program (LNR 141), the general fund appropriation shall be reduced to the extent that the actual amount of special funds received exceeds the amount authorized for each year of the biennium; provided further that the total expenditure shall not exceed the total amount of the appropriation authorized by this Act.

SECTION 33. Provided that of the general fund appropriation for general support for economic development (PED 142), the sum of \$49,729 in fiscal year 1985-86 and \$52,910 in fiscal year 1986-87 shall be used for staff and operating expenses for the Aloha Tower Development Corporation.

EMPLOYMENT

SECTION 34. Provided that the Hawaii public employee relations board (LBR 161) shall, in addition to its existing functions, plan and implement programs in accordance with section 89-5(b)(8), Hawaii Revised Statutes.

SECTION 35. Provided that of the general fund appropriation for vocational rehabilitation (SOC 802), the sum of \$760,118 in fiscal year 1985-86 and \$808,091 in fiscal year 1986-87, shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$328,423 in fiscal year 1985-86 and \$349,442 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 36. Provided that of the general fund appropriation for general administration (LBR 902), the sum of \$6,000 in fiscal year 1985-86 and \$6,000 in fiscal year 1986-87 shall be provided for the operation of the state fire council.

SECTION 37. Provided that of the general fund appropriation for general administration (LBR 902), the sum of \$47,575 in fiscal year 1985-86 and \$50,429 in fiscal year 1986-87 shall be provided for a purchase of service.

TRANSPORTATION FACILITIES

SECTION 38. Provided that of the special fund appropriation for air transportation facilities and services (TRN 195), the sum of \$100,000 in fiscal

year 1985-86 and \$100,000 in fiscal year 1986-87 or so much thereof as may be necessary shall be used for grant for the Civil Air Patrol.

SECTION 39. Provided that of the special fund appropriation for water transportation facilities (TRN 395), the sum of \$20,000 in fiscal year 1985-86 shall be used to conduct marketing and promotion efforts for Hawaii's harbors, with special focus on Honolulu harbor; provided that the department of transportation shall submit a progress report on such efforts to the legislature twenty days before the convening of the 1986 regular session.

ENVIRONMENTAL PROTECTION

SECTION 40. Provided that of the general fund appropriation for solids, liquids, gases, and noise (HTH 840), the sum of \$40,000 for fiscal year 1985-86 shall be used for compliance inspections of generators and handlers of hazardous wastes.

SECTION 41. Provided that of the general fund appropriation for aquatic resources (LNR 401), the sum of \$18,221 in fiscal year 1985-86 and \$22,628 in fiscal year 1986-87 shall be used for an aquatic resources education program; provided further that the funds for educational supplies and a temporary information specialist III to organize and coordinate an aquatic resources education project are contingent upon the establishment of this program to qualify for federal matching funds.

SECTION 42. Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of \$60,000 shall be used in fiscal year 1985-86 to prepare an environmental impact statement to assess the effects of diesel oil emulsion or other appropriate eradication methods, used in the eradication of marijuana grown on state lands.

SECTION 43. Provided that the department of land and natural resources shall review the effectiveness of the canine corps of the conservation and resources enforcement branch (LNR 405); provided further that the review shall include, but not be limited to, the following:

- (1) A statement of program goals and objectives;
- (2) A description of activities to carry out the goals and objectives;
- (3) Measurements used to determine program effectiveness; and
- (4) An organizational and management structure required to carry out activities:

Provided further that the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 45. Provided that of the general fund appropriation for policy development, coordination and analysis for natural physical environment (HTH 850), the sum of \$195,000 in fiscal year 1985-86 and \$195,000 in fiscal year 1986-87 shall be used to continue the intent and purpose of Act 275, SLH 1984.

SECTION 45. Provided that of the general fund appropriation for land and natural resources-natural physical environment (LNR 906), the sum of \$65,900 in fiscal year 1985-86 shall be used to locate and possibly eradicate destructive non-native plants and animals.

SECTION 46. Provided that of the general fund appropriation for fiscal year 1985-86 and fiscal year 1986-87 for equipment for the environmental protection programs of the department of land and natural resources, the

department shall not expend funds for the purpose of purchasing computer equipment or computer related items until such time that the departmental plan for computerization has been completed and approved by the department of budget and finance.

HEALTH

SECTION 47. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for the tuberculosis branch (HTH 101), one position shall be for coordination and distribution of tuberculosis drugs statewide; provided further that this position shall work out of the Oahu tuberculosis office at Lanakila.

SECTION 48. Provided that the tuberculosis branch, department of health (HTH 101), shall continue to decrease the administration of chest x-rays for the diagnosis of tuberculosis; provided further that the department shall terminate the use of its mobile x-ray vans.

SECTION 49. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for Hansen's disease branch (HTH 111), one position shall be used for the purpose of providing home care services for the infirmed and disabled at Kalaupapa settlement.

SECTION 50. Provided that of the general fund appropriation for venereal disease (HTH 121), the sum of \$25,292 in fiscal year 1985-86 and \$26,911 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 51. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for other communicable disease branch (HTH 131), one position shall be responsible for the control of zoonotic diseases in the State.

SECTION 52. Provided that of the general fund appropriation for other communicable diseases (HTH 131), the sum of \$187,000 in fiscal year 1985-86 and \$190,000 in fiscal year 1986-87 shall be used for the purchase of vaccine for hepatitis B screening and for reporting and follow up procedures.

SECTION 53. Provided that of the general fund appropriation for chronic disease (HTH 151), the sum of \$165,516 in fiscal year 1985-86 and \$176,109 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 54. Provided that of the federal fund appropriation for nutrition services (HTH 160), the sum of \$163,395 in fiscal year 1985-86 and \$173,200 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 55. Provided that of the general fund appropriation for emergency medical services (HTH 170), the sum of \$211,654 in fiscal year 1985-86 and \$211,654 in fiscal year 1986-87 shall be used to expand emergency medical services to twenty-four hours a day seven days a week to the extent of available personnel in the Waialua area to the extent practicable, given available trained personnel, taking into account moderate overtime and financial resources.

SECTION 56. Provided that of the general fund appropriation for emergency medical services (HTH 170), the sum of \$167,867 in fiscal year 1985-86 and \$178,611 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 57. Provided that of the general fund appropriation for family planning (HTH 185), the sum of \$444,278 in fiscal year 1985-86 and \$472,712 in

fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$512,209 in fiscal year 1985-86 and \$500,456 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 58. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for school health services (HTH 191), thirty-two positions shall be used for direct school health services.

SECTION 59. Provided that of the general fund appropriation for health care services (HTH 801), the sum of \$11,000 for the second half of fiscal year 1985-86 and \$22,000 in fiscal year 1986-87 shall be used to regulate the testing of newborns for congenital metabolic disease and to carry out a monitoring and follow-up program.

SECTION 60. Provided that of the general fund appropriation for health care services (HTH 801), the sum of \$526,584 in fiscal year 1985-86 and \$567,678 in fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$104,929 in fiscal year 1985-86 and \$108,436 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 61. Provided that of the general fund appropriation for community based mental health services, (HTH 401), the sum of \$5,155,327 in fiscal year 1985-86 and \$5,441,274 in fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$2,120,177 in fiscal year 1985-86 and \$2,120,177 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 62. Provided that of the general fund appropriation for identification, evaluation, and treatment for developmentally disabled (HTH 500), the sum of \$1,150,527 in fiscal year 1985-86 and \$1,223,632 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 63. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for community based services for developmentally disabled (HTH 501), two positions shall be used for the Hale Hauoli programs on Maui and Hawaii.

SECTION 64. Provided that of the general fund appropriation for community based services for developmentally disabled (HTH 501), the sum of \$1,936,355 in fiscal year 1985-86 and \$2,060,283 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 65. Provided that of the general fund appropriation for Waimano training school and hospital (HTH 511), \$311,561 in fiscal year 1985-86 and \$847,880 in fiscal year 1986-87 shall be used for purchases of service relating to home and community based services; provided further that the funds provided shall be expended to support accelerating the placement of Waimano training school and hospital patients in the community; provided further that the Waimano training school and hospital shall report on the progress of deinstitutionalization and the usage of the funds for in-community programs during the first six months of fiscal year 1985-86 and the plans for usage of the funds for the remainder of fiscal year 1985-86 and fiscal year 1986-87; provided further that the report shall be submitted to the legislature twenty days before the convening of the 1986 Regular Session.

SECTION 66. Provided that the department of health shall consolidate the administration of Waimano training school and hospital and the community

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services for the developmentally disabled branch under one division. This consolidation shall be completed by the end of fiscal year 1986-87.

Provided further that a report on the consolidation's progress shall be submitted to the legislature not less than twenty days prior to the convening of the 1986 regular session.

SECTION 67. Provided that of the total number of positions authorized in fiscal year 1985-86 and fiscal year 1986-87 for sanitation and substance control (HTH 611), three positions shall be for the narcotics enforcement division.

SECTION 68. Provided that of the general fund appropriation for sanitation and substance control (HTH 611), the sum of \$3,000 in fiscal year 1985-86 and \$3,000 in fiscal year 1986-87 shall be used to purchase food products for testing for contamination and pesticides.

SECTION 69. Provided that of the general fund appropriation for medical facilities - standards, inspection and licensing (HTH 701), the sum of \$50,000 for fiscal year 1985-86 and \$50,000 for fiscal year 1986-87 shall be used to assist the counties for fire inspection services of adult boarding and care homes subject to licensure under chapter 346, Hawaii Revised Statutes.

SECTION 70. Provided that in fiscal year 1985-86 and fiscal year 1986-87 for public health nursing services (HTH 902), four positions shall be used for supporting case management of the elderly on Oahu and Kauai.

SECTION 71. Provided that of the general fund appropriation for public health nursing (HTH 902), the sum of \$39,000 in fiscal year 1985-86 and \$39,000 in fiscal year 1986-87 shall be used for the case management and coordination program for the fragile elderly on Maui.

SECTION 72. Provided that of the general fund appropriation for health education (HTH 908), the sum of \$55,613 in fiscal year 1985-86 and \$59,173 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 73. Provided that the department of health shall evaluate the effectiveness of the health promotion and education office (HTH 908); provided further that this evaluation shall include, but not be limited to, the following:

- (1) A statement of program goals and objectives;
- (2) A description of activities to carry out the goals and objectives;
- (3) Measurements used to determine program effectiveness; and
- (4) An organizational and management structure required to carry out activities.

Provided further that the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 74. Provided that the department of health shall evaluate the effectiveness of the state health planning and development agency (HTH 906); provided further that the evaluation shall include, but not be limited to, the following:

- (1) A statement of program goals and objectives;
- (2) A description of activities to carry out the goals and objectives;
- (3) Measurements used to determine program effectiveness; and
- (4) An organizational and management structure required to carry out activities.

Provided further that the department shall submit a report on its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 75. Provided that of the general fund appropriation for general administration (HTH 907), the sum of \$105,656 in fiscal year 1985-86 and \$112,417 in fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$13,459 in fiscal year 1985-86 and \$13,459 in fiscal year 1986-87 shall be used for purchases of services.

SECTION 76. Provided that the county/State hospitals division (HTH 907) shall lapse \$750,000 in special funds from the fiscal year 1983-84 balance carried forward to fiscal year 1984-85.

SECTION 77. Provided that the county/State hospitals division (HTH 907), is directed to lapse a total of \$750,000 of the fiscal year 1983-84 special fund excess receipts carried forward into fiscal year 1984-85, from the respective county/State hospitals as determined by the county/State hospitals general administration.

SECTION 78. Provided that the county/State hospital division (HTH 907) shall prepare a report to the legislature twenty days prior to the convening of the 1986 regular session on the contractual agreements with pathology, radiology (including nuclear medicine, CT-scan, etc.), emergency services, for such charges deemed reimbursable by third party payors including medicare and medicaid for inpatient and outpatient services by the so called "pass through" method of payment to each contractor by the individual hospitals; provided further that this report shall include, but not be limited to the following:

- (1) A description of the contractual agreements for each affected service;
- (2) An analysis of the information below to determine the cost effectiveness of the contractual agreements and the adequacy of the conditions of the agreements:
 - (a) The amount billed for each service per month since October 1983 through October 1986;
 - (b) The amount paid to each contractor or permittee for each service per month since November 1983 through November 1986;
 - (c) The amount reimbursed to each hospital by medicare for each service per month since November 1983 through November 1986;
 - (d) The amount reimbursed to each hospital by medicaid for each service per month since November 1983 through November 1986;
 - (e) Any other such data as necessary to comply with this request.

Provided further that the county/State hospital division provide a status report on its implementation of the legislative auditor's recommendation on the division's contracting for services on a fee basis in his "Budget Review and Analysis; County/State Hospital Program and the Health Care Payments Program."

SECTION 79. Provided that the department of health is authorized (1) to trade off and/or transfer positions; (2) to establish other positions for the

purpose of maximizing the utilization of personnel resources and staff productivity.

Provided further that the department of health shall report twenty days prior to the opening of the 1986 regular session of the legislature on (1) the status of all new personnel changes provided by this Act; (2) the status and number of temporary positions authorized by the director through delegated gubernatorial authority for the fiscal years 1978-79 to 1985-86 by year; and (3) the action plans employed by the department to correct deficiencies in such areas as staff utilization, staffing patterns, and other external forces limiting programs efficiencies for both general fund and special funds positions.

Provided further that if any of the newly approved positions are not filled by the end of the 1986-87 fiscal year, the position count and funds authorized for such positions shall lapse.

SECTION 80. Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of \$500,000 in fiscal year 1985-86 and \$500,000 in fiscal year 1986-87 shall be used to subsidize operations at Molokai general hospital; provided further that of the appropriated amounts to Molokai general hospital, \$145,568 in fiscal year 1985-86 and \$122,884 in fiscal year 1986-87 shall be released contingent on the loss of revenues due to medicaid/medicare prospective payment system shortages; provided further that of the general fund appropriation, the sum of \$289,777 in fiscal year 1985-86 and \$308,323 in fiscal year 1986-87 shall be used to subsidize operations at Waianae coast comprehensive health center - emergency room; provided further that of the general fund appropriation, the sum of \$172,382 in fiscal year 1985-86 and \$128,720 in fiscal year 1986-87 shall be released to Kahuku hospital contingent on the loss of revenues due to medicaid/medicare prospective payment system shortages.

SECTION 81. Provided that the department of health shall commence with the deinstitutionalization plan as outlined in the report entitled "Report to the Legislature, Response to Act 285, Section 17C" dated April 4, 1985, within available resources in the most economic and prudent manner; provided further that the department shall have flexibility to use purchase of service funds for private contracts to assist in deinstitutionalization and, if private purchases of services are not available or not equivalent in cost and applicability, to hire temporary state employees; provided further that the department shall report back to the 1986 regular session outlining progress toward deinstitutionalization and recommendations for further action in this area.

SECTION 82. Provided that of the general fund appropriation for fiscal year 1985-86 and fiscal year 1986-87, the department of health shall not expend funds for the purchase of computer equipment or computer related items until such a time that the department has completed standards and guidelines for the purchase of computer equipment and computer related items.

SOCIAL SERVICES

SECTION 83. Provided that the department of social services and housing shall develop a plan to reorganize the child protective services units (SOC 111); provided further that the department shall submit the plan to the department of budget and finance for approval by September 1, 1985; provided further the department shall submit the approved plan to the legislature twenty days before the convening of the 1986 regular session.

SECTION 83A. Provided that of the general fund appropriation for services to individuals and families (SOC 111), the sum of \$2,521,596 in fiscal year 1985-86 and \$2,436,560 in fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$3,887,094 in fiscal year 1985-86 and \$3,817,304 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 83B. Provided that of the general fund appropriation for services to individuals and families (SOC 111), the sum of \$70,000 in fiscal year 1985-86 and \$70,100 in fiscal year 1986-87 shall be used for the adoption assistance program.

SECTION 84. Provided that of the general fund appropriation for payments to assist in child welfare foster board payments (SOC 203), the sum of \$570,000 in fiscal year 1985-86 and \$570,000 in fiscal year 1986-87 shall be used for increased foster care payment.

SECTION 85. Provided that of the general fund appropriation for health care payments (SOC 230), the sum of \$285,300 in fiscal year 1985-86 and the sum of \$689,700 in fiscal year 1986-87 shall be used for expansion of the nursing home without walls project; provided further that these funds shall not be expended unless legislation expanding the nursing home without walls project to the neighbor islands is enacted.

SECTION 86. Provided that of the general fund appropriation for eligibility determination (SOC 236), the sum of \$617,289 in fiscal year 1985-86 shall be used for the Hawaii automated welfare information system (HAWIS); provided further that the allotment of these funds shall be dependent upon the department of social services and housing receiving formal approval of its advanced planning document from the federal department of health and human services.

SECTION 87. Provided that of the general fund appropriation for Hawaii office of economic opportunity (GOV 860), the sum of \$122,250 in fiscal year 1985-86 shall be for:

Hawaii county economic opportunity council	\$25,000
Honolulu community action program	60,100
Maui economic opportunity	28,650
Kauai economic opportunity	8,500

Provided further that these amounts are to bring various head start facilities into compliance with licensing requirements.

SECTION 88. Provided that of the general fund appropriation for Hawaii office of economic opportunity (GOV 860), the sum of \$2,011,863 in fiscal year 1985-86 and \$2,124,070 in fiscal year 1986-87 shall be used for purchases of service; provided further that of the federal funds authorized, the sum of \$1,306,000 in fiscal year 1985-86 and \$1,306,000 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 89. Provided that of the general fund appropriation for planning, program development and coordination of services for elderly (GOV 602), the sum of \$2,848,034 in fiscal year 1985-86 and \$2,903,304 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 90. Provided that of the general fund appropriation for the plan, program development and coordination of services for the elderly (GOV

602), \$25,000 in fiscal year 1985-86 shall be used for a pilot program on Alzheimer's disease; provided further that an assessment of this pilot project shall be submitted to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 91. Provided that of the general fund appropriation for planning, program development and coordination of services for immigrants (GOV 803), the sum of \$204,321 in fiscal year 1985-86 and \$214,871 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 92. Provided that of the temporary positions authorized by this Act for general support for public welfare (SOC 903), not more than eleven positions shall be used to implement, to the extent practicable, the recommendations of the 1984 Health Care Financing Administration's staffing study; provided further that of the appropriation for general support for public welfare, the sums of \$101,141 in general funds and \$139,671 in federal funds for fiscal year 1985-86 and \$122,099 in general funds and \$168,614 in federal funds for fiscal year 1986-87 shall be used to fund these positions and position related expenses; provided further that these positions shall be transferred into a new program I.D., general support for medical care payments (SOC 902) and established as a separate division; provided further that the department shall effectuate a reorganization of the public welfare division to reflect this newly established entity.

SECTION 93. Provided that of the temporary positions authorized by this Act for general support for public welfare (SOC 903), not more than three positions shall be used to implement, to the extent practicable, the recommendations of the 1984 medical care administration office's clerical staffing study; provided further that of the appropriation for general support for public welfare, the sums of \$16,304 in general funds and \$22,516 in federal funds for fiscal year 1985-86 and \$18,354 in general funds and \$25,347 in federal funds for fiscal year 1986-87 shall be used to fund these positions and position related expenses.

SECTION 95. Provided that the department of social services and housing - general administration (SOC 904), shall prepare a report detailing the transfer of funds among its various programs for fiscal year 1984-85 and the first half of fiscal year 1985-86; provided further that the report shall include:

- (1) Program ID and title of the programs providing and receiving such funds;
- (2) Amount of the transfer by cost category before and after the transfer;
- (3) An explanation of the surplus and deficit in the respective programs involved in the transfer;

provided further that the department shall submit the report to the legislature twenty days prior to the convening of the 1986 regular session.

FORMAL EDUCATION

SECTION 96. Provided that the amounts shown for regular instruction (EDN 105) are intended for student enrollment projections of 165,720 for fiscal year 1985-86 and 168,406 for fiscal year 1986-87.

SECTION 96A. Provided that of the amount appropriated and positions approved for the regular instruction program (EDN 105), it is the intent of the legislature that the Governor is authorized to expend general fund moneys to provide for and maintain the level of services approved by the legislature and

authorized by this Act; provided further that in the event the sum received by the department of education for the regular instruction program (EDN 105) under Public Law 81-874 (Impact Aid), or any other public law which amends or supersedes Public Law 81-874, for each year of the fiscal biennium 1985-87 is less than \$9,400,000 for fiscal year 1985-86 and \$9,400,000 for fiscal year 1986-87, the legislature may under procedures established in Article III, Section 10 of the Hawaii State Constitution, meet in special session to deal with the problem. If the sum received is greater than the amount authorized in this Act for each year of the fiscal biennium 1985-86, then the general fund appropriation to the department of education shall be reduced to the extent that the actual sum received exceeds the amount authorized for each respective fiscal year.

SECTION 97. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$60,000 in fiscal year 1985-86 and \$60,000 in fiscal year 1986-87 shall be provided for the philosophy in the schools program; provided further that these moneys shall be used to contract the University of Hawaii department of philosophy to conduct the program.

SECTION 98. Provided that of the general fund appropriation for other regular instruction (EDN 106), \$2,863,862 in fiscal year 1985-86 and \$317,455 in fiscal year 1986-87 shall be used for the early provision for school success program to aid 13,640 kindergarten students in the development of basic skills and life skills; provided further that in fiscal year 1985-86, the 100 support teachers in the program shall provide direct services to students identified as having learning difficulties in kindergarten classes throughout the state; provided further that the teachers in grades K - 3 may receive in-service training; provided further that the department shall submit an evaluation of this program to the legislature twenty days before the convening of the 1986 regular session.

SECTION 99. Provided that of the general fund appropriation for other regular instruction programs (EDN 106), the sum of \$1,360,354 in fiscal year 1985-86 and \$1,455,889 in fiscal year 1986-87 and of the general fund appropriation for school administration (EDN 203), the sum of \$65,540 in fiscal year 1985-86 and \$77,564 in fiscal year 1986-87 shall be used to meet the primary instructional needs of the intermediate schools, as expressed by the schools themselves; provided further that these funds will enable the schools through their respective district superintendents to strengthen the educational program in grades seven and eight; provided further that these funds shall be divided into two parts as follows:

- (1) for intensive supplemental instructional assistance in the basic skills for students performing below stanine four; and
- (2) for curriculum and instructional or administrative support to allow schools optimal flexibility;

provided further that personnel to provide intensive supplemental instructional assistance in basic skills and curriculum and instructional or administrative support shall be made available to intermediate schools, at the discretion of the respective district superintendents; provided further that the principals of the intermediate schools shall consult with teachers to solicit their advice on the use of these funds and positions; provided further that the school shall be permitted latitude and discretion to determine their needs and priorities; provided further that the principals shall submit plans for the use of these funds and positions to their district superintendents who shall review the plans for conformance with departmental policies and regulations; and provided further that the district

superintendents shall assure accountability to the superintendent of education by developing and implementing proper planning procedures and follow-up accountability reports.

SECTION 100. Provided that of the general fund appropriation for other regular instruction (EDN 106) \$1,024,921 in fiscal year 1985-86 and \$866,742 in fiscal year 1986-87, shall be used to assist those students in high school who are progressing through public schools without acquiring the required basic skills of communication or computation or who remain at levels significantly below their capabilities; and provided further that by fiscal year 1986-87, these funds shall cease to be expended for instruction aimed solely at having students demonstrate mastery of the essential competencies, as defined by the Hawaii State Test of Essential Competencies (HSTEC).

SECTION 101. Provided that of the general fund appropriation to other regular instruction programs (EDN 106), the sum of \$15,894,085 in fiscal year 1985-86 and \$15,949,787 in fiscal year 1986-87 shall be used for the school priority fund; and provided further that the 482 teachers and 33 educational assistants instructional resource augmentation (IRA) positions may be utilized for students in grades seven and eight, at the discretion of the district superintendents, when feasible.

SECTION 102. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$159,866 in fiscal year 1985-86 and \$170,098 in fiscal year 1986-87 shall be used for the summer program for the enhancement of basic education (SPEBE); provided further that of the amount provided for the summer program for the enhancement of basic education, \$28,000 in fiscal year 1985-86 and \$28,000 in fiscal year 1986-87 shall be used for the Hawaii student science training program in Hilo; provided further that the department shall develop the program using the Hawaii student science training program as a model; provided further that the department shall ensure that the summer learning enhancement centers funded under the summer program for the enhancement of basic education program shall be located throughout the state; provided further that these summer learning enhancement centers shall provide interested and able high school students with opportunities during the summer to experience the application of mathematics, science, or language; provided further that the department shall develop and implement the program with the cooperation and support of higher education institutions, public agencies, and private business and industry; provided further that the procedures for selecting students to participate in the program shall include the involvement of appropriate teachers; provided further that the department shall ensure that the planning of the program is completed and that implementation begin in June 1986; provided further that the department shall submit a progress report to the legislature twenty days before the convening of the 1986 regular session.

SECTION 103. Provided that of the general fund appropriation for special education (EDN 107), the sum of \$491,242 and twenty-one teacher and twenty-one educational assistant temporary positions in fiscal year 1985-86 and \$582,654 and twenty-one teacher and twenty-one educational assistant temporary positions in fiscal year 1986-87 shall be deployed to the schools to meet the most critical needs for supplemental instructional resources in special education; provided further that the positions may be used to provide consultation to regular education teachers serving mainstreamed special education students, provide support to special education teachers in fulfilling program requirements,

and provide special education instruction to address problems relating to class scheduling; provided further that the educational assistant positions shall be deployed to the elementary schools, and the teacher positions shall be deployed to the secondary schools, unless otherwise redeployed subject to approval by the superintendent.

SECTION 104. Provided that of the general fund appropriation for the exceptional child program (EDN 107), the sum of \$334,110 in fiscal year 1985-86 and \$400,932 in fiscal year 1986-87 shall be used for gifted and talented students; provided further that the department shall not expend any funds as provided in this section until the department has developed a comprehensive program and implementation plan.

SECTION 105. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$468,745 in fiscal year 1985-86 and \$511,188 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 106. Provided that federally funded positions slated for conversion to general funds under the department of education's reorganization plan shall not be converted until the department of education's reorganization plan has been approved by the governor; provided further that the general fund appropriation for fiscal year 1985-86 shall be utilized to fund "warm bodies" who occupy positions slated for abolishment under the department of education's reorganization plan; provided further that prior to the actual conversion of federally funded positions to general fund, the department of education shall develop a report detailing the approved reorganization plan and a listing of all the positions to be converted, the reason for the conversion, and the impact of the conversion of positions on the various programs and the relationship of the conversions to the goals of the reorganization plan; and provided further that the report shall be submitted to the legislature twenty days before the convening of the 1986 regular session.

SECTION 107. Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$215,000 in fiscal year 1985-86 and \$215,000 in fiscal year 1986-87 shall be expended to provide a student activities coordinator to each of the twenty-seven high schools with a student enrollment of 1000 or more.

SECTION 108. Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$444,000 in fiscal year 1985-86 and \$220,000 in fiscal year 1986-87 shall be used for athletic equipment; provided further that the department shall submit a report on the distribution of funds by school to the legislature not less than twenty days prior to the convening of the 1986 regular session.

SECTION 109. Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$46,347 in fiscal year 1985-86 and \$49,313 in fiscal year 1986-87 shall be used for purchases of service; provided further that the department of education, in cooperation with the provider, shall seek ways to maximize the opportunities for teachers and students to expand their awareness of pacific and asian countries.

SECTION 110. Provided that of the general fund appropriation for state administration (EDN 303), the sum of \$45,306 in fiscal year 1985-86 and \$50,367 in fiscal year 1986-87 shall be used to assist teachers to analyze and interpret test results so that student learning problems can be better diagnosed

and instruction improved; provided further that no moneys shall be used for test development.

SECTION 111. Provided that the department of education shall prepare alternative plans for the recruitment of teachers in shortage categories to insure that provisions are made to retrain Hawaii teachers prior to out-of-state recruitment; provided further that the department submit the plans to the legislature twenty days before the convening of the 1986 regular session.

SECTION 112. Provided that of the general fund appropriation for state administration (EDN 303), the sum of \$153,157 in fiscal year 1985-86 and \$156,617 in fiscal year 1986-87 shall be used to finance the operations of the board of education; provided further that the board shall not expend funds in excess of the amounts provided in this section nor shall the board transfer or authorize the transfer of funds from other education programs to pay for expenditures in excess of the amounts provided in this section; provided further that any expenditure in excess of the amounts provided in this section shall be in direct contravention of legislative intent.

SECTION 113. Provided that resource teachers assigned to each district office under district administration, department of education (EDN 304) may be utilized at the discretion of the district superintendent to strengthen the instructional program and to improve student and teacher interaction in the intermediate schools.

SECTION 114. Provided that for physical plant operations and maintenance (AGS 807), for fiscal year 1986-87, the department of education shall revise and update its furniture inventory and submit an expenditure plan for fiscal year 1986-87 to the legislature at least twenty days prior to the convening of the 1986 regular session.

SECTION 115. Provided that of the general fund appropriation to instruction, University of Hawaii, Manoa (UOH 101), the sum of \$74,677 in fiscal year 1985-86 and \$79,456 in fiscal year 1986-87 shall be expended by the school of nursing to conduct educational outreach programs on the neighbor islands leading to baccalaureate and master's degrees.

SECTION 116. Provided that of the general fund appropriation for instruction, University of Hawaii, Manoa (UOH 101), the sum of \$44,677 and 2.5 position counts shall be used in fiscal year 1985-86 and \$54,656 and 2.5 position counts shall be used in fiscal year 1986-87 for the dental hygiene program at the school of nursing, to comply with accreditation requirements and to implement appropriate instructional programs in expanded functions such as local anesthetics and study casts. Provided further that the school shall also offer educational programs in expanded functions to in-service dental hygienists.

SECTION 117. Provided that of the general fund appropriation for instruction, University of Hawaii, Manoa (UOH 101), the sum of \$125,000 in fiscal year 1985-86 and \$125,000 in fiscal year 1986-87 shall be expended to increase graduate assistant stipends 5% effective July 1, 1985.

SECTION 118. Provided that of the general fund appropriation for instruction-University of Hawaii, Manoa (UOH 101), one position count and the sum of \$48,332 in fiscal year 1985-86 and one position count and \$48,332 in fiscal year 1986-87 shall be used for a professor of law position and current

expenses to establish a Pacific and Asian legal studies program at the school of law.

SECTION 119. Provided that the university, with the approval of the board of regents, is authorized to transfer instructional positions including graduate assistants, lecturers, and funds for related salary costs within and between the PPB level IV instruction appropriations for the various campuses for the purpose of correcting instructional deficiencies caused by shifting enrollment patterns, student demand, or accreditation standards; provided that the total authorized position count and funds as appropriated in this Act for the instructional programs shall not be exceeded. Provided further that the university shall present to each regular session of the legislature, a report describing the justification for any transfers (including the means of financing and descriptions of positions involved in the transfers), the impact of such transfers on the affected programs, and a summary status of any deferred instructional deficiencies caused by shortages in instructional personnel including recommended alternatives.

SECTION 120. Provided that of the general fund appropriation for organized research, University of Hawaii, Manoa (UOH 102), the sum of \$185,000 in fiscal year 1985-86 and \$200,000 in fiscal year 1986-87 shall be used by the school of travel industry management to conduct visitor industry research and training projects in conjunction with the Hawaii Visitors Bureau.

SECTION 121. Provided that of the general fund appropriation for organized research-University of Hawaii, Manoa (UOH 102), one position count and the sum of \$10,780 in fiscal year 1985-86 and \$12,936 in fiscal year 1986-87 shall be used for a clerk-stenographer II position for the curriculum research and development group.

SECTION 122. Provided that of the general fund appropriation for organized research - University of Hawaii, Manoa (UOH 102), the sum of \$100,000 in fiscal year 1985-86 shall be expended by the cancer research center of Hawaii for the purpose of completing preliminary studies in the basic biology of cancer on native Hawaiians and undertaking pilot studies in epidemiology, cancer control, and clinical research in patient care.

SECTION 123. Provided that of the general fund appropriation for organized research, university of Hawaii, Manoa (UOH 102), the sum of \$125,000 in fiscal year 1985-86 and \$125,000 in fiscal year 1986-87 shall be expended to continue the north Hawaii pasture and diversified crop program.

SECTION 124. Provided that of the general fund appropriation for organized research-University of Hawaii, Manoa (UOH 102), the sum of \$100,684 in fiscal year 1985-86 and \$101,446 in fiscal year 1986-87 shall be used by the pesticides hazard assessment project of the Pacific biomedical research center to conduct pesticides research projects.

SECTION 125. Provided that organized research - University of Hawaii (UOH 102) shall develop a plan for the center for asian and pacific studies (CAPS) to identify, coordinate, and strengthen the instructional and research activities relating to the asia and pacific region and to advance the knowledge of the area in order to make CAPS a leading asian - pacific studies program; provided further that the university shall submit its plans for the center for asian and pacific studies to the legislature no later than twenty days prior to the convening of the 1986 regular session.

SECTION 126. Provided that of the general fund appropriation for public service, University of Hawaii, Manoa (UOH 103), the sum of \$71,575 and two position counts shall be provided in fiscal year 1985-86 and \$82,100 and two position counts shall be provided in fiscal year 1986-87 to establish and maintain a research/demonstration agricultural experiment station on Molokai.

SECTION 127. Provided that of the general fund appropriation for public service, University of Hawaii, Manoa (UOH 103), the sum of \$24,000 in fiscal year 1985-86 and \$24,000 in fiscal year 1986-87 shall be expended for the college of continuing education and community services to provide stipends for students participating in the legislative internship program.

SECTION 128. Provided that of the general fund appropriation for public service-University of Hawaii, Manoa (UOH 103), the sum of \$10,000 in fiscal year 1985-86 and \$10,000 in fiscal year 1986-87 shall be used for the family community leadership project.

SECTION 129. Provided that the general fund appropriations for the PPB level IV academic support programs of the University of Hawaii include the following amounts to be expended for library automation:

	FY 1985-86	FY 1986-87
UOH 104	\$954,265	\$679,865
UOH 303	\$ 82,875	\$ 59,000
UOH 313	\$ 82,875	\$ 59,000
UOH 323	\$ 82,875	\$ 59,000
UOH 333	\$ 61,850	\$ 28,900
UOH 503	\$ 61,850	\$ 28,900
UOH 603	\$ 61,850	\$ 28,900

SECTION 130. Provided that of the general fund appropriation for academic support, University of Hawaii, Manoa (UOH 104), the sum of \$210,411 in fiscal year 1985-86 and \$212,446 in fiscal year 1986-87 shall be expended for the Sea grant college program, to match federal funds for various projects.

SECTION 131. Provided that of the general fund appropriation for the academic support-University of Hawaii, Manoa (UOH 104), the sum of \$260,000 in fiscal year 1985-86 and \$300,000 in fiscal year 1986-87 shall be used for library books and journals.

SECTION 132. Provided that of the general fund appropriation for student services, University of Hawaii, Manoa, (UOH 105), the sum of \$100,000 in fiscal year 1985-86 and \$100,000 in fiscal year 1986-87 shall be expended by the Intercollegiate Athletics, Women's program; provided further that a proportionate share is allocated to the women's softball team.

SECTION 133. Provided that of the general fund appropriation for student services, University of Hawaii, Manoa (UOH 105), the sum of \$82,154 in fiscal year 1985-86 and \$82,154 in fiscal year 1986-87 shall be expended for the operation manong project to conduct student services programs for disadvantaged students for the purpose of ensuring equal access and opportunity to public higher education programs; provided further that 2 temporary positions are made permanent; provided further that the university shall submit a report on the operation manong project to the legislature at least twenty days prior to the convening of the 1986 regular session.

SECTION 134. Provided that of the general fund appropriation for the student services-University of Hawaii, Manoa (UOH 105), the sum of \$10,989 in fiscal year 1985-86 and \$14,652 in fiscal year 1986-87 shall be used to establish an administrative and fiscal support specialist position.

SECTION 135. Provided, that the general fund appropriations for the PPB level IV institutional support programs of the University of Hawaii include the following amounts for electricity costs:

	FY 1985-86	FY 1986-87
UOH 106	\$6,217,062 64,761,067 Kwh \$.0960	\$6,258,279 65,190,407 Kwh \$.0960
UOH 216	\$781,963 5,374,317 Kwh \$.1455	\$816,968 5,614,902 Kwh \$.1455
UOH 305	\$512,356 4,463,027 Kwh \$.1148	\$494,361 4,306,278 Kwh \$.1148
UOH 315	\$283,718 2,319,850 Kwh \$.1223	\$340,914 2,787,517 Kwh \$.1223
UOH 325	\$382,422 3,279,778 Kwh \$.1166	\$358,519 3,074,778 Kwh \$.1166
UOH 335	\$59,854 551,145 Kwh \$.1086	\$59,854 551,145 Kwh \$.1086
UOH 505	\$189,159 1,246,105 Kwh \$.1518	\$189,159 1,246,105 Kwh \$.1518
UOH 605	\$325,630 1,754,473 Kwh \$.1856	\$308,063 1,659,825 Kwh \$.1856
UOH 706	\$27,967 217,475 Kwh \$.1286	\$27,967 217,475 Kwh \$.1286

As used in this section "Kwh" means kilowatt hours. Provided further that the electricity rates and kilowatt usage as identified herein shall be used as a reference base by the university and the legislature in determining any deficits in electricity.

SECTION 136. Provided that of the general fund appropriation for the institutional support-university of Hawaii, Manoa (UOH 106), the sum of \$1,254,458 in fiscal year 1985-86 and \$2,455,425 in fiscal year 1986-87 shall be expended for the following repair and maintenance projects:

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PROJECT DESCRIPTION	FY 1985-86	FY 1986-87
Reroofing of various buildings	\$650,000	\$370,000
Repairs and replacement of lighting system at Orvis auditorium	60,000	
Various repairs to art building	25,000	
Repairs to cancer research center of Hawaii	37,000	
Repairs to school of medicine at Queen's medical center	165,000	
Exterior painting/repairs to various buildings	155,458	754,542
Repairs and maintenance to various college of tropical agriculture and human resources		990,600
Replacement of cage washer at bio-med sciences animal facilities		60,000
Repairs to power generator at MEES observatory, Haleakala, Maui		13,000
Repair and replacement of water line at arboretum		25,000
Various repairs to Waikiki aquarium		22,000
Replace classroom furniture	50,000	
Replacement of floor coverings in 25 temporary buildings		50,000
Repairs to agronomy and soil field laboratory		110,000
Exterior painting and repairs to various buildings		60,283
General Improvements - Makai Campus facilities	112,000	
	\$1,254,458	\$2,455,425

Provided further that the universty shall submit a report to the legislature twenty days before the convening of the 1986 regular session and the 1987 regular session, listing the various repair and maintenance projects undertaken.

SECTION 137. Provided that of the general fund appropriations for the University of Hawaii, the sum of \$2,997,293 in fiscal year 1985-86 and \$2,615,308 in fiscal year 1986-87 shall be expended in the following PPB level IV institutional support programs for the purpose of (a) replacing obsolete or inoperable educational classroom and scientific equipment (b) acquiring new educational classroom or scientific equipment to keep pace with new technological advances:

	FY 1985-86	FY 1986-87
UOH - 106	\$1,861,840	\$1,624,554
UOH - 216	242,396	211,507
UOH - 906	<u>893,057</u>	<u>779,247</u>
	\$2,997,293	\$2,615,308

Provided further that the respective chancellor's offices shall act as the administrator for the expenditure of these funds in order to ensure conformance with legislative intent and institutional requirements; provided further that if there are any remaining funds in excess of each campus's instructional or research requirements, each chancellor may use such funds to meet other institutional equipment needs with the exception of administration office equipment and furniture.

SECTION 138. Provided that the University shall assess current security operations and future plans to improve security at the Manoa Campus and submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 139. Provided that of the general fund appropriation for instruction, University of Hawaii, Hilo (UOH 211), the sum of \$102,810 in fiscal year 1985-86 and \$99,515 in fiscal year 1986-87 shall be used to provide funding for a food service and hotel operations training program in north Hawaii, of Hawaii community college.

SECTION 140. Provided that of the general fund appropriations for the University of Hawaii, the sum of \$190,593 shall be expended in fiscal year 1985-86 and \$190,593 in fiscal year 1986-87 by the respective community colleges for vocational education, as follows:

PROGRAM ID	COLLEGE	AMOUNT
UOH 211	Hawaii community college	\$14,667
UOH 301	Honolulu community college	\$79,904
UOH 311	Kapiolani community college	\$28,354
UOH 321	Leeward community college	\$32,697
UOH 501	Maui community college	\$12,208
UOH 601	Kauai community college	\$ 674
UOH 859	Hoomana school	<u>\$22,089</u>
		<u>\$190,593</u>

Provided further that these funds shall be expended to maintain current service levels for community college vocational education programs only in the event of possible shortfalls in federal matching funds.

SECTION 141. Provided that of the general fund appropriation for instruction, University of Hawaii, Hilo, (UOH 211), the sum of \$50,000 in fiscal year 1985-86 shall be used to conduct a study on the present and future student housing needs for the University of Hawaii at Hilo campus; provided further that the study shall include but not be limited to such alternatives as public and/or private construction, purchase, or leasing of apartments or dormitories and a plan for the phased development of student housing including estimated costs projections; provided further that the University of Hawaii shall submit its findings on this study to the Legislature, no later than twenty days prior to the convening of the 1986 Regular Session.

SECTION 142. Provided that of the general fund appropriation for institutional support-University of Hawaii, Hilo (UOH 216), the sum of \$95,000

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in fiscal year 1985-86 shall be expended for the following repair and maintenance projects:

PROJECT DESCRIPTION	FY 1985-86
Wentworth hall, repair termite damage and painting	\$ 40,000
Portable buildings #10, 11, 1, 13, and 14, repair leaks and repaint	40,000
Auditorium-theater, roof repair	<u>15,000</u>
	\$ 95,000

Provided further that the university shall submit a report to the legislature twenty days before the convening of the 1986 regular session and the 1987 regular session, listing the various repair and maintenance projects undertaken.

SECTION 143. Provided that of the general fund appropriation for instruction, Maui community college (UOH 501), the sum of \$72,928 and three position counts in fiscal year 1985-86 and \$83,404 and three position counts in fiscal year 1986-87 shall be expended for the continuation of the agricultural training program of the Molokai agriculture program.

SECTION 144. Provided that of the general fund appropriation for academic support-university of Hawaii, system-wide support (UOH 901), two position counts and the sum of \$560,000 in fiscal year 1985-86 and two position counts and \$941,000 in fiscal year 1986-87 shall be used to upgrade and improve existing academic computing capabilities including the acquisition of new computer equipment in accordance with phase III of the University's academic computing plan.

SECTION 145. Provided that of the general fund appropriation for systemwide support, institutional support (UOH 903), the sum of \$15,000 in fiscal year 1985-86 and \$15,000 in fiscal year 1986-87 may be expended at the discretion of the president of the University of Hawaii.

SECTION 146. Provided that of the general fund appropriation for the statewide planning coordination for post-secondary education, University of Hawaii (UOH 905), the post-secondary commission shall lapse excess funds from each year of the fiscal biennium 1985-87 for the Western interstate commission for higher education activities.

SECTION 147. Provided that of the general fund appropriation for community college systemwide support (UOH 906), the sum of \$52,974 in fiscal year 1985-86 and \$52,974 in fiscal year 1986-87 shall be used for the employment training office (ETO); provided further that four positions shall be established to teach the economically disadvantaged, unemployed, and/or underemployed youths and adults.

SECTION 148. Provided that of the general fund appropriation for community colleges, systemwide support (UOH 906), the sum of \$30,000 shall be expended in fiscal year 1985-86 to conduct an evaluation of security needs of all community college campuses.

SECTION 149. Provided that of the general fund appropriation for community college systemwide support, University of Hawaii (UOH 906), the

sum of \$350,928 in fiscal year 1985-86 and \$344,276 in fiscal year 1986-87 shall be used for the following repair and maintenance projects:

PROGRAM ID	PROJECT DESCRIPTION	FY 1985-86	FY 1986-87
UOH 325	Reroof building #889 (LA)	\$124,000	
UOH 325	Reroof building #879 (MS)	81,000	
UOH 305	Reroof building #814	129,600	
UOH 605	Repair rust leaks, metal roof	16,328	
UOH 325	Reroof building #880 (GT)		\$131,000
UOH 315	Repair termite damages		108,000
UOH 505	Reroof building #221		105,276
		<u>\$350,928</u>	<u>\$344,276</u>

Provided further that the university shall submit a report to the legislature twenty days before the convening of the 1986 regular session and the 1987 regular session, listing the various repair and maintenance projects undertaken.

SECTION 150. Provided that of the general fund appropriation for the community college systemwide support (UOH 906), the sum of \$152,797 in fiscal year 1985-86 and \$152,797 in fiscal year 1986-87 shall be used for disadvantaged and handicapped support services.

CULTURE AND RECREATION

SECTION 151. Provided that of the general fund appropriation for historical and archaeological places (LNR 801), the sum of \$25,000 in fiscal year 1985-86 shall be used to fund the main street task force; provided further that the main street task force shall submit a progress report to the legislature twenty days before the convening of the 1986 regular session, describing ongoing and pending projects, future plans and directions and alternative funding sources which may be available.

SECTION 152. Provided that of the general fund appropriation for aquaria (UOH 881), the sum of \$125,000 in fiscal year 1985-86 and \$135,000 in fiscal year 1986-87 shall be expended for the blue water marine laboratory program.

SECTION 153. Provided that of the general fund appropriation to Hawaii public broadcasting (CCA 701), \$50,000 in fiscal year 1985-86 shall be used to conduct a needs evaluation including, but not limited to, a user survey and demand analysis, cost-benefit analysis, and program funding analysis for the proposed Instructional Television Fixed Service (ITFS) system; provided further that construction of improvements for the ITFS system shall not commence prior to the completion of the study.

SECTION 154. Provided of the general funds appropriated to the state foundation on culture and the arts (AGS 881) for purchases of services for fiscal year 1986-87, it is the intent of the legislature that the foundation solicit and consider additional proposals from all eligible private and other public agencies not already considered by the foundation for funding for fiscal year 1986-87, and

that it resubmit to the legislature a new prioritized list of proposed purchases of services to be funded within the approved appropriation for fiscal year 1986-87.

SECTION 155. Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$1,703,643 in fiscal year 1985-86 and \$1,577,937 in fiscal year 1986-87 shall be used for purchases of service; provided further that the funds designated for Halau Likolaulani O'Hawaii shall be matched by funding from the Office of Hawaiian Affairs; provided further that Halau Likolaulani O'Hawaii is in accordance with all applicable laws.

SECTION 156. Provided that the department of accounting and general services shall expend funds for the construction of a plaque explaining the historical significance of Queen Liliuokalani; provided further that the plaque shall be placed by the Queen Liliuokalani statue; provided further that the plaque shall be financed from funds authorized in section 103-8, Hawaii Revised Statutes.

SECTION 157. Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$175,000 in fiscal year 1985-86 and \$150,000 in fiscal year 1986-87 shall be used for the construction and location of the King Kalakaua statue.

SECTION 158. Provided that of the general fund appropriation for parks recreation (LNR 806), the sum of \$131,500 in fiscal year 1985-86 and \$131,500 in fiscal year 1986-87 shall be used for lifeguard and beach cleaning services for Hanauma bay beach park and/or Kahana bay beach park; provided further that the funds shall only be expended if the beach parks are transferred from the city and county of Honolulu to the State; provided further that any unexpended or unencumbered funds provided for this purpose at the end of each fiscal year shall be lapsed into the general fund.

SECTION 159. Provided the special fund appropriation for spectator events and shows (AGS 889), a sum not to exceed \$5,000 for each year of the fiscal biennium 1985-87 shall be authorized by the stadium authority to be expended at the discretion of the stadium manager for promotion and other stadium purposes.

PUBLIC SAFETY

SECTION 160. Provided that of the general fund appropriation for intake service center (SOC 394), the sum of \$108,782 in fiscal year 1985-86 and \$75,000 in fiscal year 1986-87 shall be used for the youth development project.

SECTION 161. Provided that of the general fund appropriation for intake service center (SOC 394), the sum of \$108,782 in fiscal year 1985-86 and \$75,000 in fiscal year 1986-87 shall be used for the youth development project.

SECTION 162. Provided that of the general fund appropriation for intake service centers (SOC 394), the sum of \$22,670 in fiscal year 1985-86 and \$30,226 in fiscal year 1986-87 shall be provided to fund one new permanent social worker III and one new permanent clerk typist II at the Maui intake service center.

SECTION 163. Provided that of the general fund appropriation for juvenile correctional facilities (SOC 401), the sum of \$140,000 in fiscal year 1985-86 shall be provided for repair of the roof and gym at the Hawaii youth correctional facility.

SECTION 164. Provided that the corrections division, department of social services and housing, shall limit the prisoner population at the Waiawa correctional facility (SOC 404) to probation felons and misdemeanants; provided further that these inmates shall have been classified by the corrections division as minimum security inmates.

SECTION 165. Provided that of the general fund appropriation for Maui community correctional center (SOC 406), the sum of \$17,220 in fiscal year 1985-86 and \$16,144 in fiscal year 1986-87 shall be used for implementation of community service projects.

SECTION 166. Provided that of the general fund appropriation for Oahu community correctional center (SOC 407), the sum of \$27,162 in fiscal year 1985-86 and \$36,216 in fiscal year 1986-87 shall be provided for an educational and vocational program director and a clerk-steno.

SECTION 167. Provided that of the general fund appropriation for Oahu community correctional center (SOC 407), the sum of \$513,617 in fiscal year 1985-86 and \$546,488 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 168. Provided that of the general fund appropriation for Oahu community correctional facility (SOC 407), the sum of \$45,948 in fiscal year 1985-86 shall be used for the purchase of motor vehicles to transport inmates to and from community service projects and for equipment for community service project work.

SECTION 169. Provided that of the general fund appropriation for Kauai community correctional center (SOC 408), the sum of \$17,190 in fiscal year 1985-86 and \$16,144 in fiscal year 1986-87 shall be used to expand community service projects.

SECTION 170. Provided that of the general fund appropriation for Hawaii women's correctional facility (SOC 409), the sum of \$80,000 in fiscal year 1985-86 shall be provided for repairs of the plumbing and electrical systems and for repairs of the roof of the women's correctional facility.

SECTION 171. Provided that of the general fund appropriation for Hawaii women's correctional facility (SOC 409), the sum of \$198,834 in fiscal year 1985-86 and \$211,560 in fiscal year 1986-87 shall be used for purchases of service.

SECTION 172. Provided that the corrections division, department of social services and housing (SOC 493), in consultation with the department of planning and economic development, shall conduct a feasibility study on implementing energy conservation measures at Hawaii state correctional facilities; provided further that the study shall include but not be limited to, the installation of solar panelling and fans in air conditioned modules, the projection of potential cost savings to be realized from the implementation of energy conservation measures; provided further that the department of social services and housing shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 173. Provided that the corrections division (SOC 493) shall submit a report on overtime costs; provided further that the report shall include, but not be limited to:

- (1) All overtime costs incurred in fiscal year 1982-1983, fiscal year 1983-1984, and fiscal year 1984-1985;
- (2) Reasons for such overtime costs;
- (3) Procedures by which such overtime costs are authorized;
- (4) Recommendations to decrease overtime costs;

provided further that the department shall submit a report to the Legislature twenty days before the convening of the 1986 regular session.

SECTION 174. Provided that of the general fund appropriation for general administration - confinement (SOC 493), the sum of \$30,000 in fiscal year 1985-86 shall be provided for roof repair and fumigation of the correctional training facility.

SECTION 175. Provided that of the general fund appropriation for general administration - confinement (SOC 493), the sum of \$100,000 in fiscal year 1985-86 and \$100,000 in fiscal year 1986-87 shall be provided for additional training for new adult corrections officers; provided further that the department of social services and housing shall conduct a comprehensive review of its adult corrections officer training program to identify areas of possible improvement and to evaluate alternative training methods in order to improve staff efficiency, effectiveness and morale; provided further that this evaluation report shall be submitted to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 176. Provided that of the general fund appropriation for general administration - confinement (SOC 493), the sum of \$26,325 in fiscal year 1985-86 and \$35,100 in fiscal year 1986-87 shall be provided for a statewide educational and vocational coordinator and a clerk-steno.

SECTION 177. Provided that the corrections division, department of social services and housing (SOC 493), shall conduct a cost effectiveness study on fee-for-service medical services at all Hawaii state correctional facilities; provided further the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 178. Provided that of the general fund appropriation for state criminal justice information and identification (ATG 231), the sum of \$3,500 in fiscal year 1985-86, and \$3,500 in fiscal year 1986-87 shall be provided to establish the criminal justice data interagency board.

SECTION 179. Provided that of the general fund appropriation for state criminal justice information and identification (ATG 231), the sum of \$8,000 in fiscal year 1985-86 shall be provided for integrating finger printing data into the computerized system.

SECTION 180. Provided that of the general fund appropriation for the amelioration of physical disasters program (DEF 110), the sum of \$1,500,000 for fiscal year 1985-86 and \$1,500,000 for fiscal year 1986-87 shall be used exclusively for the relief from major disasters as intended under section 127-11, Hawaii Revised Statutes; provided further that the amount expended for each disaster shall not exceed \$750,000.

INDIVIDUAL RIGHTS

SECTION 181. Provided that of the general fund appropriation for consumer advocate for communication, utilities and transportation services (CCA 103), the sum of \$14,000 in fiscal year 1985-86 and \$14,000 in fiscal year

1986-87 shall be provided for the purpose of renting data processing and word processing equipment.

SECTION 182. Provided that of the general fund appropriation for banking services (CCA 104), the sum of \$50,000 in fiscal year 1985-86 shall be provided for the purchase of computer hardware, software, and related expenses.

SECTION 183. Provided that of the general fund appropriation for insurance services program (CCA 106), for fiscal year 1985-86 the sum of \$250,000 shall be used for litigation expenses; and provided further that: (1) the funds appropriated for litigation expenses shall not be used for any other purpose; (2) if the insurance commissioner is or shall be appointed a receiver (whether designated "receiver," "rehabilitator," "liquidator," "conservator," or other similar title) of an insurer, the term "litigation expenses" shall include, but not be limited to, one or more loans (on such terms and conditions as the commissioner and the court having jurisdiction over the receivership shall approve) to the insurance commissioner, acting as receiver, for litigation purposes; (3) all funds not expended or encumbered specifically for litigation expenses by June 30, 1986 shall lapse into the general fund; (4) the department of commerce and consumer affairs shall submit an accountability report on all expenses incurred related to litigation to the legislature ten days after every quarter of the fiscal year 1985-86; and (5) the department shall submit a report on the status of cases involving litigation to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 184. Provided that of the appropriation to insurance services (CCA 106), the sum of \$250,000 in fiscal year 1985-86 shall be used by the insurance commissioner for the purpose of conducting a comprehensive review of the insurance laws of the State; provided further that a progress report of the findings and recommendations shall be submitted to the Legislature twenty days before the convening of the 1986 regular session; provided further that the final report shall be submitted twenty days before the convening of the 1987 regular session.

SECTION 185. Provided that of the general fund appropriation for professional, vocational and personal services (CCA 105), the sum of \$10,683 in fiscal year 1985-86 and \$14,244 in fiscal year 1986-87 shall be provided for the purpose of establishing one full time equivalent clerk V in the real estate commission.

SECTION 186. Provided that the public utilities commission (BUF 901) shall develop a plan to address the problem of completing major rate case proceedings within the nine-month statutory time limit and the time frame to make decisions after the proceedings are completed; provided further that the plan shall include but not be limited to organizational structure, staffing patterns, and other management support needed to alleviate the problem; provided further the public utilities commission shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 187. Provided that of the general fund appropriation for the general support - protection of the consumer program (CCA 191), the sum of \$25,000 in fiscal year 1985-86 shall be expended by the Department of Commerce and Consumer Affairs for the study of the medical malpractice insurance system, this study shall include but not limited to: 1) an analysis of the increasing costs of medical malpractice insurance, 2) a review of steps being

taken by other states to control medical malpractice insurance costs, 3) an evaluation of medical malpractice claims, awards, settlements and premiums in Hawaii since 1976, 4) an assessment of the legal system governing medical malpractice, and 5) the formulation of alternatives to control medical malpractice insurance costs; provided further that the department shall submit its report of finds and recommendations to the Legislature no later than twenty days prior to the convening of the 1986 Regular Session.

GOVERNMENT-WIDE SUPPORT

SECTION 188. Provided that of the general fund appropriation to the office of the governor (GOV 100), \$50,000 in fiscal year 1986-87 shall be used for gubernatorial transition expenses pursuant to chapter 30, Hawaii Revised Statutes.

SECTION 189. Provided that of the general fund appropriation to the office of the governor (GOV 100), the sum of \$250,000 in fiscal year 1985-86 and \$250,000 in fiscal year 1986-87 shall be used for the Governor's contingency fund, which may be transferred to other appropriations and allotted, with the approval of the Governor, for unexpected or unforeseen needs.

SECTION 190. Provided that the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor.

SECTION 191. Provided that of the general fund appropriation to the office of the Governor (GOV 100), \$49,729 in fiscal year 1985-86 and \$52,910 in fiscal year 1986-87 shall be used to initiate a rural housing study examining the need for, and the requirements and structure of a statewide Rural Housing Program.

SECTION 192. Provided that any reimbursements received by the office of the Lieutenant Governor (LTG 100) from the counties for county associated election costs in the fiscal biennium 1985-87 shall be deposited into the general fund.

SECTION 193. Provided that of the general fund appropriation for the office of the Lieutenant Governor (LTG 100), \$372,083 in fiscal year 1985-86 and \$377,446 in fiscal year 1986-87 shall be expended at the discretion of the lieutenant governor; provided further that \$20,000 in fiscal year 1985-86 shall be expended by the campaign spending commission for a computer program known as the "campaign reporter" to be used by candidates.

SECTION 194. Provided that of the general fund appropriation for office of the Lieutenant Governor, (LTG 100), the sum of \$15,000 in fiscal year 1985-86 shall be used for a neighbor island survey.

SECTION 195. Provided that program planning, analysis and budgeting (BUF 101) shall develop a strategy for assisting the various state departments in planning and establishing coordinated computer systems; provided further that a report of the strategy shall be submitted to the legislature twenty days before the convening of the 1986 regular session; provided further that a management audit by the office of the legislative auditor on statewide data processing shall be conducted; provided further that a preliminary report shall be submitted by the legislative auditor twenty days before the 1986 regular session; provided further that a final report shall be submitted twenty days before the 1987 Regular Session.

SECTION 196. Provided that in the event expenses specified in section 621-9, Hawaii Revised Statutes (witness fees), and section 802-5, Hawaii Revised Statutes (court appointed private counsel for indigents), exceed the general fund appropriations made to legal assistance in criminal actions (BUF 151) and program planning, analysis and budgeting program (BUF 101) in each year of the fiscal biennium 1985-87 for the purposes stated therein, the director of finance with the approval of the governor is authorized to utilize savings as determined to be available from any other state program for the purpose of meeting deficits incurred by the department of budget and finance; provided further that any excess funds from witness fees and related expenses or court-appointed counsel for indigents shall be lapsed.

SECTION 197. Provided that of the general fund appropriation for statewide plan and coordination (PED 103), the sum of \$6,000 in fiscal year 1985-86 and \$6,000 in fiscal year 1986-87 shall be used for out of state travel and subsistence allowance for the State land use commission.

SECTION 198. Provided that of the general fund appropriation for pesticides (GOV 102), the sum of \$60,000 in fiscal year 1985-86 and \$60,000 in fiscal year 1986-87 shall be used for pesticide education programs for farmers; provided further that the funds shall be expended by the Governor's Agriculture coordinating committee.

SECTION 199. Provided that of the general fund appropriation for GOV - other policy development and coordination (GOV 102), the sum of \$83,500 in fiscal year 1985-86 and \$83,500 in fiscal year 1986-87 shall be used for research on spotted wilt disease; provided further that the sum of \$70,000 in fiscal year 1985-85 shall be used for research on fumigants and non-volatile chemicals for the control of nematodes; provided further that the sum of \$85,000 in fiscal year 1985-86 and \$85,000 in fiscal year 1986-87 shall be used for research on cultural and biological control measures to reduce nematode populations; provided further that the sum of \$5,000 in fiscal year 1985-86 and \$5,000 in fiscal year 1986-87 shall be used for research on the biological control of nematodes under greenhouse conditions; provided further that the sum of \$20,000 in fiscal year 1985-86 and \$20,000 in fiscal year 1986-87 shall be used to support the state farm fair.

SECTION 200. Provided that of the general fund appropriation to the supporting services, revenue collection program (TAX 107), \$145,440 in fiscal year 1985-86 and \$45,156 in fiscal year 1986-87 shall be for the requirements of litigated tax claims pursuant to section 40-35, Hawaii Revised Statutes; provided further that \$103,000 of the total appropriation in fiscal year 1985-86, shall be used to pay the outstanding debt with the office of the attorney general.

SECTION 201. Provided that of the general fund appropriation for the cash and debt management program (BUF 110), \$75,000 in fiscal year 1985-86 and \$80,000 in fiscal year 1986-87 shall be used to meet requirements of the uniform disposition of unclaimed property program pursuant to Chapter 523A, Hawaii Revised Statutes; provided further that in the event such claims exceed the general fund appropriation for the respective fiscal year, the director of finance with the approval of the governor is authorized to utilize savings as determined to be available from any other state program for the purpose of meeting deficits incurred by the department of budget and finance.

SECTION 202. Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are

insufficient to meet and pay all such obligations at maturity in accordance with the terms of such bonds, there is hereby appropriated out of the general fund of the State all amounts necessary for the payment of the principal and interest of the bonds as they mature, and this appropriation shall be a paramount appropriation upon the general fund of the State; provided further that a report of all such appropriations shall be submitted to the legislature by February 1 of the following calendar year.

SECTION 203. Provided that of the general fund appropriation for legal services (ATG 100), \$1,121,727 in fiscal year 1985-1986 shall be used to pay for litigation expenses as defined by the attorney general's "Administrative Policies Regarding Accountability for Litigation Expenses and the Hire of Special Deputies." These expenses shall include all costs reasonably related to the investigation, prosecution, or defense of a court action or suit to which the State of Hawaii is or is anticipated to be named a party. Litigation expenses shall include but not be limited to travel expenses incurred by the attorney general's staff, special deputies, consultants, experts, or witnesses; depositions; court reporting services; transcripts; experts' compensation, transportation, hotel, room and board, air and ground transportation, telephone calls, testing, preparation of exhibits; preparation of demonstrative exhibits; investigations; court fees; and bonds, such as supersedeas bonds.

Provided further that the funds appropriated for litigation expenses and the hire of special deputies shall not be used for any other purpose; and provided further that the department of the attorney general shall not bill any state department, agency, or program that is general funded for litigation expenses or for the hire of special deputies.

Provided further that all expenses for the hire of special deputies incurred by general funded state departments, agencies, and programs, exclusive of boards and commissions, shall be paid for by the attorney general through the litigation fund on a non-reimbursable basis.

Provided further that the attorney general shall continue to submit an accountability report on all expenses incurred for litigation expenses and the hire of special deputies to the legislature ten days after each quarter of the fiscal year; provided further that the accountability report shall identify litigation and hire of special deputies expenses incurred by any general funded and any non-general funded state department, agency, or program; provided further that the report shall reflect the total amount expended for litigation expenses and for the hire of special deputies by program ID and organization code; and provided further that if such reports exhibit sound planning, control, and accountability based on the administrative policies established by the attorney general, the legislature shall appropriate a justifiable amount to the department of the attorney general exclusively for litigation expenses and the hire of special deputies.

Provided further that all funds not expended or encumbered specifically for litigation expenses or the hire of special deputies by June 30, 1986 in the fiscal year 1985-86 shall lapse into the general fund.

SECTION 204. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$10,000 in fiscal year 1985-86 shall be used for litigation expenses for LTG 100.

SECTION 205. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$417,804 in fiscal year 1985-86 and \$412,211 in fiscal year 1986-87 shall be used for the victim/witness assistance program.

Provided further that of the general fund appropriation for the Honolulu victim/witness assistance program, the sum of \$17,804 in fiscal year 1985-86 and \$22,211 in fiscal year 1986-87 shall be used for an additional victim/witness counselor and associated costs.

SECTION 206. Provided that of the general fund appropriation for legal services, (ATG 100), the sum of \$10,000 in fiscal year 1985-86 for the victim/witness assistance program, county of Kauai, shall be used to host the 1985 conference for the National Organization of Victim Assistance.

SECTION 207. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$260,000 in fiscal year 1985-86 and \$260,000 in fiscal year 1986-87 shall be used for additional temporary deputy attorneys general, one each for Maui and Kauai, two for Hawaii, and four for Oahu; provided further that these eight deputy attorneys general shall be assigned to the department of social services and housing for the sole purpose of handling child abuse and neglect cases.

SECTION 208. Provided that of the general fund appropriation for the electronic data processing service (BUF 131), the sum of \$356,657 in fiscal year 1985-86 and \$373,990 in fiscal year 1986-87 shall be for services provided to the legislative reference bureau by the electronic data processing division; provided further that the electronic data processing division shall provide all of the electronic data processing services required by the legislative reference bureau.

SECTION 209. Provided that of the general fund appropriation for work force, attraction, selection, classification and effectiveness (PER 102), the sum of \$30,000 in fiscal year 1985-86 shall be used for consultant services to review program functions and methods in position classification and job evaluation, including but not limited to, the concept of equal pay for equal work, collective bargaining, and other operational difficulties and conflicts which would enhance productivity and reduce classification services backlog; provided further the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 210. Provided that of the general fund appropriation to public lands management (LNR 101), the sum of \$100,000 in fiscal year 1985-86 shall be expended to conduct the necessary legal and historical research relating to the boundaries of the State of Hawaii and specifically, the State's contention that all waters between the main islands of Hawaii are part of the State boundaries, in preparation for such legal challenge to the State's position as is expected to be forthcoming.

SECTION 211. Provided that the governor shall lapse at the close of each fiscal year of the biennium, an amount equal to workers' compensation benefits paid in lieu of general fund salary costs; provided further that the governor shall prepare an annual report of the general fund salary cost savings lapsed at the end of fiscal year 1984-85 due to workers' compensation benefits paid; provided further that the report shall contain the amounts lapsed by department; provided further that the report shall be submitted to the legislature twenty days prior to the convening of the 1986 regular session.

SECTION 212. Provided that funds budgeted for statewide liability insurance, statewide property insurance, and employee bond premiums in the department of transportation (TRN 195, TRN 395) and the University of Hawaii (UOH 903) shall be transferred to insurance management (AGS 203).

SECTION 213. Provided that the department of accounting and general services shall determine whether the surplus property management program (AGS 244) should continue as originally intended or whether the program should be terminated; provided further that the department shall submit a report of its findings and recommendations to the legislature twenty days before the convening of the 1986 regular session.

SECTION 214. Provided that of the general fund appropriation for capitol building security (ATG 801), the sum of \$46,300 in fiscal year 1985-86 and \$46,300 in fiscal year 1986-87 shall be provided for contracting internal security services for the Iolani Palace.

SECTION 215. Provided that any agency or department for which purchases of service are appropriated, shall submit a report to the legislature twenty days before the convening of the 1986 regular session; provided further that the report shall contain the following:

- (1) An alphabetical listing within each program identification number of all agencies/activities contracted during the fiscal year 1985-86, the appropriated and allotted amount of the contract, and the source of funding.
- (2) An evaluation of each agency-activity funded including a statement of program accomplishments of the agency-activity, FY 1984-85.

Provided further, that in submitting its 1986-87 supplemental budget request to the 1986 legislature, all agencies and departments requesting funds for grants, subsidies, and purchases of service shall include in the budget submittal:

- (1) An alphabetical listing within each program identification number of all agencies/activities recommended for funding in fiscal year 1986-87, including identification of sources of funding;
- (2) A listing of any changes in funding from fiscal year 1985-86 and the reasons for the changes; and
- (3) An evaluation of each agency-activity recommended for funding including a statement of the agency-activity's relationship to program goals.

SECTION 216. Provided that the designated expending agency for a grant, subsidy, or purchase of service is authorized to delegate to other state or county agencies the expenditure of funds when it is determined by the agency that it is more advantageous to do so.

SECTION 217. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor, or the director of finance, if so delegated by the governor, shall transfer the necessary funds and positions to the proper expending agency; provided further that a report of all such transactions shall be submitted to the legislature by February 1 of the following calendar year.

SECTION 218. The governor is hereby authorized to establish 20 permanent positions during each year of the fiscal biennium 1985-87 to be allocated by him to any of the program areas included in this Act as he shall deem proper. No positions shall be established under this section to implement any collective bargaining contract signed after the legislature adjourns sine die.

SECTION 219. Provided that, if an expending agency receives additional federal funds for any purchase of service listed in this part, the expending agency

shall increase the amount designated for federal funds and reduce the amount of the general fund appropriation accordingly.

SECTION 220. Provided that the designated expending agency for a grant, subsidy or purchase of service is authorized to delegate to other state or county agencies the expenditure of funds when it is determined by the agency that it is more advantageous to do so.

SECTION 221. The attorney general shall not bill any state department, agency, or program that is general funded, exclusive of boards and commissions, for legal or clerical services provided by the legal or clerical staff of the department of the attorney general.

Provided further that for any state department, agency, or program that is partially general funded, an agreement shall be made between the department, agency, or program and the attorney general to determine the ratio of general funds to other funds that shall be paid for litigation expenses, the hire of special deputies, and legal or clerical services that are provided by the department of the attorney general.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 136. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in Part II of this Act for capital investment shall be expended for the projects listed below. The appropriations accounting by the Department of Accounting and General Services shall be made based on the projects listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
ECONOMIC DEVELOPMENT					
PED102 - COMMERCE AND INDUSTRY					
1. ORB-1 HAWAIIAN OCEAN AWARENESS CENTER					
DESIGN AND CONSTRUCTION OF A FACILITY WHICH INCREASES THE AWARENESS OF THE OCEAN AS PART OF HAWAII'S PAST, PRESENT AND FUTURE. FUNDS APPROPRIATED UNDER ACT 285, H.4.A. CAN BE USED FOR THIS PURPOSE.					
		DESIGN		1,500	
		CONSTRUCTION		3,500	4,750
		EQUIPMENT		500	250
		TOTAL FUNDING	AGS	5,500 C	5,000 C
2. HTDC-1 HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK KEAHOLE, KONA, HAWAII					
HIGH-TECHNOLOGY PARK SITE FOR USE BY AQUACULTURE AND RELATED OCEAN SCIENCE INDUSTRIES. APPROXIMATELY 471 ACRES OF STATE LANDS LOCATED NEXT TO KEAHOLE AIR-PORT AND NELH. USER LOT SIZES OF 5 TO 25 ACRES. CONSTRUCTION TO INCLUDE BASIC INFRASTRUCTURE, UTILITIES, GRADING, WIDENING OF EXISTING ACCESS, AND CONSTRUCTION OF INTERNAL ROADS. PARK WILL ASSIST DEVELOPING INDUSTRIES, GENERATE NEW JOBS AND STATE TAX REVENUES.					
		PLANS		250	1
		LAND		1	1
		DESIGN		500	100
		CONSTRUCTION		6,000	1,000
		EQUIPMENT		1	1
		TOTAL FUNDING	PED	6,752 C	1,103 C
3. HYPERBARIC TREATMENT CENTER, OAHU					
MODIFICATION OF "GOOD SAMARITAN" HYPERBARIC TREATMENT CHAMBER AND SUPPORT FACILITIES AT KEWALO BASIN.					
		CONSTRUCTION		250	
		TOTAL FUNDING	AGS	250 C	C
4. NATURAL ENERGY LABORATORY OF HAWAII					
DESIGN AND CONSTRUCTION FOR ON-AND OFF-SITE IMPROVEMENTS.					
		PLANS		75	25
		DESIGN		25	25
		CONSTRUCTION		100	100
		EQUIPMENT		100	100
		TOTAL FUNDING	PED	300 C	250 C

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)		
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F	
PED107 - FOREIGN TRADE ZONE SERVICES						
5.	FTZ-1	RENOVATION OF PIER 2 FACILITIES FOR EXPANSION OF FOREIGN-TRADE ZONE ACTIVITIES				
		RENOVATION OF STRUCTURES AND GROUNDS AT PIER 2 TO PROVIDE FOR THE EXPANSION OF FTZ ACTIVITIES INCLUDING MANUFACTURING, ASSEMBLY, TRANSSHIPMENT, STORAGE AND WAREHOUSING OF GOODS AND MERCHANDISE. IMPROVEMENTS INCLUDE MANUFACTURING AND WAREHOUSING AREAS, ROLL-UP DOORS, SECURITY ALARM AND FENCES, UTILITIES, AND OTHER FTZ REQUIREMENTS.				
		DESIGN			120	
		CONSTRUCTION			836	
		EQUIPMENT			44	
		TOTAL FUNDING	PED		1,000 D	D
6.	FTZ-2	FOREIGN-TRADE ZONE INDUSTRIAL PARK				
		PLANS AND DESIGN OF SITE IMPROVEMENTS FOR FTZ ACTIVITIES. IMPROVEMENTS INCLUDE INSTALLATION OF WATER AND SEWER LINES, ELECTRICAL AND COMMUNICATIONS LINES, FIRE HYDRANTS AND OTHER UTILITIES; CONSTRUCTION OF ROADWAYS, SECURITY FENCING, OFFICE SPACE AND OTHER FACILITIES NEEDED TO MEET FOREIGN-TRADE ZONE REQUIREMENTS.				
		PLANS			50	
		DESIGN				100
		TOTAL FUNDING	PED		50 D	100 D
AGR192 - GENERAL ADMINISTRATION FOR AGR						
7.	AO1	AGRICULTURAL PARK SUBDIVISION, STATEWIDE				
		PLANS AND CONSTRUCTION OF ON AND OFF SITE IMPROVEMENTS FOR DEVELOPMENT OF AGRICULTURAL LOTS.				
		CONSTRUCTION			2,000	
		TOTAL FUNDING	AGS		2,000 C	C
LNR153 - COMMERCIAL FISHERY AND AQUACULTURE						
8.	C31	AQUATIC ANIMAL ISOLATION AREA				
		DESIGN, CONSTRUCT AND EQUIP A 1,500 SQUARE FEET AREA AT THE ANUENUE FISHERIES RESEARCH CENTER, SAND ISLAND, HONOLULU, OAHU, FOR ISOLATION OF CERTAIN AQUATIC ANIMALS, INCLUDING PROVISION OF TANKS, PUMPS, FENCING AND RELATED EQUIPMENT.				
		DESIGN			2	

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION		37	
		EQUIPMENT		3	
		TOTAL FUNDING	LNR	42 C	C
9. C32 INTERIM POND RESEARCH COMPLEX					
CONSTRUCT AND EQUIP AN INTERIM POND RESEARCH COMPLEX CONSISTING OF EIGHT ACRES OF PONDS AND RELATED EARTHWORK, PIPES, PUMPS AND FENCING ON ELEVEN ACRES OF STATE LAND LOCATED ADJACENT TO THE UNIVERSITY OF HAWAII'S WAIALEE LIVESTOCK RESEARCH CENTER.					
		CONSTRUCTION		218	
		EQUIPMENT		10	
		TOTAL FUNDING	LNR	228 C	C
PED120 - ENERGY DEVELOPMENT AND MANAGEMENT					
10. SEO-1 ENERGY CONSERVATION IN HOSPITALS SCHOOLS AND PUBLIC BUILDINGS					
DO AUDIT RECOMMENDATIONS BY MODIFYING STRUCTURES AND ELEC/MECHANICAL SYSTEMS INCLD RENOVATIONS ALTERATION & RETROFITS IN HOSPITALS SCHOOLS AND PUBLIC BLGS TO GET SIGNIF ENERGY SAVINGS & LESS COSTLY OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.					
		PLANS		370	340
		DESIGN		330	385
		CONSTRUCTION		480	510
		EQUIPMENT		370	315
		TOTAL FUNDING	PED	775 C	775 C
			PED	775 N	775 N
11. AES775 ALTERNATE ENERGY DEMONSTRATION AND COMMERCIALIZATION PROJECTS					
PROGRAM TO PLAN DESIGN AND CONSTRUCT ALTERNATE ENERGY FACILITIES TO DEMONSTRATE THE POTENTIAL OF VARIOUS ALTERNATE ENERGY RESOURCES IN HAWAII AND TO IMPLEMENT THE COMMERCIALIZATION OF ECONOMICALLY FEASIBLE ALTERNATE ENERGY PROJECTS. FUNDS MAYBE USED FOR ENERGY RELATED PROJECTS AND MAYBE USED TO MATCH NON-STATE FUNDS.					
		PLANS		350	325
		LAND		1	1
		DESIGN		220	250
		CONSTRUCTION		350	350
		EQUIPMENT		79	74
		TOTAL FUNDING	PED	1,000 C	1,000 C

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
LNR141 - WATER DEVELOPMENT & IRRIGATION SERVICES					
12.	G25	WATER SOURCES INVESTIGATION, AND DEVELOPMENT, HAWAII			
STUDIES, INVESTIGATIONS, EXPLORATION AND DEVELOPMENT FOR THE PRUDENT UTILIZATION OF SURFACE AND GROUND WATER RESOURCES, AND IMPROVEMENT OF WATER QUALITY FOR INSTREAM USES.					
		PLANS		10	10
		LAND		20	20
		DESIGN		20	20
		CONSTRUCTION		435	435
		TOTAL FUNDING	LNR	485 C	485 C
13.	G43	WATER SOURCES INVESTIGATION, AND DEVELOPMENT, OAHU			
PLANNING AND CONDUCTING GEOLOGIC AND HYDROLOGIC INVESTIGATIONS AND ENGINEERING STUDIES, AND THE EXPLORATION AND DEVELOPMENT OF SURFACE AND GROUND WATER RESOURCES. IMPROVEMENT OF WATER QUALITY AND PRESERVATION OF WATER FOR INSTREAM USES.					
		PLANS		20	20
		LAND		20	20
		DESIGN		70	70
		CONSTRUCTION		745	745
		TOTAL FUNDING	LNR	855 C	855 C
14.	G44	WATER SOURCES INVESTIGATION, AND DEVELOPMENT, KAUAI			
CONDUCTING ENGINEERING AND ECONOMIC STUDIES AND GEOLOGIC AND HYDROLOGIC INVESTIGATIONS AND EXPLORING AND DEVELOPING SURFACE AND GROUND WATER RESOURCES FOR CONSUMPTION AND INSTREAM USES.					
		PLANS		15	15
		LAND		15	15
		DESIGN		30	30
		CONSTRUCTION		355	355
		TOTAL FUNDING	LNR	415 C	415 C
15.	G45	WATER RESOURCES DEVELOPMENT FOR AGRICULTURE STATEWIDE			
PLANNING ACQ DESIGN AND CONSTRUCT OF WATER FACIL FOR AGRICULTURE, INCLUDING WATER DEVELOPMENT FOR AQUACULTURE AND REHABILITATION OF DITCH SYSTEMS.					
		PLANS		20	
		LAND		30	
		DESIGN		50	

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CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION		2,715	
		TOTAL FUNDING	LNR	2,815 C	C
16.	G46	WATER SOURCES INVESTIGATION, AND DEVELOPMENT, MAUI			
		PLANNING, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR WATER SOURCES INVESTIGATION, EXPLORATION AND DEVELOPMENT FOR THE COUNTY OF MAUI. WATER QUALITY IMPROVEMENT FOR INSTREAM USES.			
		PLANS		10	10
		LAND		20	20
		DESIGN		130	30
		CONSTRUCTION		1,235	335
		TOTAL FUNDING	LNR	1,395 C	395 C
17.	JO4	MAUNAWILI WATERSHED ACQUISITION, OAHU			
		ACQUISITION OF LAND AND WATER RIGHTS AT MAUNAWILI VALLEY, OAHU.			
		LAND		3,800	
		TOTAL FUNDING	LNR	3,800 C	C
18.	WAIMEA	IRRIGATION SYSTEM, UPPER HAMAKUA DITCH, HAWAII			
		DESIGN AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT.			
		PLANS		20	
		DESIGN		60	
		CONSTRUCTION		570	
		TOTAL FUNDING	LNR	650 C	C
TRANSPORTATION FACILITIES					
TRN102 - HIA FACILITIES & SVCS					
1.	A10	HIA ROADWAYS AND PARKING			
		DESIGN & CONSTRUCT ROADS & PARKING AREAS INCLUDING GROUND AND ELEVATED STRUCTURES AND EXIT PLAZA FOR OVERSEAS AND INTER-ISLAND TERMINALS AND SUPPORT AREAS. ALTERATIONS TO EXISTING ROADS AND PARKING STRUCTURE. NEW PARKING STRUCTURE. RELOCATE EXISTING TENANTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		DESIGN		270	
		CONSTRUCTION		2,800	
		TOTAL FUNDING	TRN	2,970 E	E
			TRN	100 N	N

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
2. A11 HIA INTERISLAND COMPLEX					
DESIGN AND CONSTRUCT INTERISLAND COMPLEX INCLUDING BUILDINGS, APRONS AND TAXIWAYS, ROADWAYS, PARKING AND OTHER MISC IMPROVEMENTS. LAND ACQUISITION. RELOCATE EXISTING INTERISLAND MAINTENANCE, CARGO AND ADMIN OFFICES. ALTERATIONS TO EXISTING BLDGS APRONS, ROADWAYS AND PARKING. INSTALL FRUNITURE, LANDSCAPING, AND MISC EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.					
		DESIGN		2,000	
		CONSTRUCTION			10,000
		TOTAL FUNDING	TRN	2,000 E	10,000 E
3. A23 HIA AIRFIELD IMPROVEMENTS					
DESIGN & CONSTRUCT IMPROVEMENTS TO AIRFIELD FACIL. INCLUDING TAXIWAYS, RUNWAYS SIGNS, ENGINE RUN UP PAD, SERVICE ROADS, SAFETY AREAS, LIGHTING SYSTEMS, EMERGENCY GENERATOR, AND OTHER MISC IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.					
		DESIGN			300
		CONSTRUCTION			2,760
		TOTAL FUNDING	TRN	E	2,960 E
			TRN	N	100 N
4. A37 AIRPORT SYSTEMS IMPROVEMENTS					
DESIGN AND CONSTRUCT SYSTEM IMPROVEMENTS INCLUDING ENERGY MANAGEMENT, SIGNS, FLIGHT INFORMATION, FIRE ALARM, SECURITY OPERATIONAL CONTROLS, LOADING BRIDGES, UTILITIES, RAMP AIR, AND FUELING. IMPROVE ENERGY EFFICIENCY AND OPERATIONAL EFFICIENCY AND OTHER MISC IMPROVEMENTS.					
		DESIGN		2,900	
		CONSTRUCTION			18,200
		TOTAL FUNDING	TRN	B	4,000 B
			TRN	2,900 E	14,200 E
5. A41 HIA TERMINAL MODIFICATIONS					
DESIGN AND CONSTRUCT IMPROVEMENTS TO FAC. INCLUDING BLDGS, ROADS, PARKING, UTILITIES, AIRCRAFT PARKING APRONS, SIGNS AND LANDSCAPING. RELOCATE EXISTING TENANTS. PROJECTS FOR OPERATIONAL AND ENERGY EFFICIENCY, PASSENGER CONVENIENCE AND OTHER MISC. IMPROVEMENTS.					
		DESIGN		3,000	

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION		8,000	17,300
		TOTAL FUNDING	TRN	5,000 B	5,000 B
			TRN	6,000 E	12,300 E

6. A43 SERVICE SUPPORT FACILITIES AT HIA

DESIGN AND CONSTRUCT SERVICE SUPPORT FACILITIES INCLUDING BLDGS, ROADS, PARKING, UTILITIES, LANDSCAPING, TELEPHONE, NON POTABLE WATER, LEASE LOTS, SERVICE COURT DEVELOPMENT, APRONS, TAXIWAYS, CARGO TERMINAL AND OTHER MISC IMPROVEMENTS.

DESIGN		550	
CONSTRUCTION		6,000	2,500
TOTAL FUNDING	TRN	6,550 E	2,500 E

TRN104 - GENERAL AVIATION FACILITIES AND SERVICES

7. A71 GENERAL AVIATION RELIEVER AIRPORT OAHU

LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A GENERAL AVIATION RELIEVER AIRPORT ON EXISTING MILITARY AIRFIELD ON OAHU. CONSTRUCT RUNWAY, TAXIWAY, AIRCRAFT APRONS, T HANGARS, ROADS AND PARKING, SITE PREPARATION, UTILITIES AND OTHER APPURTENANCES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.

DESIGN		1,000	
CONSTRUCTION		4,000	
TOTAL FUNDING	TRN	4,000 E	E
	TRN	1,000 N	N

TRN111 - GENERAL LYMAN FIELD FACILITIES & SERVICE

8. B10 GENERAL LYMAN IMPROVEMENTS

DESIGN AND CONSTRUCT IMPROVEMENTS TO FACILITIES INCLUDING BLDGS, ROADS, PARKING, UTILITIES, AIRFIELD AND OTHER MISC IMPROVEMENTS. MODIFICATIONS TO EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

DESIGN		40	
CONSTRUCTION		400	
TOTAL FUNDING	TRN	440 E	E

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F

TRN114 - KE-AHOLE AIRPORT FACILITIES AND SERVICES

9. C03 KEAHOLE AIRPORT IMPROVEMENTS

DESIGN AND CONSTRUCT IMPROVEMENTS TO FACILITIES INCLUDING BLDGS, ROADS, PARKING, APRONS, RUNWAYS, TAXIWAYS, AND UTILITIES. ALTERATIONS TO EXISTING FACILITIES AND RELOCATION OF TENANTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

DESIGN		700	
CONSTRUCTION		4,500	4,000
TOTAL FUNDING	TRN	4,700 E	4,000 E
	TRN	500 N	N

TRN131 - KAHULUI AIRPORT FACILITIES AND SERVICES

10. D04 KAHULUI AIRPORT EXPANSION

DESIGN AND CONSTRUCT ADDITIONS & ALTERATIONS TO BLDGS, ROADS AND PARKING, APRONS, NEW TERMINAL, TAXIWAYS, RUNWAYS, LANDCPG, FURNITURE, SITEWORK, CARGO TERMINAL, OFFSITE DRAINAGE, RELOCATE CONTROL TOWER, RELOCATE TENANTS AND OTHER MISC IMPROVMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

DESIGN		3,000	
CONSTRUCTION		18,700	14,800
TOTAL FUNDING	TRN	5,000 B	5,000 B
	TRN	15,200 E	8,400 E
	TRN	1,500 N	1,400 N

11. D08 SERVICE SUPPORT FACILITIES AT KAHULUI AIRPORT

DESIGN AND CONSTRUCT BLDGS, ROADS, PARKING APRONS, TAXIWAYS, LEASE LOTS, CARGO TERMINAL, HELIPADS AND OTHER MISC IMPROVEMENTS. RELOCATION OF EXISTING TENANTS.

DESIGN		150	
CONSTRUCTION		1,500	
TOTAL FUNDING	TRN	1,650 E	E

TRN141 - MOLOKAI AIRPORT FACILITIES AND SERVICES

12. D55 MOLOKAI AIRPORT IMPROVEMENTS

DESIGN AND CONSTRUCT BLDGS, ROADS, PARKING, APRONS, UTILITIES LANDSCAPING, MODIFICATIONS TO EXISTING FACILITIES, RELOCATION OF EXISTING TENANTS AND OTHER MISC IMPROVEMENTS.

DESIGN		35	
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CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)		
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F	
CONSTRUCTION					350	
TOTAL FUNDING				TRN	385 E	E
TRN161 - LIHUE AIRPORT FACILITIES AND SERVICES						
13. E03 LIHUE AIRPORT COMPLEX						
<p>CONSTRUCT AIRPORT FACILITIES INCLUDING BLDGS, ROADS, PARKING, UTILITIES, AIR-CRAFT APRONS, TAXIWAYS, RUNWAYS, CARGO TERMINAL, LEASE LOTS AND HANGARS, ALTERATION TO EXISTING FACILITIES INCLUDING BLDGS, AIRFIELD, ROAD, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATION OF TENANTS AND MODIFICATIONS TO EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.</p>						
DESIGN					750	
CONSTRUCTION					7,300	
TOTAL FUNDING				TRN	4,000 B	B
				TRN	4,050 E	E
TRN195 - AIR TRANSPORTATION FACILITIES AND SERVICES SUPPORT						
14. F04 AIRPORT PLANNING STATEWIDE						
<p>PROVIDE BASIC DATA AND INFO. FOR PROPER PLANNING, PRELIMINARY DESIGNS, SPECIAL ENGINEERING, ARCHITECTURAL, ENVIRONMENTAL AND SPECIAL STUDIES FOR THE STATEWIDE SYSTEM OF AIRPORTS AND CONTINUE REVIEW AND UPDATING OF MASTER PLANS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.</p>						
PLANS					500	400
TOTAL FUNDING				TRN	500 B	400 B
15. F06 LAND ACQUISITION STATEWIDE						
<p>ACQUISITION OF LAND, AIRPORT FACILITIES AND LEASE RIGHTS FOR STATEWIDE AIRPORTS.</p>						
LAND						12,500
TOTAL FUNDING				TRN	B	6,000 B
				TRN	E	6,500 E
16. F08 AIRPORT IMPROVEMENTS STATEWIDE						
<p>MISC IMPROVEMENTS TO VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS. IMPROVEMENTS TO FACILITIES AND IMPROVEMENTS TO OPERATIONAL EFFICIENCY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.</p>						
DESIGN					1,140	

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION		9,800	4,000
		TOTAL FUNDING	TRN	4,000 B	4,000 B
			TRN	5,540 E	E
			TRN	1,400 N	N

TRN301 - HONOLULU HARBOR FACILITIES AND SERVICES

17. J02 IMPROVEMENTS TO FACILITIES AT PIERS 19 TO 34 AT HONOLULU HARBOR

IMPROVEMENT OF FACILITIES IN THE PIERS 19 TO 34 AREA INCLUDING PARTIAL DEMOLITION AND IMPROVEMENTS AND MODIFICATION TO SHED FACILITIES IN THE PIERS 24-26 AREA AND OTHER IMPROVEMENTS.

DESIGN		40	
CONSTRUCTION			460
TOTAL FUNDING	TRN	40 B	460 B

18. J03 MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT HONOLULU HARBOR

MISC IMPROVEMENTS TO PIERS, SHEDS, AND YARD FACILITIES AT HONOLULU HARBOR, INCLUDING IMPROVEMENTS TO LIGHTING, PAVING, AND OTHER FACILITIES.

DESIGN		20	20
CONSTRUCTION		90	95
TOTAL FUNDING	TRN	110 B	115 B

19. J04 IMPROVEMENTS TO FORT ARMSTRONG FACILITIES

IMPROVEMENTS TO PIERS AND YARD AREA AND OTHER IMPROVEMENTS.

DESIGN		100	35
CONSTRUCTION		700	260
TOTAL FUNDING	TRN	B	295 B
	TRN	800 E	E

20. J06 CONTAINER FACILITIES AT SAND ISLAND, OAHU

DEVELOPMENT OF SAND ISLAND CONTAINER YARD AREAS AND OTHER IMPROVEMENTS.

DESIGN		75	
CONSTRUCTION		660	
TOTAL FUNDING	TRN	735 B	B

21. PEARL HARBOR DREDGING, OAHU

DESIGN AND CONSTRUCTION FOR DREDGING OF PEARL HARBOR.

DESIGN		100	
CONSTRUCTION		900	
TOTAL FUNDING	AGS	1,000 C	C

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F

TRN303 - BARBERS POINT HARBOR FACILITIES AND SERVICES

- 22. J11 BARBERS PT. DEEP DRAFT HARBOR IMPROVEMENTS, OAHU

INCREMENTAL DEVELOPMENT OF BARBER'S PT. HARBOR INCLUDING FENCING, CLEARING, GRUBBING AND THE CONSTRUCTION OF ACCESS ROADS, PIER, YARD AND SHED FACILITIES, UTILITIES, AND MISCELLANEOUS IMPROVEMENTS.

DESIGN		150	
CONSTRUCTION		7,150	4,950
TOTAL FUNDING	TRN	150 B	B
	TRN	7,150 E	4,950 E

TRN311 - HILO HARBOR FACILITIES AND SERVICES

- 23. L06 CONTAINER FACILITIES AT HILO HARBOR, HAWAII

RECONSTRUCTION AND STRENGTHENING OF PIER 1 AND OTHER IMPROVEMENTS.

CONSTRUCTION		2,000	
TOTAL FUNDING	TRN	2,000 E	E

TRN331 - KAHULUI HARBOR FACILITIES AND SERVICES

- 24. M01 KAHULUI HARBOR IMPROVEMENTS, MAUI

SIDINGS AND DOORS FOR PIER 2 SHED EXTENSION AND OTHER IMPROVEMENTS.

DESIGN		20	
CONSTRUCTION			200
TOTAL FUNDING	TRN	20 B	200 B

- 25. M06 PIER 1 IMPROVEMENTS AT KAHULUI HARBOR

DEVELOPMENT OF PIER AND BACKUP AREA AND OTHER IMPROVEMENTS.

CONSTRUCTION		800	
TOTAL FUNDING	TRN	800 B	B

TRN361 - NAWILIWILI HARBOR FACILITIES AND SERVICES

- 26. K01 NAWILIWILI HARBOR IMPROVEMENTS, KAUAI

MODIFICATIONS AND IMPROVEMENTS TO SEAWALL AND JETTY AREA AT NAWILIWILI AND OTHER IMPROVEMENTS.

DESIGN		50	
CONSTRUCTION			460
TOTAL FUNDING	TRN	50 B	460 B

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F	
TRN395 - WATER TRANSPORTATION FACILITIES AND SERVICES SUPPPORT						
27.	I01	STATEWIDE HARBOR PLANNING				
		CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.				
		PLANS			120	
		TOTAL FUNDING	TRN		120 B	B
28.	I03	MISC. IMPRV. TO FAC. AT NEIGHBOR ISLAND PORTS				
		IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES. WATER AREAS AND OTHER FACILITIES.				
		DESIGN			20	20
		CONSTRUCTION			90	95
		TOTAL FUNDING	TRN		110 B	115 B
29.	I04	STATEWIDE COMMERCIAL HAR. SEWER SYSTEM IMPROVEMENT				
		SEWER IMPROVEMENTS AT BASEYARD AND AT HONOLULU HARBOR INCLUDING PIERS 31 TO 33 AREAS.				
		DESIGN			25	20
		CONSTRUCTION			151	125
		TOTAL FUNDING	TRN		176 B	145 B
TRN501 - OAHU HIGHWAYS AND SERVICES						
30.	Q52	INTERSTATE H-1, PALAILAI TO KUNIA INTERCHANGE OAHU.				
		CONSTRUCTION OF ADDITIONAL INBOUND & OUTBOUND LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.				
		DESIGN			1,000	
		CONSTRUCTION			9,500	
		TOTAL FUNDING	TRN		1,300 D	D
			TRN		9,200 J	J
31.	Q54	INTERSTATE H-1, WAIAWA TO HALAWA INTERCHANGE, OAHU.				
		ADDITIONAL LANES TO INCREASE THE INBOUND AND OUTBOUND CAPACITY OF THE HIGHWAY FROM WAIAWA TO HALAWA INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.				
		DESIGN			650	
		CONSTRUCTION			6,500	
		TOTAL FUNDING	TRN		1,230 D	D
			TRN		5,920 J	J

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
32.	R30	INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU.			
		INCREMENTAL CONSTRUCTION OF DIVIDED HIGHWAY FROM JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		97,155	200,330
		TOTAL FUNDING	TRN	12,047 D	24,000 O
			TRN	85,108 J	176,330 J
33.	R71	LIKELIKE HWY-KAHEKILI HWY INTERCHANGE, AND KAHEKILI HIGHWAY IMPROVEMENTS, OAHU			
		LAND AND DESIGN FOR INTERCHANGE AT LIKELIKE HIGHWAY AND IMPROVEMENTS TO KAHEKILI HIGHWAY FROM LIKELIKE HIGHWAY TO KAMEHAMEHA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.			
		LAND		3,122	
		DESIGN		742	
		TOTAL FUNDING	TRN	1,664 D	D
			TRN	2,200 K	K
34.	R76	KALANIANAOLE HIGHWAY, AINAKOA TO LUNALILO HOME ROAD, OAHU			
		DEVELOPING A TRANSPORTATION CORRIDOR INCLUDING HIGHWAYS, BIKEWAYS AND LAND TRANSIT SYSTEMS FROM HAWAII KAI TO DOWNTOWN HONOLULU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		950	
		DESIGN		1,461	
		TOTAL FUNDING	TRN	746 D	D
			TRN	1,665 K	K
35.	S43	RELOCATION OF WAIANAE BASEYARD, WAIANAE, OAHU.			
		DEVELOPMENT OF NEW HIGHWAY MAINTENANCE BASEYARD ADJACENT TO WAIANAE INTERMEDIATE SCHOOL.			
		DESIGN		25	
		CONSTRUCTION			175
		TOTAL FUNDING	TRN	25 D	175 D

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36.	S51	PALI HIGHWAY IMPROVEMENT, WAOKANAKA TO VINEYARD BOULEVARD, OAHU			
		CONSTRUCTION OF ADDITIONAL TRAFFIC LANES AND SIGNALS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT			
		DESIGN		17	
		CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	892 D	D
			TRN	1,625 K	K
37.	S70	FORT WEAVER ROAD REALIGNMENT AND WIDENING, EWA, OAHU			
		REALIGNMENT AND WIDENING OF FORT WEAVER ROAD INCLUDING IMPROVEMENTS TO KUNIA RD. TO PROVIDE FOR A CONNECTION TO H-1 AND IMPROVEMENTS OF EXISTING 2-LANE HWY TO A DIVIDED HWY, AND FOR THE EXTENSION OF THE RENTON RD-HANAKAHI ST. SECTION. THIS PROJECT IS DEEMED NEC. TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,300 D	D
			TRN	3,700 K	K
38.	S78	GUARDRAIL & SHOULDER IMPROVEMENTS AT VARIOUS LOCATIONS ON STATE HWYS ON OAHU			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS, CONCRETE SAFETY BARRIERS AND MODERNIZATION OF EXISTING GURADRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON OAHU.			
		DESIGN		50	60
		CONSTRUCTION		738	735
		TOTAL FUNDING	TRN	788 B	795 B
39.	S80	HIGHWAY LIGHTING IMPROVEMENTS, OAHU			
		HIGHWAY LIGHTING IMPROVEMENTS AND REHABILITATION AT VARIOUS LOCATIONS ON OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		DESIGN		48	55
		CONSTRUCTION		2,070	
		TOTAL FUNDING	TRN	1,311 D	55 D
			TRN	807 K	K

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
40.	S83	SAND ISLAND ACCESS ROAD WIDENING AND IMPROVEMENTS, OAHU			
		COMPLETION OF SAND ISLAND PARKWAY ROAD, CONSTRUCTION OF SECOND BRIDGE, WIDENING OF EXISTING ROAD TO NIMITZ HWY, AND CONSTRUCTION OF INTERCHANGE AT NIMITZ HWY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT. \$950,000(D) MAY BE USED TO REIMBURSE THE HARBOR SPECIAL FUND FOR DESIGN OF THE SECOND BRIDGE WHICH WAS FUNDED BY THE HARBORS SPECIAL FUND.			
		LAND		51	
		DESIGN		950	
		CONSTRUCTION			9,800
		TOTAL FUNDING	TRN	1,001 D	2,940 D
			TRN	K	6,860 K
41.	S85	REHABILITATE EXISTING SPRINKLER SYSTEMS AT VARIOUS LOCATIONS, OAHU			
		REHABILITATE EXISTING SPRINKLER SYSTEMS TO CONSERVE WATER ON LANDSCAPED AREAS ALONG THE INTERSTATE FREEWAYS AND OTHER MAJOR URBAN HIGHWAYS.			
		DESIGN		40	
		CONSTRUCTION			500
		TOTAL FUNDING	TRN	40 D	500 D
42.	KAMEHAMEHA	HIGHWAY, H-1 TO MILILANI TOWN, OAHU.			
		DESIGN, RIGHTS-OF-WAY, AND CONSTRUCTION FOR WIDENING AND IMPROVMENTS, INCLUDING PEDESTRIAN WALKWAYS.			
		LAND		1	1
		DESIGN		10	10
		CONSTRUCTION		100	100
		TOTAL FUNDING	TRN	111 D	111 D
TRN511 - HAWAII HIGHWAYS AND SERVICES					
43.	T02	HILO WATERFRONT ROAD, WAILOA RIVER BRIDGE TO HILO WHARF, HAWAII			
		IMPROVEMENT OF HIGHWAY FROM THE VICINITY OF WAILOA RIVER BRIDGE TO HILO WHARF INCLUDING THE REPLACEMENT OF WAILOA RIVER BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		802	
		DESIGN		111	
		CONSTRUCTION			5,100
		TOTAL FUNDING	TRN	381 D	1,785 D
			TRN	532 N	3,315 N

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
44.	T16	HAWAII BELT ROAD, IMPROVEMENTS TO SECTION 19H			
		REALIGNMENT OF PORTION OF HAWAII BELT ROAD INCLUDING THE CONSTRUCTION OF THE KAPEHU AND KAALAU BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND			195
		DESIGN		97	
		TOTAL FUNDING	TRN	97 D	195 D
45.	T26	HAWAII BELT ROAD, CLIMBING LANES AT OOKALA, HAMAKUA, HAWAII			
		CONSTRUCTION OF CLIMBING LANES FROM KAAWALII GULCH TO OOKALA CEMETARY.			
		CONSTRUCTION		343	
		TOTAL FUNDING	TRN	343 D	D
46.	T56	HAWAII BELT ROAD, SLAUGHTER HOUSE ROAD TO SOUTH OF KEAAU-PAHOA ROAD, PUNA, HI			
		IMPROVEMENT AND REALIGNMENT OF EXISTING TWO-LANE HIGHWAY TO FOUR-LANE HIGHWAY FROM THE VICINITY OF SLAUGHTER HOUSE ROAD TO SOUTH OF THE KEAAU-PAHOA ROAD, INCLUDING IMPROVEMENT OF THE HAWAII BELT ROAD AND KEAAU-PAHOA ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		3,317	
		TOTAL FUNDING	TRN	995 D	D
			TRN	2,322 K	K
47.	T61	HAWAII BELT ROAD, TRUCK CLIMBING LANES, PEPEEKEO, SOUTH HILO, HAWAII			
		CONSTRUCTION OF CLIMBING LANES ON HAWAII BELT ROAD AT PEPEEKEO.			
		LAND		8	
		CONSTRUCTION		760	
		TOTAL FUNDING	TRN	768 D	D
48.	T75	KEEAU-PAHOA ROAD, PUNA, HAWAII			
		RECONSTRUCTION OF HIGHWAY FROM HAWAIIAN PARADISE PARK TO VICINITY OF KEONEPOKO HOMESTEADS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		374	
		TOTAL FUNDING	TRN	62 D	D
			TRN	312 L	L

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				Fiscal Year O 1985-86 F	Fiscal M Year O 1986-87 F
49.	T77	GUARDRAIL AND SHOULDER IMPROVEMENTS, AT VARIOUS LOCATIONS ON STATE HWYS ON HI			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAY ON HAWAII.			
		DESIGN		13	6
		CONSTRUCTION		302	92
		TOTAL FUNDING	TRN	315 B	98 B
TRN531 - MAUI HIGHWAYS AND SERVICES					
50.	V41	HALEAKALA HIGHWAY, HANA HIGHWAY TO KULA HIGHWAY, MAKAWAO, MAUI			
		CONSTRUCTION OF HIGHWAY FROM HALIIMAILE ROAD TO KULA HIGHWAY JUNCTION, AND A TRUCK CLIMBING LANE FROM HANA HIGHWAY TO HALIIMAILE ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		2,115	
		TOTAL FUNDING	TRN	635 D	D
			TRN	1,480 K	K
51.	V45	HANA HIGHWAY-HUELO TO HANA, MAUI			
		REPAIR AND REPLACEMENT OF BRIDGES AND CULVERTS, SAFETY IMPROVEMENTS AND RESURFACING OF HANA HIGHWAY FROM HUELO TO HANA.			
		DESIGN		50	100
		CONSTRUCTION		450	900
		TOTAL FUNDING	TRN	500 D	1,000 D
52.	V48	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS ON MAUI			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON MAUI.			
		DESIGN		50	40
		CONSTRUCTION		550	510
		TOTAL FUNDING	TRN	600 B	550 B

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
53.	V49	HONOAPIILANI HIGHWAY CHAINLINK DRAPERY ALONG PALI SECTION, MAUI			
		INSTALLATION OF CHAINLINK DRAPERY TO PREVENT ROCKS FROM FALLING ONTO HIGHWAY.			
		DESIGN		50	40
		CONSTRUCTION		450	450
		TOTAL FUNDING	TRN	500 D	490 D
54.	V51	HONOAPIILANI HIGHWAY WIDENING, KAA NAPALI RESORT TO PUAMANA, LAHAINA, MAUI.			
		WIDEN THE EXISTING TWO LANE HIGHWAY WITH LEFT TURN LANES TO A THREE LANE HIGHWAY WITH LEFT TURN LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500 D	D
TRN541 - MOLOKAI HIGHWAYS AND SERVICES					
55.	W07	KAMEHAMEHA V HIGHWAY AND MAUNALOA HIGHWAY REPLACEMENT OF BRIDGES, MOLOKAI			
		REPLACEMENT OF HONOULIMALOO AND KAMALO BRIDGES ON KAM V HIGHWAY AND MANAWAINUI BRIDGE ON MAUNALOA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		72	160
		DESIGN			40
		CONSTRUCTION			1,375
		TOTAL FUNDING	TRN	35 D	437 D
			TRN	37 N	1,138 N
56.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS ON MOLOKAI			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON MOLOKAI.			
		DESIGN		60	
		CONSTRUCTION			580
		TOTAL FUNDING	TRN	60 B	580 B

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TRN551 - LANAI HIGHWAYS AND SERVICES					
57.	W58	GUARDRAIL AND SHOULDER IMPROV. AT VARIOUS LOCATIONS ON STATE HWYS ON LANAI			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE & SURFACE TREATMENT OR PAVING & INSTALLATION OF METAL GUARDRAIL AND MODERNIZATION OF EXISTING GUARDRAIL AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON LANAI.			
		DESIGN		30	
		CONSTRUCTION			300
		TOTAL FUNDING	TRN	30 B	300 B
TRN561 - KAUAI HIGHWAYS AND SERVICES					
58.	X43	HANAMAULU-AHUKINI CUTOFF RD, KAUAI			
		LAND ACQUISITION, PLANS & CONSTRUCTION OF HWY TO RELIEVE CONGESTION THRU LIHUE TOWN AREA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		3,972	9,000
		TOTAL FUNDING	TRN	1,312 D	2,700 D
			TRN	2,660 K	6,300 K
59.	X45	KAUMUALII HIGHWAY-HULEIA BRIDGE REPLACEMENT, KAUAI			
		CONSTRUCTION OF BRIDGE AND APPROACHES TO REPLACE EXISTING STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		127	
		CONSTRUCTION		5,330	
		TOTAL FUNDING	TRN	2,592 D	D
			TRN	2,865 N	N
60.	X51	GUARDRAIL AND SHOULDER IMPROV AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON KAUAI			
		UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON KAUAI.			
		DESIGN		10	26
		CONSTRUCTION		207	489
		TOTAL FUNDING	TRN	217 B	515 B

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
TRN595 - LAND TRANSPORTATION FACILITIES AND SERVICES SUPPORT					
61.	X91	CONSTRUCTION OF WHEELCHAIR RAMPS- STATEWIDE			
		CONSTRUCTION OF WHEELCHAIR RAMPS AT VARIOUS LOCATIONS ALONG STATE HIGHWAYS, STATEWIDE.			
		DESIGN		15	
		CONSTRUCTION		185	
		TOTAL FUNDING	TRN	200 D	D
62.	X96	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE			
		TO ACQUIRE CLEAR TITLE TO REAL PROPERTY USED FOR THE CONSTRUCTION OF PREVIOUS HIGHWAY PROJECTS WHERE APPLICABLE, TO PROVIDE FOR THE TRANSFER OF REAL PROPERTY INTEREST FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.			
		LAND		300	300
		TOTAL FUNDING	TRN	300 D	300 D
63.	X98	MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS & HIGHWAY FAC., STATEWIDE			
		MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY, INCLUDING ELIMINATION OF CONSTRICTIONS, ON-AND-OFF SITE, EFFECTING EFFICIENT FLOW OF TRAF- FIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		LAND		100	100
		DESIGN		335	
		CONSTRUCTION		1,915	1,915
		TOTAL FUNDING	TRN	725 D	725 D
			TRN	1,625 N	1,625 N
64.	X99	HIGHWAY PLANNING, STATEWIDE.			
		ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH AND ADVANCE PLANNING OF FEDERAL-AID AND NON FEDERAL-AID HIGHWAY PROJECTS. THIS PROJECT IS DEEMED NECES- SARY TO QUALIFY FOR FEDERAL-AID FINAN- CING OR REIMBURSEMENT.			
		PLANS		2,511	2,611
		TOTAL FUNDING	TRN	848 B	882 B
			TRN	1,663 N	1,729 N

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ENVIRONMENTAL PROTECTION

HTH840 - SOLIDS, LIQUIDS, GASES, AND NOISE

1. 840 0 0 1 SEWERAGE CONSTRUCTION GRANTS

GRANTS TO COUNTY OR STATE AGENCY FOR ELIGIBLE WATER POLLUTION CONTROL FACILITIES CONFORMING WITH STATE WPC PLAN AUTHORIZED BY ACT 187/79. STATE MAY MAKE GRANTS TO FINANCE ELIGIBLE PLANNING, DESIGN AND/OR CONSTRUCTION COSTS OF PROJECTS RECEIVING FEDERAL GRANTS.

PLANS		75	75
DESIGN		525	525
CONSTRUCTION		4,100	4,100
TOTAL FUNDING	HTH	4,700 C	4,700 C

LNR402 - FORESTS AND WILDLIFE RESOURCES

2. D-01 FOREST ROADS

DEVELOPMENT OF A ROAD NETWORK FOR FOREST AREAS TO PROVIDE EASY ACCESS FOR MANAGEMENT/RECREATION/SCIENTIFIC/EDUCATION/ETC. PURPOSES.

PLANS		2	5
DESIGN		7	14
CONSTRUCTION		35	225
TOTAL FUNDING	LNR	44 C	244 C

3. D-09 HILO DEPARTMENT OF LAND AND NATURAL RESOURCES BASEYARD IMPROVEMENT

IMPROVEMENTS TO BASEYARD TO INCLUDE CONSTRUCTION OF A WAREHOUSE, COVERING STRUCTURE OVER GREASE PIT & HEAVY EQUIPMENT REPAIR AREA, EXPANSION OF REPAIR SHOP AREA, EXPANSION OF COVERED PARKING AREA, PAVING, & CONSTRUCTION OF STORAGE BUILDING FOR STATE PARKS SUPPLIES AND MOTOR VEHICLES.

PLANS		5	
DESIGN		13	15
CONSTRUCTION		340	150
EQUIPMENT		12	15
TOTAL FUNDING	LNR	370 C	180 C

4. D-15 ARBORETA DEVELOPMENT

DEVELOPMENT OF A SUITABLE LOCATION FOR THE PURPOSE OF GROWING SELECT VEGETATION FOR RECREATION, SCIENTIFIC, RESEARCH, & EDUCATIONAL PURSUITS. INCLUDES THE GROWTH OF EXOTIC AND NATIVE SPECIES AND SUPPORT FACILITIES.

PLANS		1	
DESIGN		1	

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		CONSTRUCTION		10	
		TOTAL FUNDING	LNR	12 C	C
5.	D-23	HAWAII ENDANGERED SPECIES FACILITIES - MAUI			
		PLANNING, DESIGN, CONSTRUCTION, AND RENOVATION OF AN ENDANGERED SPECIES FACILITY TO MAINTAIN & BREED ENDANGERED SPECIES IN CAPTIVITY FOR RESEARCH & RELEASE INTO THE WILD INCLUDING FACILITIES FOR RESEARCH, VETERINARY MEDICINE & SECURITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		PLANS		25	
		DESIGN		50	
		CONSTRUCTION			600
		EQUIPMENT			130
		TOTAL FUNDING	LNR	75 C	730 C
6.	D-42	KAMUELA SUPPORT FACILITY			
		CONSTRUCTION OF A STRUCTURE TO PROVIDE COVERED PARKING FOR VEHICLES & EQUIPMENT AT KAMUELA; ENCLOSED STORAGE SPACE FOR OPERATIONAL AND FIRE TOOLS, SMALL EQUIPMENT, MATERIAL AND SUPPLIES; AND A WORKSHOP TO ACCOMMODATE MAINTENANCE AND MINOR REPAIR WORK ON FACILITIES AND EQUIPMENT.			
		PLANS		2	
		DESIGN		4	
		CONSTRUCTION		150	
		EQUIPMENT		11	
		TOTAL FUNDING	LNR	167 C	C
7.	D-44	POLIPOLI ACCESS ROAD, MAUI			
		INCREMENTAL PAVING OF POLIPOLI ACCESS ROAD TO IMPROVE ACCESS TO PUBLIC HUNTING AREAS -2.1 MILES.			
		PLANS		6	6
		CONSTRUCTION		190	195
		TOTAL FUNDING	LNR	196 C	201 C
8.	D-45	KAWAINUI MARSH WILDLIFE SANCTUARY, OAHU			
		PLANNING, DESIGN, AND CONSTRUCTION OF FACILITIES FOR WILDLIFE CONSERVATION AND EDUCATION INCLUDING VEGETATION REMOVAL TO CREATE OPEN WATER, MOATS, AND ISLANDS; FENCING BOUNDARIES TO EXCLUDE PREDATORS AND DISTURBANCE; DEVELOP ACCESS TRAILS AND VIEWING SITES FOR PUBLIC USE, AND ERECT BOUNDARY AND INTERPRETIVE SIGNS AND DISPLAYS.			
		PLANS		20	5

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		DESIGN		30	
		CONSTRUCTION			50
		EQUIPMENT			75
		TOTAL FUNDING	LNR	50 C	130 C

LNR404 - WATER RESOURCES

9. G89 INVESTIGATION AND DEVELOPMENT OF ALTERNATIVE WATER SOURCES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE INVESTIGATION AND DEVELOPMENT OF ALTERNATIVE WATER SOURCES.

PLANS		100	
LAND		100	
DESIGN		200	
CONSTRUCTION			900
TOTAL FUNDING	LNR	400 C	900 C

10. G91 INVESTIGATION AND DEVELOPMENT OF DESALTING PLANT TECHNOLOGY

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A ONE MGD DESALTING DEMONSTRATION PLANT.

DESIGN		250	
CONSTRUCTION			4,000
TOTAL FUNDING	LNR	250 C	2,000 C
	LNR	X	2,000 X

TRN903 - COASTAL AREAS

11. 10K NIUMALU SHORE PROTECTION, KAUAI

DESIGN AND CONSTRUCTION OF REVETMENT FOR SHORELINE PROTECTION AT NIUMALU INCLUDING CLEARING, GRADING, AND OTHER IMPROVEMENTS.

CONSTRUCTION		350	
TOTAL FUNDING	TRN	350 C	C

HEALTH

HTH111 - HANSEN'S DISEASE

1. KALAUPAPA GASOLINE STORAGE FACILITY

DESIGN AND CONSTRUCTION OF A GASOLINE STORAGE FACILITY AT KALAUPAPA SETTLEMENT.

DESIGN		15	
CONSTRUCTION		92	
TOTAL FUNDING	AGS	107 C	C

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HTH215 - KONA HOSPITAL						
2. KONA HOSPITAL RENOVATION AND EXPANSION						
PLANS FOR RENOVATION AND EXPANSION OF PRESENT FACILITY.						
PLANS						
TOTAL FUNDING				AGS	210	
					210 C	C
HTH430 - HAWAII STATE HOSPITAL						
3. 430001 HAWAII STATE HOSPITAL						
PLANS AND CONSTRUCTION FOR DEVELOPMENT OF STATE HOSPITAL, INCLUDING RENOVATIONS AND MODIFICATIONS.						
CONSTRUCTION						
TOTAL FUNDING				AGS		15,000
					C	15,000 C
HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL						
4. 511002 CONVERT WAIMANO TRAINING SCHOOL AND HOSPITAL'S PRIMARY ELECTRICAL SYS TO HECO						
HAWAIIAN ELECTRIC COMPANY TO REPLACE WAIMANO TRAINING SCHOOL AND HOSPITAL'S PRIMARY ELECTRICAL SYSTEM. MAINTENANCE OF THE PRIMARY ELECTRICAL SHALL BE BORNE BY HAWAIIAN ELECTRIC COMPANY. CONVERSION IS NECESSARY TO STABILIZE POWER FLUCTUATIONS, WHICH CAUSE MOTOR AND EQUIPMENT SHUTDOWN. CURRENT SYSTEM IS OVERLOADED AND UNABLE TO HANDLE INCREASED POWER DEMANDS.						
PLANS						
					10	
DESIGN						
					25	
CONSTRUCTION						
					100	
TOTAL FUNDING				AGS	135 C	C
HTH601 - VECTOR CONTROL						
5. KAUAI VECTOR CONTROL FACILITY						
PLANS FOR CONSTRUCTION OF LABORATORY, OFFICE, RESTROOM/SHOWER, AND STORAGE AREA.						
PLANS						
					35	
TOTAL FUNDING				AGS	35 C	C

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SOCIAL SERVICES

HHL602 - PLNNG, DEVPMT AND MGT FOR HAWN HOMESTD LAND

1. LMD001 HAWAIIAN HOME LANDS DEVELOPMENT, STATEWIDE

DEVELOPMENT OF HAWAIIAN HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED, INCLUDING PLANS, DESIGNS AND THE CONSTRUCTION OF ON-SITE (SUCH AS GRADING, ROADS AND UTILITIES) AND OFF-SITE IMPROVEMENTS.

PLANS		10	
DESIGN		200	
CONSTRUCTION			2,780
EQUIPMENT			10
TOTAL FUNDING	HHL	210 C	2,790 C

FORMAL EDUCATION

EDN105 - REGULAR INSTRUCTION PROGRAM

1. 001 RELOCATE OR CONSTRUCT PORTABLE CLASSROOMS

RELOCATION OR CONSTRUCTION OF PORTABLES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION. THESE FUNDS ARE ALSO FOR SECONDARY SCHOOLS.

DESIGN		100	100
CONSTRUCTION		890	890
EQUIPMENT		10	10
TOTAL FUNDING	AGS	1,000 C	1,000 C

2. 002 MINOR IMPROVEMENTS

MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENT TO BUILDINGS AND SCHOOL SITES, INCLUDING ELEMENTARY SPECIAL CLASSROOMS (MUSIC, ART AND SCIENCE).

DESIGN		70	70
CONSTRUCTION		225	225
EQUIPMENT		5	5
TOTAL FUNDING	AGS	300 C	300 C

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3. MODERNIZING AND UPGRADING OF PUBLIC SCHOOL FACILITIES, STATEWIDE						
DESIGN AND CONSTRUCTION FOR REPAIR AND MAINTENANCE FOR MODERNIZATION AND UPGRADING OF PUBLIC SCHOOL FACILITIES, INCLUDING NECESSARY REROOFING, TO CONFORM WITH BOE'S SPECIFICATIONS AND STANDARDS.						
		DESIGN			2,000	2,000
		CONSTRUCTION			18,005	18,005
		TOTAL FUNDING	AGS	20,000 A		20,000 A
			AGS		5 C	5 C
4. 003 LUMP SUM FOR MASTER PLANS AND SITE STUDIES MINOR LAND ACQUISITION						
ACQUISITION OF SMALL PARCELS, MASTER PLANNING, PRE-LAND ACQUISITION STUDIES, SITE SELECTION AND FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS. CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.						
		PLANS			99	100
		LAND			1	
		TOTAL FUNDING	AGS	100 C		100 C
5. 005 REMOVAL OF ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOM IMPROVEMENTS						
TO PROVIDE RAMPS AND OTHER CORRECTIVE MEASURES FOR EASY ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.						
		DESIGN			100	200
		CONSTRUCTION			980	1,000
		EQUIPMENT			20	
		TOTAL FUNDING	AGS	1,100 C		1,200 C
6. 008 LUMP SUM - FIRE PROTECTION SYSTEMS; FIRE ALARM SYSTEMS						
FIRE PROTECTION SYSTEMS TO MEET WATER SYSTEM STANDARDS.						
		DESIGN			50	50
		CONSTRUCTION			250	250
		TOTAL FUNDING	AGS	300 C		300 C
7. 009 LUMP SUM - CORRECTION TO SOUND PROBLEM						
TO PROVIDE CORRECTIVE MEASURES ON EXCESSIVE EXTERIOR NOISE AND VENTILATION PROBLEMS THAT AFFECT CLASSROOMS.						
		CONSTRUCTION			300	
		TOTAL FUNDING	AGS	300 C		C

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8.	140005	MCKINLEY HIGH			
		DESIGN AND CONSTRUCT RENOVATION OF BUILDING B.			
		CONSTRUCTION		1,665	
		EQUIPMENT		35	
		TOTAL FUNDING	AGS	1,700	C
9.	140006	MCKINLEY HIGH			
		DESIGN AND CONSTRUCT RENOVATION OF BUILDING E.			
		DESIGN			135
		TOTAL FUNDING	AGS		135
10.	206002	HALEIWA ELEMENTARY			
		DESIGN AND CONSTRUCT RESTORATION OF BUILDING A.			
		CONSTRUCTION		350	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	360	C
11.	237006	WHEELER ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, GROUND AND SITE IMPROVEMENTS.			
		DESIGN			82
		TOTAL FUNDING	AGS		82
12.	325003	WAIANAE HIGH SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, GROUND AND SITE IMPROVEMENTS.			
		DESIGN			80
		TOTAL FUNDING	AGS		80
13.	335005	NANAKULI ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS; GROUND AND SITE IMPROVEMENTS.			
		DESIGN			60
		TOTAL FUNDING	AGS		60
14.	340005	KANOELANI ELEMENTARY			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, GROUND AND SITE IMPROVEMENTS.			
		DESIGN		52	
		CONSTRUCTION			600
		EQUIPMENT			8
		TOTAL FUNDING	AGS	52	608
15.	342001	WAIANAE III ELEMENTARY			
		MASTER PLAN REPORT.			
		PLANS		50	
		TOTAL FUNDING	AGS	50	C

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16.	342002	WAIANAE III ELEMENTARY			
		LAND ACQUISITION.			
		LAND			600
		TOTAL FUNDING	AGS	C	600 C
17.	342003	WAIANAE III ELEMENTARY			
		DESIGN AND CONSTRUCT FIRST INCREMENT; CLASSROOMS, EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.			
		DESIGN			150
		TOTAL FUNDING	AGS	C	150 C
18.	410009	KAHUKU HIGH SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, SEWER CONNECTION, GROUND AND SITE IMPROVEMENTS.			
		DESIGN		135	
		CONSTRUCTION			2,290
		EQUIPMENT			25
		TOTAL FUNDING	AGS	135 C	2,315 C
19.	420004	LAIE ELEMENTARY			
		DESIGN AND CONSTRUCT CLASSROOMS, EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		1,290	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	1,300 C	C
20.	511002	KAU HIGH AND PAHALA ELEMENTARY SCHOOL KAU HAWAII			
		DESIGN AND CONSTRUCTION OF INDUSTRIAL ARTS FACILITY, EQUIPMENT AND APPURTENANCES, DEMOLISH OLD STRUCTURE.			
		DESIGN		10	
		CONSTRUCTION		1,200	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	1,220 C	C
21.	514002	KEALAKEHE ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, EQUIPMENT AND APPURTENANCES, WORKROOM, TOILETS.			
		DESIGN		125	
		CONSTRUCTION			2,200
		EQUIPMENT			25
		TOTAL FUNDING	AGS	125 C	2,225 C
22.	520002	MT VIEW ELEMENTARY & INTERMEDIATE SCHOOL PUNA HAWAII			
		DESIGN AND CONSTRUCTION OF CLASSROOM BUILDING WITH COVERED WALKWAY, WORKROOM, TOILETS, EQUIPMENT AND APPURTENANCES.			

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		CONSTRUCTION		821	
		EQUIPMENT		8	
		TOTAL FUNDING	AGS	829 C	C
23.	523008	PAHOA HIGH & ELEMENTARY			
		DESIGN AND CONSTRUCTION - MUSIC AND ARTS & CRAFTS CLASSROOMS, EQUIPMENT AND APPURTENANCES, COVERED WALKWAYS.			
		CONSTRUCTION		1,050	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	1,060 C	C
24.	523012	PAHOA HIGH AND ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, COVERED WALKWAY, EQUIPMENT AND APPURTENANCES. DEMOLISH OLD STRUCTURE.			
		DESIGN			150
		TOTAL FUNDING	AGS	C	150 C
25.	524002	WAIAKEA ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, COVERED WALKWAY, EQUIPMENT AND APPURTENANCES; PARKING, GROUND AND SITE IMPROVEMENTS.			
		CONSTRUCTION		1,730	
		TOTAL FUNDING	AGS	1,730 C	C
26.	525010	WAIAKEA HIGH SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, COVERED WALKWAY, PARKING, EQUIPMENT AND APPURTENANCES.			
		DESIGN		60	
		CONSTRUCTION			830
		EQUIPMENT			10
		TOTAL FUNDING	AGS	60 C	840 C
27.	526001	WAIAKEA INTERMEDIATE SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, GROUND AND SITE IMPROVEMENTS.			
		DESIGN			85
		TOTAL FUNDING	AGS	C	85 C
28.	528002	WAIMEA ELEMENTARY AND INTERMEDIATE			
		DESIGN AND CONSTRUCT CLASSROOMS, COVERED WALKWAY, EQUIPMENT AND APPURTENANCES.			
		DESIGN			60
		TOTAL FUNDING	AGS	C	60 C
29.	32006	KAHAKAI ELEMENTARY SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS; EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.			

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		DESIGN		66	
		CONSTRUCTION			1,000
		EQUIPMENT			14
		TOTAL FUNDING	AGS	66 C	1,014 C
30.	603004	IAO SCHOOL, MAUI			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.			
		DESIGN		86	
		CONSTRUCTION			1,395
		EQUIPMENT			9
		TOTAL FUNDING	AGS	86 C	1,404 C
31.	608010	KIHEI SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, PARKING, BUS LOADING AREA, GROUND AND SITE IMPROVEMENTS.			
		DESIGN		175	
		CONSTRUCTION			2,880
		EQUIPMENT			20
		TOTAL FUNDING	AGS	175 C	2,900 C
32.	624002	LAHAINA INTERMEDIATE SCHOOL			
		DESIGN AND CONSTRUCT CLASSROOMS, GROUND AND SITE IMPROVEMENTS.			
		DESIGN		113	
		CONSTRUCTION			2,140
		EQUIPMENT			10
		TOTAL FUNDING	AGS	113 C	2,150 C
33.	626001	NEW MAUI INTERMEDIATE SCHOOL			
		LAND ACQUISITION.			
		LAND		600	
		TOTAL FUNDING	AGS	600 C	C
34.	626002	NEW MAUI IMTERMEDIATE SCHOOL			
		MASTER PLAN REPORT.			
		PLANS		50	
		TOTAL FUNDING	AGS	50 C	C
35.	626003	NEW MAUI INTERMEDIATE SCHOOL			
		DESIGN AND CONSTRUCT FIRST INCREMENT; CLASSROOMS, PARKING, PLAYCOURT, PLAYFIELD, GROUND AND SITE IMPROVEMENTS.			
		DESIGN			329
		TOTAL FUNDING	AGS	C	329 C
36.	701003	HANALEI ELEMENTARY			
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, GROUND AND SITE IMPROVEMENTS. DEMOLISH OLD STRUCTURE.			

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		CONSTRUCTION EQUIPMENT			1,374	
		TOTAL FUNDING	AGS		1,390 C	
37.	703003	KAPAA ELEMENTARY				
		DESIGN AND CONSTRUCT CLASSROOM BUILDING, EQUIPMENT AND APPURTENANCES.				
		CONSTRUCTION EQUIPMENT			963	
		TOTAL FUNDING	AGS		975 C	
38.	ED 1	WAIPAHU INTERMEDIATE SCHOOL				
		DESIGN AND CONSTRUCTION OF CLASSROOMS.				
		DESIGN CONSTRUCTION			160	
		TOTAL FUNDING	AGS		160 C	1,600
						1,600 C
39.	AIEA	HIGH SCHOOL, OAHU				
		DESIGN AND CONSTRUCTION FOR RETAINING WALL FOR ATHLETIC FIELD.				
		DESIGN CONSTRUCTION			58	
		TOTAL FUNDING	AGS		342	
					400 C	
40.	MILILANI	HIGH SCHOOL, OAHU - GYMNASIUM				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GYMNASIUM.				
		DESIGN CONSTRUCTION			10	
		EQUIPMENT			2,890	
		TOTAL FUNDING	AGS		10	
					2,910 C	
41.	WAIAKEA	HIGH SCHOOL, HAWAII - GYMNASIUM				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR WAIAKEA GYMNASIUM.				
		DESIGN CONSTRUCTION			10	
		EQUIPMENT			3,090	
		TOTAL FUNDING	AGS		10	
					3,110 C	
42.	HANA	HIGH SCHOOL, MAUI - GYMNASIUM				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GYMNASIUM.				
		DESIGN CONSTRUCTION			10	
		EQUIPMENT			3,990	
		TOTAL FUNDING	AGS		15	
					4,015 C	

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43. KAHUKU ELEMENTARY SCHOOL					
DESIGN OF CLASSROOMS AND IMPROVEMENTS FOR KAHUKU ELEMENTARY SCHOOL.					
		DESIGN		400	
		TOTAL FUNDING	AGS	400 C	C
EDN203 - SCHOOL ADMINISTRATION					
44. 215002 MILILANI HIGH, OAHU					
DESIGN AND CONSTRUCT ADMINISTRATION BUILDING, CONVERT TEMPORARY ADMINISTRATION BUILDING TO CLASSROOMS.					
		DESIGN		10	
		CONSTRUCTION		1,302	
		EQUIPMENT		8	
		TOTAL FUNDING	AGS	1,320 C	C
EDN303 - STATE ADMINISTRATION					
45. 015 STATE AND DISTRICT OFFICE					
RENOVATE EXISTING SCHOOL FACILITIES FOR STATE AND DISTRICT OFFICE USE.					
		DESIGN		40	
		CONSTRUCTION			300
		TOTAL FUNDING	AGS	40 C	300 C
EDN305 - SCHOOL FOOD SERVICES					
46. 335004 NANAKULI ELEMENTARY					
DESIGN AND CONSTRUCT CAFETORIUM, EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.					
		DESIGN		82	
		CONSTRUCTION			1,150
		EQUIPMENT			28
		TOTAL FUNDING	AGS	82 C	1,178 C
47. 340004 KANOELANI ELEMENTARY					
DESIGN AND CONSTRUCT CAFETORIUM, EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.					
		CONSTRUCTION		1,050	
		EQUIPMENT		26	
		TOTAL FUNDING	AGS	1,076 C	C
48. 341003 LEIHOKU ELEMENTARY					
DESIGN AND CONSTRUCT CAFETORIUM, EQUIPMENT AND APPURTENANCES, GROUND AND SITE IMPROVEMENTS.					
		DESIGN		82	
		CONSTRUCTION			1,150
		EQUIPMENT			28
		TOTAL FUNDING	AGS	82 C	1,178 C

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49.	524003 WAIAKEA ELEMENTARY			
	DESIGN AND CONSTRUCTION RENOVATE BUILDING INTO DINING ROOM/TEMPORARY LIBRARY, EQUIPMENT AND APPURTENANCES.			
	DESIGN		35	
	CONSTRUCTION			300
	EQUIPMENT			40
	TOTAL FUNDING	AGS	35 C	340 C
50.	532005 KAHAKAI ELEMENTARY			
	DESIGN AND CONSTRUCT SERVING KITCHEN, MULTI-PURPOSE DINING ROOM, EQUIPMENT AND APPURTENANCES, PARKING, GROUND AND SITE IMPROVEMENTS.			
	CONSTRUCTION		1,300	
	EQUIPMENT		28	
	TOTAL FUNDING	AGS	1,328 C	C
51.	625005 MAKAWAO INTERMEDIATE SCHOOL			
	DESIGN AND CONSTRUCT CAFETORIUM, GROUND AND SITE IMPROVEMENTS.			
	DESIGN			112
	TOTAL FUNDING	AGS	C	112 C
EDN407 - PUBLIC LIBRARIES				
52.	032-1 PEARL CITY REGIONAL LIBRARY EXPANSION			
	EXPAND MAIN READING AREA TO ACCOMMODATE ADDITIONAL BOOKS AND MATERIAL. REGIONAL LIBRARY SERVES AS RESOURCE LIBRARY FOR SEVEN COMMUNITY LIBRARIES IN THE WEST OAHU LIBRARY DISTRICT.			
	CONSTRUCTION		782	
	EQUIPMENT		55	
	TOTAL FUNDING	AGS	837 C	C
53.	043-1 SALT LAKE/MOANALUA			
	CONSTRUCT A FACILITY WITH TEMPERATURE HUMIDITY AND ACOUSTICAL CONTROLS TO PROVIDE LIBRARY SERVICES TO THE COMMUNITY OF SALT LAKE/MOANALUA AND ADJACENT COMMUNITIES.			
	CONSTRUCTION			1,900
	EQUIPMENT			100
	TOTAL FUNDING	AGS	C	2,000 C
54.	051-3 KAHULUI LIBRARY, MAUI			
	EXPANSION AND RENOVATION OF LIBRARY TO SERVE AS A REGIONAL LIBRARY FOR MAUI DISTRICT. EXPANSION OF MAIN READING AND BOOK STACK AREA.			
	CONSTRUCTION		575	

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		EQUIPMENT			75	
		TOTAL FUNDING	AGS	650	C	
55. 070-4 HAWAII REGIONAL LIBRARY, HILO, HAWAII						
EXPANSION TO INCLUDE MEETING ROOM AND ADDITIONAL READING AREA OF LIBRARY. PRESENT LIBRARY DOES NOT HAVE A MEETING ROOM AND REGIONAL LIBRARY NEEDS ADDITIONAL AREA FOR BOOK STORAGE AND READING AREAS. PLANS AND DESIGN COMPLETED.						
		DESIGN			110	
		TOTAL FUNDING	AGS	110	C	
56. 085-4 KAILUA KONA LIBRARY, HAWAII						
FACILITY TO SERVE THE COMMUNITY OF KAILUA AND ADJACENT AREA. ALSO SERVE AS A SUB REGIONAL LIBRARY FOR ISLAND OF HAWAII; TEMPERATURE HUMIDITY AND ACOUSTICAL CONTROLS.						
		DESIGN			133	
		TOTAL FUNDING	AGS	133	C	
57. PUBLIC LIBRARIES						
REMOVAL OF ASBESTOS MATERIALS IN PUBLIC LIBRARIES.						
		DESIGN			60	
		CONSTRUCTION			536	
		TOTAL FUNDING	AGS	596	C	
UOH101 - INSTRUCTION - UOH, MANOA						
58. UNIVERSITY OF HAWAII AT MANOA						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR SCHOOL OF ARCHITECTURE.						
		DESIGN		94		1
		CONSTRUCTION				3,199
		EQUIPMENT				1
		TOTAL FUNDING	AGS	94	C	3,201
59. 039 MEDICAL SCHOOL DEVELOPMENT KUAKINI HOSPITAL, PHASE II						
DEVELOPMENT OF FACILITIES FOR A 4-YEAR MEDICAL SCHOOL AT COMMUNITY HOSPITALS IN ACCORDANCE WITH LONG-RANGE DEVELOPMENT PLANS AND AFFILIATION AGREEMENTS.						
		DESIGN				5
		CONSTRUCTION				434
		EQUIPMENT				120
		TOTAL FUNDING	AGS		C	559

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60. 049 SWIMMING POOL COMPLEX, PHASE II					
DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR THE SWIMMING POOL COMPLEX, PHASE II.					
		DESIGN			30
		CONSTRUCTION			250
		TOTAL FUNDING	AGS		280 C
61. 068 OLD QUAD AREA RESTROOM FACILITIES					
REPLACEMENT OF RESTROOM FACILITIES REMOVED FROM THE BUSINESS ADMINISTRATION COMPLEX AND OTHER IMPROVEMENTS.					
		DESIGN			1
		CONSTRUCTION			648
		TOTAL FUNDING	AGS	C	649 C
62. 080 KUYKENDALL HALL RENOVATIONS					
RENOVATIONS TO KUYKENDALL HALL CLASSROOM WING TO IMPROVE VENTILATION, ACOUSTICS, LIGHTING, SAFETY AND AESTHETIC ENVIRONMENT.					
		DESIGN			127
		CONSTRUCTION			1,920
		TOTAL FUNDING	AGS	127 C	1,920 C
UOH102 - ORGANIZED RESEARCH - UOH, MANOA					
63. 155 MKO, MID-LEVEL FACILITIES, PHASE II					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR ADDITIONAL HOUSING FACILITIES AT HALE POHAKU FOR OBSERVATORY PERSONNEL.					
		DESIGN			76
		CONSTRUCTION			986
		EQUIPMENT			95
		TOTAL FUNDING	AGS	1,157 E	E
64. LYONS ABORETUM, OAHU					
PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ENHANCE ARBORETUM PROGRAM.					
		PLANS			1
		LAND			1
		DESIGN			10
		TOTAL FUNDING	UOH	12 C	C

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UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA						
65.	242	TRAFFIC CIRCULATION IMPROVEMENTS, MAKAI CAMPUS, PHASE I				
		DESIGN AND CONSTRUCTION OF A PERMANENT ROAD SYSTEM TO FACILITATE PEDESTRIAN AND VEHICULAR TRAFFIC CIRCULATION FROM PARKING STRUCTURE AND HOUSING AREAS TO WAIALAE AVENUE. THE ROAD SYSTEM SHALL INCLUDE RESTROOM AND LIGHTING FACILITIES FOR ADJACENT AREAS.				
		DESIGN			35	
		CONSTRUCTION			1,565	
		TOTAL FUNDING	AGS		1,600	C
66.	250A	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE E3				
		DESIGN AND CONSTRUCTION OF NEW HAZARDOUS WASTE FACILITY.				
		DESIGN			30	
		CONSTRUCTION			298	
		TOTAL FUNDING	AGS		328	C
67.	250B	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE E4				
		DESIGN AND CONSTRUCTION OF REMOVAL OF ASBESTOS AND OTHER HAZARDS AT HAMILTON LIBRARY.				
		DESIGN			15	
		CONSTRUCTION			157	
		TOTAL FUNDING	AGS		172	C
68.	250C	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE E5				
		DESIGN AND CONSTRUCTION OF EMERGENCY LIGHTING, FIRE EXIT DOORS SYSTEM AND SECOND EXIT STAIRWAY EXTENSION AT KUYKENDALL HALL.				
		DESIGN				15
		CONSTRUCTION				193
		TOTAL FUNDING	AGS			208
69.	250D	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE F1				
		DESIGN AND CONSTRUCTION OF EMERGENCY LIGHTING, SPRINKLER/SMOKE DETECTOR SYSTEM, AND SAFETY EYE WASH STATIONS AT EDMONDSON HALL				
		DESIGN				14

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F	
		CONSTRUCTION			143	
		TOTAL FUNDING	AGS	C	157 C	
70.	250E	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE F2				
		DESIGN AND CONSTRUCTION OF FUME HOOD SYSTEM MODIFICATIONS AT HIG BUILDING.				
		DESIGN			10	
		CONSTRUCTION			83	
		TOTAL FUNDING	AGS	C	93 C	
71.	250F	MODIFICATIONS TO EXISTING AND/OR ADD. OF NEW FACILITIES TO MEET HOSHA, PHASE F3				
		DESIGN AND CONSTRUCTION OF FUME HOOD SYSTEM MODIFICATIONS AT SNYDER HALL.				
		DESIGN			6	
		CONSTRUCTION			36	
		TOTAL FUNDING	AGS	C	42 C	
72.	255A	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HADICAPPED, PHASE A EXT, PART II				
		DESIGN AND CONSTRUCTION OF HANDICAPPED RAMP AT DEAN HALL.				
		DESIGN			2	
		CONSTRUCTION			12	
		TOTAL FUNDING	AGS	14 C	C	
73.	255B	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HANDICAPPED, PHASE A EXT, PART IIB				
		DESIGN AND CONSTRUCTION OF HANDICAPPED CHAIR LIFT AT GARTLEY HALL.				
		DESIGN			3	
		CONSTRUCTION			21	
		TOTAL FUNDING	AGS	24 C	C	
74.	255C	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HANDICAPPED, PHASE A EXT, PART IIC				
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS FOR A PATHWAY BETWEEN CAMPUS CENTER AND ANDREWS AMPHITHEATRE.				
		DESIGN			7	
		CONSTRUCTION			56	
		TOTAL FUNDING	AGS	63 C	C	

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75.	255D	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HANDICAPPED, PHASE A EXT, PART IID			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS FOR A PATHWAY BETWEEN PORTEUS HALL AND HAWAII HALL.			
		DESIGN		3	
		CONSTRUCTION		18	
		TOTAL FUNDING	AGS	21 C	C
76.	255E	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HANDICAPPED, PHASE A EXT, PART IIE			
		DESIGN AND CONSTRUCTION OF RAMP NEAR THE POST OFFICE BUILDING.			
		DESIGN		10	
		CONSTRUCTION		68	
		TOTAL FUNDING	AGS	78 C	C
77.	255F	MOD. TO EXISTING FAC. FOR THE PHYSICALLY HANDICAPPED, PHASE CI			
		DESIGN AND CONSTRUCTION OF ENTRANCE AND RESTROOM MODIFICATIONS AT FOOD SERVICE AND TECHNOLOGY BUILDING.			
		DESIGN			2
		CONSTRUCTION			8
		TOTAL FUNDING	AGS	C	10 C
78.	255G	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C2			
		DESIGN AND CONSTRUCTION OF ENTRANCE AND RESTROOM MODIFICATIONS AT HENKE HALL			
		DESIGN			1
		CONSTRUCTION			6
		TOTAL FUNDING	AGS	C	7 C
79.	255H	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C3			
		DESIGN AND CONSTRUCTION OF RAMPS AT GEORGE HALL ANNEXES #1 TO #9			
		DESIGN			2
		CONSTRUCTION			9
		TOTAL FUNDING	AGS	C	11 C
80.	255I	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C4			
		DESIGN AND CONSTRUCTION OF RAMP AT STUDENT SPECIAL SERVICES BUILDING			
		DESIGN			1

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		CONSTRUCTION			4	
		TOTAL FUNDING	AGS	C	5 C	
81.	255J	MODIFICATIONS TO THE EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C5				
		DESIGN AND CONSTRUCTION OF ENTRANCE AND RESTROOM MODIFICATIONS AT STUDENT SERVICES BUILDING				
		DESIGN			3	
		CONSTRUCTION			23	
		TOTAL FUNDING	AGS	C	26 C	
82.	255K	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C6				
		DESIGN AND CONSTRUCTION OF RESTROOM MODIFICATIONS AT BACHMAN HALL				
		DESIGN			2	
		CONSTRUCTION			14	
		TOTAL FUNDING	AGS	C	16 C	
83.	255M	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C8				
		DESIGN AND CONSTRUCTION OF ENTRANCE AND RESTROOM MODIFICATIONS AT DRAMA BUILDINGS #1 AND #2				
		DESIGN			2	
		CONSTRUCTION			11	
		TOTAL FUNDING	AGS	C	13 C	
84.	255N	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C9				
		DESIGN AND CONSTRUCTION OF RESTROOM MODIFICATIONS AT MAKAI CAMPUS #1, #11, AND #12				
		DESIGN			2	
		CONSTRUCTION			8	
		TOTAL FUNDING	AGS	C	10 C	
85.	255O	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C10				
		DESIGN AND CONSTRUCTION OF SIDEWALK CURBCUT AND RAMP ENTRANCE MODIFICATIONS AT WIST HALL ANNEX NO. 1				
		DESIGN			1	
		CONSTRUCTION			4	
		TOTAL FUNDING	AGS	C	5 C	

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86.	255P	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C11			
		DESIGN AND CONSTRUCTION OF RAMP, RESTROOM AND FIRE ALARM MODIFICATIONS AT CASTLE MEMORIAL HALL			
			DESIGN		3
			CONSTRUCTION		28
		TOTAL FUNDING	AGS	C	31 C
87.	255Q	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C12			
		DESIGN AND CONSTRUCTION OF RAMP, RESTROOM AND FIRE ALARM MODIFICATIONS AT UNIVERSITY ELEMENTARY SCHOOL			
			DESIGN		3
			CONSTRUCTION		34
		TOTAL FUNDING	AGS	37 C	C
88.	255I	MODIFICATIONS TO EXISTING FACILITIES FOR THE PHYSICALLY HANDICAPPED, PHASE C7			
		DESIGN AND CONSTRUCTION OF RAMP AT MILLER HALL.			
			DESIGN		3
			CONSTRUCTION		26
		TOTAL FUNDING	AGS	C	29 C
89.	257A	ENERGY CONSERVATION MODIFICATIONS, PHASE IIIA			
		DESIGN AND CONSTRUCTION OF A/C SYSTEM CONVERSION FOR ROOMS 152 AND 252, BILGER HALL (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
			DESIGN		10
			CONSTRUCTION		105
		TOTAL FUNDING	PED	115 C	C
90.	257B	ENERGY CONSERVATION MODIFICATIONS, PHASE IIIB			
		DESIGN AND CONSTRUCTION OF SEPARATE A/C SYSTEM FOR TRAINING ROOM AND LECTURE ROOM, PHYSICAL EDUCATION FACILITIES TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
			DESIGN		5
			CONSTRUCTION		55
		TOTAL FUNDING	PED	60 C	C

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91.	257C	ENERGY CONSERVATION MODIFICATIONS, PHASE IIIC			
		DESIGN AND CONSTRUCTION OF CHILLED WATER LOOP AND MICROCOMPUTER CONTROL AT MARINE SCIENCES BUILDING TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN		17	
		CONSTRUCTION		53	
		TOTAL FUNDING	PED	70 C	C
92.	257D	ENERGY CONSERVATION MODIFICATIONS, PHASE IIID			
		DESIGN AND CONSTRUCTION OF A/C CONTROLS AND MONITORING SYSTEM FOR AHU'S FOR HOLMES HALL, BIOMEDICAL SCIENCES, ST. JOHNS LAB, ASTRONOMY FACILITIES, BILGER HALL, WATANABE HALL, AND HAMILTON LIBRARY (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN		5	
		CONSTRUCTION		55	
		TOTAL FUNDING	PED	60 C	C
93.	257E	ENERGY CONSERVATION MODIFICATIONS, PHASE IIIE			
		DESIGN AND CONSTRUCTION OF A/C CONTROLS AND MONITORING SYSTEM FOR AHU'S AT BIOMEDICAL SCIENCES BUILDING (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN		3	
		CONSTRUCTION		27	
		TOTAL FUNDING	PED	30 C	C
94.	257F	ENERGY CONSERVATION MODIFICATIONS, PHASE IIIF			
		DESIGN AND CONSTRUCTION OF A/C CONTROLS AND MONITORING SYSTEM FOR AHU'S AT AGRICULTURAL SCIENCES, PHASE IIA (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN		5	
		CONSTRUCTION		55	
		TOTAL FUNDING	PED	60 C	C
95.	257G	ENERGY CONSERVATION MODIFICATIONS, PHASE IVA			
		DESIGN AND CONSTRUCTION OF CHILLED WATER LOOP AND MICROCOMPUTER CONTROLS AT KELLER HALL/PHYSICAL SCIENCES BUILDING (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			

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		CONSTRUCTION			214
		TOTAL FUNDING	PED	C	235 C
96.	257H	ENERGY CONSERVATION MODIFICATIONS, PHASE IVB			
		DESIGN AND CONSTRUCTION OF MICROCOMPUTER CONTROLS AT SAKAMAKI HALL (TO SUPPLEMENT THE FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			5
		CONSTRUCTION			55
		TOTAL FUNDING	PED	C	60 C
97.	257I	ENERGY CONSERVATION MODIFICATIONS, PHASE IVC			
		DESIGN AND CONSTRUCTION OF MICROCOMPUTER CONTROLS AT BUSINESS ADMINISTRATION BUILDING (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			3
		CONSTRUCTION			32
		TOTAL FUNDING	PED	C	35 C
98.	257J	ENERGY CONSERVATION MODIFICATIONS, PHASE IVD			
		DESIGN AND CONSTRUCTION OF MICROCOMPUTER CONTROLS AT LAW SCHOOL (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			4
		CONSTRUCTION			41
		TOTAL FUNDING	PED	C	45 C
99.	257K	ENERGY CONSERVATION MODIFICATIONS, PHASE IVE			
		DESIGN AND CONSTRUCTION OF MICORCOMPUTER CONTROLS AT PORTEUS HALL (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			3
		CONSTRUCTION			32
		TOTAL FUNDING	PED	C	35 C
100.	257L	ENERGY CONSERVATION MODIFICATIONS, PHASE IVF			
		DESIGN AND CONSTRUCTION OF CAMPUS-WIDE NIGHT LIGHTS REPLACEMENT (TO SUPPLEMENT FEDERAL/STATE MATCHING FUNDS FOR ENERGY CONSERVATION MEASURES).			
		DESIGN			9
		CONSTRUCTION			81
		TOTAL FUNDING	PED	C	90 C

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101.	273A	SAKAMAKI HALL, VENTILATION OF VAULT, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF VENTILATION SYSTEM FOR VAULT ON THE GROUND FLOOR OF SAKAMAKI HALL FOR ADMISSIONS AND RECORDS OFFICE.			
		DESIGN		3	
		CONSTRUCTION		12	
		TOTAL FUNDING	AGS	15 C	C
102.	273B	KOREAN STUDIES CENTER, AIR CONDITIONING OF THIRD FLOOR, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF AIR CONDITIONING SYSTEM FOR THE THIRD FLOOR OF THE KOREAN STUDIES CENTER.			
		DESIGN		13	
		CONSTRUCTION		75	
		TOTAL FUNDING	AGS	88 C	C
103.	273C	KELLER HALL RENOVATIONS FOR COMPUTER ROOMS, MANOA CAMPUS			
		DESIGN, CONSTRUCTION AND EQUIPPING OF RENOVATIONS TO SECOND FLOOR OF KELLER HALL FOR COMPUTER ROOMS.			
		DESIGN		21	
		CONSTRUCTION		130	
		EQUIPMENT		30	
		TOTAL FUNDING	AGS	181 C	C
104.	273D	BUSINESS ADMIN COMPLEX, AIR CONDITIONING SYSTEM FOR COMPUTER ROOMS, MANOA			
		DESIGN AND CONSTRUCTION OF AIR CONDITIONING SYSTEM FOR COMPUTER ROOMS IN E TOWER OF THE BUSINESS ADMINISTRATION COMPLEX.			
		DESIGN		10	
		CONSTRUCTION		58	
		TOTAL FUNDING	AGS	68 C	C
105.	273E	ORVIS AUDITORIUM, REFURBISHING, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF MINOR REFURBISHING TO ORVIS AUDITORIUM IN THE MUSIC COMPLEX			
		DESIGN		8	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	48 C	C

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106.	273F	STUDENT HEALTH CENTER, COMPLETE AIR CONDITIONING SYSTEM, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF COMPLETION OF AIR CONDITIONING SYSTEM AT THE STUDENT HEALTH CENTER.			
		DESIGN			17
		CONSTRUCTION			100
		TOTAL FUNDING	AGS	C	117 C
107.	273G	MILLER HALL, AIR CONDITIONING ROOMS 1, 2, 3, AND 3A, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF AIR CONDITIONING SYSTEM FOR ROOMS 1, 2, 3, AND 3A IN MILLER HALL FOR THE DEPARTMENT OF HUMAN RESOURCES.			
		DESIGN			8
		CONSTRUCTION			47
		TOTAL FUNDING	AGS	C	55 C
108.	273H	WEBSTER HALL, AIR CONDITIONING FOR COMPUTER ROOMS, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF AIR CONDITIONING SYSTEM FOR COMPUTER ROOMS FOR THE SCHOOL OF NURSING.			
		DESIGN			3
		CONSTRUCTION			12
		TOTAL FUNDING	AGS	C	15 C
109.	273I	MARINE SCIENCES BUILDING, REPLACE AUDITORIUM SEATS, MANOA CAMPUS			
		REPLACEMENT OF SEATING IN TWO AUDITORIUMS IN THE MARINE SCIENCES BUILDING.			
		DESIGN			7
		CONSTRUCTION			75
		TOTAL FUNDING	AGS	C	82 C
110.	273J	HOLMES HALL, RENOVATION FOR ENGINEERING SHOP, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF RENOVATIONS TO THE GROUND FLOOR OF HOLMES HALL FOR ENGINEERING SHOP.			
		DESIGN			4
		CONSTRUCTION			20
		TOTAL FUNDING	AGS	C	24 C
111.	273K	STUDENT SERVICES BUILDING RENOVATIONS, MANOA CAMPUS			
		DESIGN, CONSTRUCTION AND EQUIPPING OF RENOVATIONS TO STUDENT SERVICES BUILDING.			
		DESIGN			8
		CONSTRUCTION			63

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		EQUIPMENT			8
		TOTAL FUNDING	AGS	C	79 C
112.	2731	SPEECH COMMUNICATIONS RESEARCH LABORATORY, MANOA CAMPUS			
		DESIGN, CONSTRUCTION AND EQUIPPING OF SPEECH COMMUNICATION RESEARCH LABORATORY FOR THE DEPARTMENT OF SPEECH.			
		DESIGN			4
		CONSTRUCTION			18
		EQUIPMENT			6
		TOTAL FUNDING	AGS	C	28 C
113.	274A	NEW TRANSFORMER, EWC-UHM-HECO SUBSTATION, MANOA CAMPUS			
		INSTALLATION OF NEW 10 MVA TRANSFORMER AT EWC-UHM-HECO SUBSTATION AND RELATED WORK.			
		DESIGN		100	
		CONSTRUCTION		1,564	
		TOTAL FUNDING	AGS	1,664 C	C
114.	274B	OLD SWIMMING POOL DEMOLITION, MANOA CAMPUS			
		DEMOLITION OF OLD SWIMMING POOL AT THE MAKAI MANOA CAMPUS.			
		DESIGN			13
		CONSTRUCTION			87
		TOTAL FUNDING	AGS	C	100 C
115.	274C	CRAWFORD HALL AREA, SITE IMPROVEMENTS, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF SITE IMPROVEMENTS IN THE CRAWFORD HALL AREA TO FACILITATE PEDESTRIAN CIRCULATION, TO IMPROVE HEALTH AND SAFETY, AND, TO ENHANCE THE AESTHETIC ENVIRONMENT.			
		DESIGN			15
		CONSTRUCTION			105
		TOTAL FUNDING	AGS	C	120 C
116.	274D	WATER SUPPLY SYSTEM IMPROVEMENTS, PHASE I, MANOA CAMPUS			
		DESIGN AND CONSTRUCTION OF PHASE I OF WATER SUPPLY SYSTEM IMPROVEMENTS TO PROVIDE IMPROVED FIRE PROTECTION, TO PROVIDE ADEQUATE AND RELIABLE WATER SUPPLY TO ALL FACILITIES, AND TO PROVIDE FOR MORE EFFICIENT MANAGEMENT OF WATER RESOURCES.			
		DESIGN			18
		CONSTRUCTION			132
		TOTAL FUNDING	AGS	C	150 C

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117. 274E CAMPUS-WIDE SECURITY SYSTEM IMPROVEMENTS, PHASE I, MANOA CAMPUS					
DESIGN AND CONSTRUCTION OF PHASE I OF CAMPUS-WIDE SECURITY SYSTEM IMPROVEMENTS INCLUDING ILLUMINATION, FENCING AND GATES AND ALARMS.					
		DESIGN			18
		CONSTRUCTION			112
		TOTAL FUNDING	AGS	C	130 C
UOH211 - INSTRUCTION - UOH, HILO					
118. 330 HAWAII CC RELOCATION, PHASE IIA UNIVERSITY OF HAWAII AT HILO					
DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR THE INCREMENTAL RELOCATION OF HAWAII COMMUNITY COLLEGE PROGRAMS TO THE UH HILO CAMPUS.					
		DESIGN			75
		CONSTRUCTION			3,403
		TOTAL FUNDING	AGS	C	3,478 C
119. 337 RENOVATION OF COLLEGE HALL C UNIVERSITY OF HAWAII AT HILO					
DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT TO IMPROVE COLLEGE HALL C TO PROVIDE NEW SPACE TO ACCOMMODATE CHANGING AND EXPANDING PROGRAMS.					
		DESIGN			10
		CONSTRUCTION			928
		EQUIPMENT			85
		TOTAL FUNDING	AGS	C	1,023 C
120. LH0007 UNIVERSITY OF HAWAII AT HILO					
DESIGN AND CONSTRUCTION FOR AQUACULTURE PROGRAM.					
		DESIGN			9
		CONSTRUCTION			90
		EQUIPMENT			1
		TOTAL FUNDING	AGS	100 C	C
UOH215 - STUDENT SERVICES - UOH, HILO					
121. STUDENT SERVICES - UNIVERSITY OF HAWAII, HILO					
UNIVERSITY OF HAWAII AT HILO, PURCHASE AND IMPROVEMENT OF APARTMENT BUILDINGS FOR STUDENT HOUSING.					
		DESIGN			1,200
		TOTAL FUNDING	AGS	800 C	C
			AGS	400 E	E

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UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE					
122.	A22	HONOLULU CC - HEAVY EQUIPMENT SHOP INCLUDING SITE DEVELOPMENT			
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT TO PROVIDE SHOPS, CLASSROOMS, SPECIALIZED FACILITIES AND OFFICES FOR THE DIESEL MECHANICS PROGRAMS AND PARKING LOT, INCLUDING GENERAL UTILITIES, STREET LIGHTING AND LANDSCAPING.			
		DESIGN		48	
		CONSTRUCTION		1,890	
		EQUIPMENT			360
		TOTAL FUNDING	AGS	1,938 C	360 C
123.		INSTRUCTION - HONOLULU COMMUNITY COLLEGE			
		RENOVATION OF BUILDING 803 TO MEET PROGRAM REQUIREMENTS AND PROVIDE FOR THE EXPANSION OF PROGRAMS.			
		DESIGN		92	
		CONSTRUCTION			1,500
		TOTAL FUNDING	AGS	92 C	1,500 C
UOH311 - INSTRUCTION - KAPIOLANI COMMUNITY COLLEGE					
124.	B31	KAPIOLANI CC, DIAMOND HEAD - BUILDINGS A, C AND SITE PREPARATION			
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR DEVELOPING FACILITIES INCLUDING SITE WORK, ROADWAYS, UTILITIES AND BUILDINGS.			
		EQUIPMENT		936	
		TOTAL FUNDING	AGS	936 C	C
125.	B32	KAPIOLANI CC, DIAMOND HEAD - BLDGS F, G AND SITE PREP., INCL. ROADWAY IMPRVMENTS			
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR DEVELOPING FACILITIES INCLUDING SITE WORK, ROADWAYS, UTILITIES, AND BUILDINGS.			
		DESIGN		15	
		CONSTRUCTION		9,334	
		EQUIPMENT		861	
		TOTAL FUNDING	AGS	10,210 C	C

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UOH501 - INSTRUCTION - MAUI COMMUNITY COLLEGE					
126.	MO9	MAUI COMMUNITY COLLEGE - NURSING LABORATORY AND LEARNING SKILLS LABORATORY			
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR LABORATORIES, CLASSROOMS, SPECIAL CLASSROOMS, OFFICES AND SUPPORT SPACES FOR THE NURSING AND LEARNING SKILLS PROGRAMS.			
		DESIGN		81	
		CONSTRUCTION			1,921
		EQUIPMENT			384
		TOTAL FUNDING	AGS	81 C	2,305 C
UOH505 - INSTITUTIONAL SUPPORT - MAUI COMMUNITY COLLEGE					
127.	M-83A	MAUI CC - ENERGY CONSERVATION MEASURES - POWER FACTOR CORRECTORS			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CONVERSION, MODIFICATIONS AND IMPROVEMENTS TO EXISTING FACILITIES FOR ENERGY CONSERVATION INCLUDING THE INSTALLATION OF ELECTRICAL POWER FACTOR CORRECTORS.			
		DESIGN		2	
		CONSTRUCTION		28	
		TOTAL FUNDING	PED	30 C	C
128.	M-83B	MAUI CC - ENERGY CONSERVATION MEASURES - ENERGY MANAGEMENT CONTROL SYSTEM			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CONVERSION, MODIFICATIONS AND IMPROVEMENTS TO EXISTING FACILITIES FOR ENERGY CONSERVATION INCLUDING THE INSTALLATION OF A COMPUTERIZED ENERGY LOAD MANAGEMENT SYSTEM.			
		DESIGN		15	
		CONSTRUCTION		85	
		TOTAL FUNDING	PED	100 C	C
UOH903 - INSTITUTIONAL SPPT - UOH, SYSTEM-WIDE SPPT					
129.	529A	REMOVAL, ENCAPSULATION & ENCL OF ASBESTOS MATERIALS, STATEWIDE, UH, PHASE VIA			
		DESIGN AND CONSTRUCTION OF REMOVAL OF ASBESTOS MATERIALS AT AUXILIARY SERVICES BUILDING.			
		DESIGN		1	
		CONSTRUCTION		39	
		TOTAL FUNDING	AGS	40 C	C

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130.	529B	REMOVAL, ENCAPSULATION & ENCL OF ASBESTOS MATERIALS, STATEWIDE, UH, PHASE VIB			
		DESIGN AND CONSTRUCTION OF REMOVAL OF ASBESTOS MATERIALS AT KELLER HALL.			
		DESIGN		1	
		CONSTRUCTION		129	
		TOTAL FUNDING	AGS	130 C	C
131.	529C	REMOVAL, ENCAPSULATION & ENCL OF ASBESTOS MATERIALS, STATEWIDE, UH, PHASE VIC			
		DESIGN AND CONSTRUCTION OF REMOVAL OF ASBESTOS MATERIALS AT MOORE HALL.			
		DESIGN		2	
		CONSTRUCTION		228	
		TOTAL FUNDING	AGS	230 C	C
132.	529D	REMOVAL, ENCAPSULATION & ENCL OF ASBESTOS MATERIALS, STATEWIDE, UH, PHASE VID			
		DESIGN AND CONSTRUCTION OF REMOVAL OF ASBESTOS MATERIALS AT PHYSICAL SCIENCES BUILDING.			
		DESIGN		1	
		CONSTRUCTION		99	
		TOTAL FUNDING	AGS	100 C	C
CULTURE AND RECREATION					
LNR801 - HISTORICAL AND ARCHAEOLOGICAL PLACES					
1.	F10	STATEWIDE HISTORIC PRESERVATION PROGRAM			
		PLANNING, APPRAISAL AND ACQUISITION OF SIGNIFICANT SITES THREATENED BY DEVELOPMENT.			
		LAND		50	
		TOTAL FUNDING	LNR	50 C	C
2.	F12	RUSSIAN FORT			
		RESTORATION OF RUSSIAN FORT ELIZABETH, A NATIONAL HISTORICAL LANDMARK. INCLUDING INCREMENTAL PLANNING AND RESTORATION, STABILIZATION, CONSTRUCTION AND INTERPRETIVE FEATURES INCLUDING PUBLIC ACCESS AND USE OF THE FACILITIES.			
		DESIGN		20	
		CONSTRUCTION			200
		TOTAL FUNDING	LNR	20 C	200 C

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
3.	F13	LAPAKAHI NORTH KOHALA STATE PARK COMPLEX			
		LAND ACQUISITION, PLANNING, RESEARCH AND INCREMENTAL DEVELOPMENT OF THE NORTH KOHALA ARCHAEOLOGICAL AND HISTORIC SITES WHICH OFFERS AN OPPORTUNITY FOR PUBLIC INTERPRETATION OF EARLY HAWAIIAN FISHING AND FARM SYSTEM. OTHER FEATURES INCLUDE KAMEHAMEHA'S BIRTHPLACE, MOOKINI HEIAU AND OTHER FEATURES IN THE AREA.			
		PLANS		50	50
		LAND		25	
		TOTAL FUNDING	LNR	75 C	50 C
4.	F14	KEALAKEKUA BAY			
		INCREMENTAL ACQUISITION, PLANNING, RESEARCH AND DESIGN FOR A PARK COMPRISING THE MOST IMPORTANT HISTORIC AND ARCHAEOLOGIC PLACE IN THE ENTIRE STATE, PLANNING AND RESEARCH WILL BE FOLLOWED BY PARK DEVELOPMENT, CONTINUED RESEARCH AND INTERPRETIVE FACILITIES.			
		PLANS		25	
		LAND		50	
		DESIGN		25	
		CONSTRUCTION			500
		TOTAL FUNDING	LNR	100 C	500 C
5.	F15	ROYAL MAUSOLEUM-NUUANU PETROGLYPHS			
		PLANS AND RESEARCH OF SITE INCLUDING INTERPRETATION OF HISTORIC AND ARCHAEOLOGIC VALUES, RESTORATION OF CRYPT, LANDSCAPING AND OTHER IMPROVEMENTS.			
		PLANS		10	
		DESIGN		40	
		CONSTRUCTION			400
		TOTAL FUNDING	LNR	50 C	400 C
6.	F18	STATE CAPITOL			
		LANDSCAPING, INCLUDING REPLACEMENT OF SPRINKLER SYSTEM AND LAWN IMPROVEMENT.			
		DESIGN		20	
		CONSTRUCTION		200	
		TOTAL FUNDING	LNR	220 C	C
7.	F21	HALEKII-PIHANA HEIAU			
		PLANNING AND RESEARCH FOR ARCHAEOLOGICAL FEATURES AND THEIR INTERPRETATION, LANDSCAPING, STABILIZATION, RESTORATION AND CONSTRUCTION OF INTERPRETIVE FACILITIES AS DETERMINED BY PLANNING.			
		PLANS		5	
		DESIGN		5	

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION			100
		TOTAL FUNDING	LNR	10 C	100 C
8.	F23	PUU O MAHUKA HEIAU			
		RESEARCH AND INTERPRETATION OF EXISTING PARK-LANDSCAPING IMPROVEMENT. LAND ACQUISITION TO MAINTAIN THE INTEGRITY OF THE SITE.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		75	75
		TOTAL FUNDING	LNR	85 C	75 C
9.	F24	ULU PO HEIAU			
		PLANS/RESEARCH-INTERPRETATION OF EXISTING PARK AND PROPOSED LAND ACQUISITION FOR STATE PARK/PRESERVATION PURPOSES.			
		PLANS		50	
		DESIGN			50
		TOTAL FUNDING	LNR	50 C	50 C
10.	F25	WASHINGTON PLACE			
		REPLACE EXISTING EQUIPMENT SHED. THE RESPONSIBILITIES OF THIS PROJECT ARE CURRENTLY LIMITED TO THE GROUNDS AND ASSOCIATED FACILITIES.			
		DESIGN			5
		CONSTRUCTION			50
		TOTAL FUNDING	LNR	C	55 C
11.	H18	KAMOA POINT ARCHAEOLOGICAL COMPLEX			
		PLANNING; ARCHAEOLOGICAL RESEARCH, STABILIZATION, RESTORATION AND INTERPRETATION; DEVELOPMENT AND PROTECTION.			
		PLANS		30	
		DESIGN		30	
		CONSTRUCTION		100	
		TOTAL FUNDING	LNR	160 C	C
CCA701 - HAWAII PUBLIC BROADCASTING					
12.	HPBA05	HPBA STATEWIDE INTERACTIVE, CLOSED-CIRCUIT EDUCATIONAL TELEVISION SYSTEM			
		CONSTRUCT HPBA STATEWIDE, INTERACTIVE, CLOSED-CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING "INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION.			
		PLANS		80	
		LAND		46	

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		DESIGN		234	
		CONSTRUCTION			256
		EQUIPMENT			3,630
		TOTAL FUNDING	AGS	360 C	3,886 C

LNR804 - FOREST RECREATION

13. D02 FOREST TRAILS

TRAILS ARE CLEARED ON AN INCREMENTAL BASIS. TRAILS ARE AT LEAST TWO FEET WIDE AND CLEARED FOR EASY ACCESS. TRAILS PROVIDE: REMOTE OUTDOOR RECREATION OPPORTUNITIES, ACCESS FOR CONTROL OF FIRE AND PESTS, ROUTE FOR RESCUE OPERATIONS, ETC.

PLANS		5	5
DESIGN		8	4
CONSTRUCTION		129	87
TOTAL FUNDING	LNR	142 C	96 C

14. D-03 FOREST SHELTERS

DEVELOP SELECTED SITES TO PROVIDE A PLACE FOR WILDERNESS PICNICKING, RESTING, AND CAMPING. MAY INCLUDE ANY OF THE FOLLOWING: TRAIL SHELTER UNITS WITH TABLE OR COMFORT STATION, ETC.

PLANS		4	3
DESIGN		2	
CONSTRUCTION		28	17
TOTAL FUNDING	LNR	34 C	20 C

LNR806 - PARKS RECREATION

15. F09 AHUKINI PIER

DESIGN AND CONSTRUCTION OF RESTROOM, LIGHTING AND ASSOCIATED UTILITIES AS NEEDED.

DESIGN			50
TOTAL FUNDING	LNR	C	50 C

16. F27 HEEIA STATE PARK

PLANNING AND DEVELOPMENT OF MATSON POINT, AS A MAJOR PARK AND EDUCATIONAL/ CULTURAL CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

PLANS		25	
CONSTRUCTION		10	
TOTAL FUNDING	LNR	35 C	C

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17. F30 NUUANU PALI STATE PARK					
IMPROVEMENTS FOR EXISTING LOOKOUT AREA, INCLUDING INTERPRETATIVE FACILITIES. PARK EXPANSION TO INCLUDE THE AREA BETWEEN THE PALI GOLF COURSE AND THE EXISTING OVERLOOK.					
		DESIGN			6
		CONSTRUCTION			60
		TOTAL FUNDING	LNR		66 C
18. F32 IAO VALLEY STATE PARK					
INCREMENTAL DEVELOPMENT PER MASTER PLAN LIGHTING AND IMPROVEMENT OF WATER AND SEWAGE SYSTEMS, INCLUDING BRINGING ELECTRICAL POWER TO THE PARK. STREAM CHANNEL IMPROVEMENTS.					
		PLANS			10
		DESIGN			10
		CONSTRUCTION			
		TOTAL FUNDING	LNR	20 C	150
					150 C
19. F33 WAILUKU RIVER STATE PARK					
DEVELOPMENT OF LANDSCAPING, LOOKOUTS, TRAILS, PICNICKING AND OTHER FACILITIES; DEVELOPMENT OF AN INTERPRETIVE MASTER PLAN AND MANAGEMENT PLAN.					
		PLANS			
		DESIGN			10
		CONSTRUCTION			50
		TOTAL FUNDING	LNR	60 C	50 C
20. F34 LAVA TREE STATE MONUMENT					
LAND ACQUISITION TO PROTECT THE INTEGRITY OF THE EXISTING PARK FROM PROBABLE URBAN ENCROACHMENT. REPLACE RESTROOM. INSTALL WATER SYSTEM AND GENERALLY REFURBISH PARK AND INTERPRETIVE PLANNING/MANAGEMENT PLANNING FOLLOWED BY INTERPRETIVE PROGRAM.					
		DESIGN			10
		CONSTRUCTION			
		TOTAL FUNDING	LNR	10 C	150
					150 C
21. F37 DIAMOND HEAD					
ANTICIPATED IMPROVEMENTS INCLUDE TRAIL DEVELOPMENT, PARKING, LANDSCAPING, AND INTERPRETIVE PROGRAM. EXPANSION OF RESTROOM AND OTHER NEEDS. ADDITIONAL PLANNING AND PARK BOUNDARY SURVEY IS REQUIRED.					
		LAND			40
		DESIGN			8
		CONSTRUCTION			80
		TOTAL FUNDING	LNR	128 C	
					C

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22.	F38	HANAUMA BAY			
		DEVELOP A MANAGEMENT PLAN FOR MANAGING NATURAL RESOURCES AND PUBLIC USE AND REVIEW FACILITY NEEDS. DESIGN AND CONSTRUCT NEEDED IMPROVEMENTS.			
		PLANS		10	
		DESIGN		15	
		CONSTRUCTION		25	
		TOTAL FUNDING	LNR	50 C	C
23.	F46	KOKEE/WAIMEA CANYON COMPLEX			
		INCLUDES KOKEE AND WAIMEA CANYON STATE PARKS. CONTINUED PARK DEVELOPMENT AND REPLACEMENT OF OLDER FACILITIES, MASTER PLAN FOR THE IMPROVEMENT AND MANAGEMENT OF THE PARK. ADDITION OF INTERPRETIVE FACILITIES INCLUDES POSSIBLE RENOVATION OR DEMOLITION OF EXISTING RECREATION CABINS ON LEASED LOTS WHEN LEASES EXPIRE			
		DESIGN		60	20
		CONSTRUCTION		600	200
		TOTAL FUNDING	LNR	660 C	220 C
24.	F48	KEAIWA HEIAU STATE RECREATION AREA			
		IMPROVEMENTS, AND RECONSTRUCTION OF PARK FACILITIES.			
		DESIGN		15	
		CONSTRUCTION			150
		TOTAL FUNDING	LNR	15 C	150 C
25.	F50	WAHIAWA FRESH WATER PARK			
		INCREMENTAL DEVELOPMENT OF FRESH WATER PARK PER MASTER PLAN.			
		DESIGN		5	
		CONSTRUCTION		30	
		TOTAL FUNDING	LNR	35 C	C
26.	F51	MAKIKI-TANTALUS STATE PARK			
		INCREMENTAL DEVELOPMENT PER MASTER PLAN. RENOVATIONS AND IMPROVEMENTS TO EXISTING PUU UALAKAA AREA.			
		DESIGN		25	
		CONSTRUCTION			250
		TOTAL FUNDING	LNR	25 C	250 C
27.	F53	KALOPA STATE RECREATION AREA			
		IMPROVE AND PAVE ROADWAYS AND PARKING AREAS. DEVELOP NATURE TRAILS, GENERAL RENOVATIONS AND IMPROVEMENTS.			
		DESIGN		10	
		CONSTRUCTION		160	
		TOTAL FUNDING	LNR	170 C	C

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28. F54 WAILUA RIVER STATE PARK					
LAND ACQUISITION OF INHOLDINGS. ARCHAEOLOGICAL-BIOLOGICAL RESEARCH, DEVELOPMENT OF INTERPRETIVE PROGRAM AND FACILITIES ACCORDING TO MASTER PLAN INCL. FERN GROTTTO, LYDGATE BEACH MARINA AND OTHER AREAS ALONG WAILUA RIVER. UPDATE MASTER PLAN AND PROVIDE MANAGEMENT PLAN. RECONSTRUCTION OF PARK FACILITIES.					
		DESIGN		2	10
		CONSTRUCTION		20	115
		TOTAL FUNDING	LNR	22 C	125 C
29. F55 WAIANAPANAPA STATE PARK					
INCREMENTAL ACQUISITION AND DEVELOPMENT OF MAJOR PARK WITH OUTSTANDING SCENIC AND HISTORIC VALUES INCLUDING PICNIC AREAS, CAMPGROUND AND LOW COST VACATION FACILITIES. DEVELOPMENT AND MANAGEMENT OF THE PARK, ROAD RECONSTRUCTION AND LIGHTING.					
		LAND DESIGN		10	20
		CONSTRUCTION		200	
		TOTAL FUNDING	LNR	210 C	20 C
30. F57 KAHANA VALLEY STATE PARK					
INCREMENTAL DEVELOPMENT INCLUDING HISTORIC RESTORATION, WATER FEATURES AND OTHER RECREATION AND CULTURAL AND HERITAGE OPPORTUNITIES PER MASTER PLAN AND ADOPTED PROPOSALS FOR HISTORICAL, ENVIRONMENTAL, CULTURAL INTERPRETATION/ EDUCATION PROGRAMS. PLANNING AND RESEARCH BY ADVISORY BOARD AND OTHERS.					
		PLANS DESIGN		50	
		CONSTRUCTION		50	
		TOTAL FUNDING	LNR	100 C	C
31. F58 WAILOA RIVER STATE RECREATION AREA					
INCREMENTAL DEVELOPMENT OF MAJOR RECREATION AREA INCLUDING LANDSCAPING PER MASTER PLAN. REVIEW/UPDATE MASTER PLAN. LAND ACQUISITION FOR NEW PARK ENTRANCE. REPLACEMENT-EXPANSION OF EXISTING FACILITIES.					
		DESIGN		25	
		CONSTRUCTION		300	
		TOTAL FUNDING	LNR	325 C	C

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32. F59 HANA ROAD STATE WAYSIDES					
		PARKWAY DEVELOPMENT AND PLANTINGS, GRADING AND PAVING OF PARKING AREAS, AND IMPROVEMENTS TO WAYSIDES. REPLACE AND IMPROVE WATER AND SEWAGE SYSTEMS.			
		DESIGN			15
		CONSTRUCTION			160
		TOTAL FUNDING	LNR	C	175 C
33. F60 PALAAU STATE PARK					
		INCREMENTAL DEVELOPMENT OF MAJOR SCENIC PARK INCLUDING PICNIC, CAMPING AND INTERPRETIVE PROGRAM. CONSTRUCT STORAGE BUILDING.			
		DESIGN			5
		CONSTRUCTION			55
		TOTAL FUNDING	LNR	C	60 C
34. F61 WAAHILA RIDGE STATE RECREATION AREA					
		INCREMENTAL DEVELOPMENT OF A WOODED RECREATION AREA FOR PICNICKING, CAMP GROUND, TRAIL HEAD, AND SUPPORTING FACILITIES. REFURBISH EXISTING FACILITIES AS NEEDED.			
		DESIGN			15
		CONSTRUCTION			150
		TOTAL FUNDING	LNR		165 C
35. F64 MAUNA KEA RECREATION COMPLEX					
		PLAN, DESIGN AND IMPROVE EXISTING FACILITIES AT POHAKULOA.			
		DESIGN			10
		CONSTRUCTION			100
		TOTAL FUNDING	LNR		110 C
36. F67 POLI POLI SPRINGS STATE RECREATION AREA					
		PLAN TO ENLARGE THIS MOUNTAIN PARK. REPLACE EXISTING WATER TANK AND RESTROOMS. PROVIDE ADDITIONAL OVERNIGHT ACCOMMODATIONS AND REGRADE/PAVE THE PARK ENTRANCE ROAD.			
		PLANS			20
		DESIGN			5
		CONSTRUCTION			50
		TOTAL FUNDING	LNR		55 C
37. F69 MANUKA STATE WAYSIDE					
		INTERPRETIVE PROGRAM FOR EXISTING WAYSIDE PARK WITH A PLANT COLLECTION IN A KIPUKA. DEVELOP A NEW WATER SYSTEM, RESTROOM AND WIDEN ENTRANCE ROAD.			

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		PLANS			30
		DESIGN		25	
		CONSTRUCTION		250	
		TOTAL FUNDING	LNR	275 C	30 C
38. F70 SAND ISLAND STATE RECREATION AREA					
INCREMENTAL DEVELOPMENT OF BEACH PARK, PLANS AND CONSTRUCTION, INCLUDING DESIGN AND CONSTRUCTION OF A FISHING PIER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.					
		DESIGN		20	12
		CONSTRUCTION		800	120
		TOTAL FUNDING	LNR	820 C	132 C
39. F71 WAIMANALO BAY STATE RECREATION AREA					
INCREMENTAL DEVELOPMENT OF BEACH PARK FOR CAMPING AND PICNICKING.					
		DESIGN		10	
		CONSTRUCTION		50	50
		TOTAL FUNDING	LNR	60 C	50 C
40. F72 KAENA POINT STATE PARK					
INCREMENTAL ACQUISITION OF PRIVATE LANDS, DEVELOPMENT OF BEACH PARKS FROM MAKUA TO MOKULEIA. ALSO INCLUDES FUNDS FOR TEMPORARY MANAGEMENT OF SHORELINE AREAS TO CONTROL EXISTING PUBLIC USE. INCLUDES UPLAND PEACOCK FLATS AREA AS PER MASTER PLAN.					
		LAND			20
		DESIGN		30	
		CONSTRUCTION		300	
		TOTAL FUNDING	LNR	330 C	20 C
41. F73 MAKENA-LAPEROUSE STATE PARK					
INCREMENTAL ACQUISITION OF LAND AS PER CONCEPTUAL PLAN. PROTECTION OF ARCHAEOLOGICAL AND BIOLOGICAL FEATURES. INCREMENTAL DEVELOPMENT TO INCLUDE INTERPRETATION OF THESE FEATURES AS WELL AS TO PROVIDE FACILITIES FOR RECREATION OPPORTUNITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.					
		LAND			20
		DESIGN		25	
		CONSTRUCTION			250
		TOTAL FUNDING	LNR	25 C	270 C

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42.	F74	HAENA BEACH STATE PARK			
		INCREMENTAL DEVELOPMENT OF HISTORIC AND RECREATION OPPORTUNITIES INCLUDING PLANNING, RESEARCH, DESIGN AND CONSTRUCTION OF FACILITIES AND INTERPRETIVE PROGRAMS.			
		PLANS		25	25
		DESIGN		25	
		CONSTRUCTION			250
		TOTAL FUNDING	LNR	50 C	275 C
43.	F75	HAPUNA BEACH STATE PARK			
		PLANS AND CONSTRUCTION, INCLUDING ACQUISITION OF LAND, IN WAILEA BAY AREA AS PER MASTER PLAN.			
		LAND			20
		TOTAL FUNDING	LNR	C	20 C
44.	F77	MACKENZIE STATE PARK			
		REPLACEMENT OF OLDER FACILITIES AS NEEDED.			
		DESIGN		10	
		CONSTRUCTION		100	
		TOTAL FUNDING	LNR	110 C	C
45.	F78	POLIHALE STATE PARK			
		INCREMENTAL DEVELOPMENT OF EXISTING BEACH PARK. PLANS AND RENOVATION, RELOCATION OR REMOVAL OF EXISTING FACILITIES IN UNSTABLE SAND DUNE AREAS.			
		PLANS		10	
		TOTAL FUNDING	LNR	10 C	C
46.	F80	NA PALI COAST STATE PARK			
		PROVISION OF CAMPING, AND HIKING FACILITIES. PROTECTION AND INTERPRETATION OF HISTORIC AND ARCHAEOLOGICAL SITES, MANAGEMENT FACILITIES FOR WILDERNESS TYPE PARK RESEARCH OF CULTURAL AND NATURAL FEATURES, AND PLANNING FOR THE MANAGEMENT OF THESE FEATURES AND PUBLIC USE OF THE AREA.			
		PLANS			25
		DESIGN			10
		CONSTRUCTION			100
		TOTAL FUNDING	LNR	C	135 C

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47.	F81	PAPALAUA-KAANAPALI WAYSIDES & BEAUTIFICATION				
		INCREMENTAL DEVELOPMENT AND RENOVATION OF WAYSIDE PARKS AND BEAUTIFICATION OF SCENIC HIGHWAY FROM UKUMEHAME TO KAAANAPALI. EXISTING PARKS INCLUDE WAHIKULI, PAPALAUA AND LAUNIUPOKO WAYSIDES				
		DESIGN			10	
		CONSTRUCTION			100	
		TOTAL FUNDING	LNR		110 C	C
48.	F83	AIEA BAY				
		BACKGROUND INVESTIGATION AND PLANNING FOR CONVERSION OF AIEA BAY INTO "RAINBOW BAY-A KOKUA CONCEPT" AS REQUESTED BY THE PEARL HARBOR TASK FORCE. FUNDING INCLUDED FOR ANTICIPATED DEVELOPMENT OF LAND AREA BORDERING AIEA BAY FOR PUBLIC ACCESS. MAXIMUM OF 40 ACRES AVAILABLE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.				
		DESIGN			30	
		TOTAL FUNDING	LNR		30 C	C
49.	F85	AINA MOANA STATE RECREATION AREA				
		IMPROVEMENTS TO EXISTING PARK INCLUDING ADDITIONAL LANDSCAPING, AND COMPLETION OF STORAGE BUILDING.				
		DESIGN			3	
		CONSTRUCTION			15	
		TOTAL FUNDING	LNR		18 C	C
50.	F88	KAIKA POINT				
		DEVELOPMENT OF BEACH PARK AT KAIKA AS PER MASTER PLAN. INCLUDES PLAN ALTERATIONS FOR A MAINTENANCE BUILDING AND OVERFLOW PARKING AREA.				
		DESIGN			15	
		CONSTRUCTION			160	
		TOTAL FUNDING	LNR		175 C	C
51.	H45	SACRED FALLS STATE PARK				
		PLANS AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT OF PARK FACILITIES AS PER MASTER PLAN.				
		DESIGN				10
		CONSTRUCTION				500
		TOTAL FUNDING	LNR		C	510 C

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52. H47 KONA AIRPORT PARK					
INCREMENTAL DESIGN AND CONSTRUCTION FOR SHORELINE PARK DEVELOPMENT AS DETERMINED BY MASTER PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.					
		PLANS			5
		DESIGN			10
		CONSTRUCTION			50
		TOTAL FUNDING	LNR		65 C
53. H70 MALAEKAHANA BEACH PARK					
PLANNING FUNDS FOR RETAINING OR AMENDING MASTER PLAN, RESEARCH, INTERPRETIVE PLANNING AND STUDIES, DEVELOPMENT DESIGN AND CONSTRUCTION AS DETERMINED BY PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT. INCLUDES POSSIBLE RENOVATION OF EXISTING IMPROVEMENTS FOR PARK PURPOSES.					
		PLANS			25
		DESIGN			60
		CONSTRUCTION			125
		TOTAL FUNDING	LNR		210 C
TRN801 - OCEAN-BASED RECREATION					
54. O10 KEEHI BOAT HARBOR, OAHU					
DESIGN AND INSTALLATION OF ELECTRICAL OUTLETS AND RELATED IMPROVEMENTS.					
		DESIGN			5
		CONSTRUCTION			180
		TOTAL FUNDING	TRN		185 D
55. O20 ALA WAI BOAT HARBOR IMPROVEMENTS, OAHU					
LIGHTING SYSTEM MODIFICATIONS, BERTHING FACILITIES, UTILITIES AND OTHER IMPROVEMENTS.					
		DESIGN			55
		CONSTRUCTION			175
		TOTAL FUNDING	TRN		230 D
56. 030 HEEIA-KEA BOAT HARBOR, OAHU					
EXPANSION AND IMPROVEMENTS TO HEEIA-KEA BOAT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.					
		PLANS			60
		TOTAL FUNDING	TRN		60 D

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57.	O40	HALEIWA BOAT HARBOR, OAHU			
		BERTHING FACILITIES, LOADING DOCK, AND OTHER IMPROVEMENTS.			
		DESIGN		65	
		CONSTRUCTION			560
		TOTAL FUNDING	TRN	65 D	560 D
58.	01K	NAWILIWILI BOAT HARBOR, KAUAI			
		BERTHING FACILITIES, LOADING DOCK, PAVING, UTILITIES AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		720	
		TOTAL FUNDING	TRN	720 D	D
59.	01S	STATEWIDE IMPROVEMENTS TO BOATING FAC.			
		IMPROVEMENTS TO EXISTING BOAT HARBORS AND BOAT REFUGE AREAS.			
		DESIGN		10	10
		CONSTRUCTION		90	90
		TOTAL FUNDING	TRN	100 D	100 D
60.	02H	HONOKOHAU BOAT HARBOR, HAWAII			
		INCREMENTAL DEVELOPMENT OF HONOKAHAU BOAT HARBOR INCLUDING BERTHING FACILITIES AND BACKUP AREA IMPROVEMENTS.			
		DESIGN		70	
		CONSTRUCTION			645
		TOTAL FUNDING	TRN	70 D	645 D
61.	02S	STATEWIDE SEWAGE SYSTEM IMPROVEMENT TO BOATS FAC.			
		INCREMENTAL DEVELOPMENT OF SEWAGE SYSTEM FOR BOATING FACILITIES AND OTHER IMPROVEMENTS.			
		DESIGN		60	
		CONSTRUCTION			465
		TOTAL FUNDING	TRN	60 D	465 D
62.	13K	KIKIAOLA BREAKWATER RECONSTRUCTION			
		RECONSTRUCTION OF DAMAGED BREAKWATER AND OTHER IMPROVEMENTS.			
		DESIGN		50	
		CONSTRUCTION		410	
		TOTAL FUNDING	TRN	460 C	C
63.	13M	IMPROVEMENTS TO MAALAEA BOAT HARBOR, MAUI			
		PAVING, LIGHTING, ELECTRICAL FACILITIES AND OTHER IMPROVEMENTS.			
		DESIGN		15	

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		CONSTRUCTION			90		
		TOTAL FUNDING	TRN		105 D	D	
64.	240	ALA WAI BREAKWATER					
		RECONSTRUCTION OF ALA WAI BREAKWATER AND OTHER IMPROVEMENTS.					
		DESIGN			25		
		CONSTRUCTION			335		
		TOTAL FUNDING	TRN		360 C	C	
65.		RELOCATION OF THE VESSEL CARTHAGINIAN AT LAHAINA HARBOR					
		DESIGN AND CONSTRUCTION FOR RELOCATION OF THE HISTORIC VESSEL CARTHAGINIAN.					
		DESIGN			40		
		CONSTRUCTION			190		
		TOTAL FUNDING	TRN		230 C	C	
66.		PIER IMPROVEMENTS AT LAHAINA HARBOR					
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT LAHAINA HARBOR.					
		DESIGN			40		
		CONSTRUCTION			240		
		TOTAL FUNDING	TRN		280 D	D	
AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM							
67.	B68	CORROSION PROTECTION OF THE STRUCTURAL FRAMING ELEMENT					
		CLEAN, REPAIR, SANDBLAST, AND PAINT ALL BADLY CORRODED AREAS OF THE STRUCTURAL FRAMING ELEMENTS AND CORRECT THE PRIMARY CAUSES OF THE CONTINUING CORROSION.					
		DESIGN			150		
		CONSTRUCTION			2,202		
		TOTAL FUNDING	AGS		2,352 C	C	
68.	B87	RENOVATION OF ROOF AND OTHER MEMBERS OF ALOHA STADIUM					
		REPLACE ROOFING WITH IMPROVED ROOFING SYSTEM AND REPAIR, CLEAN AND PAINT OTHER CORRODED MEMBERS.					
		DESIGN				160	
		CONSTRUCTION				2,455	
		TOTAL FUNDING	AGS			2,615 C	
69.	B88	ALOHA STADIUM IMPROVEMENTS					
		RENOVATE RESTROOMS TO INCREASE WOMEN'S CAPACITY, IMPROVE SCOREBOARD COMPONENTS AND OTHER MISCELLANEOUS IMPROVEMENTS. (MEN'S RESTROOMS SHOULD NOT BE REDUCED.)					

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		DESIGN			150
		CONSTRUCTION			1,660
		TOTAL FUNDING	AGS	C	1,810 C
70.	B89	RENOVATION OF METAL DECK WITH CONCRETE TOPPING AT ALOHA STADIUM			
		REPLACEMENT OF EXISTING STRUCTURAL METAL DECKING AND CONCRETE TOPPING WITH IMPROVED DECKING SYSTEM FOR FIXED STANDS, PEDESTRIAN BRIDGES AND SPIRAL RAMPS.			
		DESIGN			130
		CONSTRUCTION			1,950
		TOTAL FUNDING	AGS	C	2,080 C
LNR809 - GENERAL ADMIN FOR CULTURE AND RECREATION					
71.	F05	SCORP (STATE COMPREHENSIVE OUTDOOR RECREATION PLAN)			
		CONTINUOUS UPDATING OF THE STATE COMPREHENSIVE OUTDOOR RECREATION PLAN TO QUALIFY FOR FEDERAL GRANTS UNDER THE LAND AND WATER CONSERVATION FUND. ALSO REFINE AND IMPLEMENT THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN AS PROVIDED IN CHAPTER 226, HAWAII REVISED STATUTES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		PLANS			100
		TOTAL FUNDING	LNR	C	50 C
			LNR	N	50 N
72.	H08	STATEWIDE FACILITIES FOR THE HANDICAPPED			
		CONSTRUCTION OF FACILITIES AND/OR RECONSTRUCTION OF EXISTING FACILITIES TO AID THE HANDICAPPED.			
		DESIGN			15
		CONSTRUCTION			150
		TOTAL FUNDING	LNR		165 C
73.	H09	STATEWIDE MINOR IMPROVEMENTS			
		MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO PARK FACILITIES.			
		DESIGN			10
		CONSTRUCTION			100
		TOTAL FUNDING	LNR		110 C

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PUBLIC SAFETY					
SOC403 - KULANI CORRECTIONAL FACILITY					
1. CD8504 KCF CONSTRUCT RESIDENTIAL & PROGRAM FACILITIES					
PLAN, DESIGN, CONSTRUCT & EQUIP PROGRAM & RESIDENTIAL FACILITIES TO ACCOMMODATE THE EXPANSION OF POPULATION AT KULANI CORRECTIONAL FACILITY.					
		PLANS		8	
		DESIGN		52	
		CONSTRUCTION			270
		EQUIPMENT			24
		TOTAL FUNDING	AGS	60 C	294 C
2. CD8507 KULANI CORRECTIONAL FACILITY LIGHTING					
PLAN, DESIGN, CONSTRUCT AND EQUIP A COMPOUND LIGHTING SYSTEM FOR THE KULANI CORRECTIONAL FACILITY.					
		PLANS		3	
		DESIGN		16	
		CONSTRUCTION		40	
		EQUIPMENT		48	
		TOTAL FUNDING	AGS	107 C	C
SOC404 - WAIAWA CORRECTIONAL FACILITY					
3. CD8505 WAIAWA CORRECTIONAL FACILITY					
CONVERT EXPAND THE WAIAWA MILITARY RESERVATION (INCLUDES BUILDINGS, TUNNEL, AND OTHER IMPROVEMENTS) INTO A CORRECTIONAL FACILITY WHICH WILL PROVIDE INMATE CARE, EDUCATION WORK TRAINING, AGRICULTURAL, AND OTHER CORRECTIONAL PROGRAMS.					
		PLANS		50	
		DESIGN		325	
		CONSTRUCTION			2,500
		EQUIPMENT			280
		TOTAL FUNDING	AGS	375 C	2,780 C
SOC405 - HAWAII COMMUNITY CORRECTIONAL CENTER					
4. CD8506 HAWAII ISC/CCC PROGRAM					
PLAN, DESIGN, CONSTRUCT AND EQUIP EXPANDED FACILITIES AT HAWAII COMMUNITY CORRECTIONAL CENTER. INCLUDES A JAIL IN WEST HAWAII.					
		PLANS		25	
		DESIGN		185	
		CONSTRUCTION			1,615
		EQUIPMENT			150
		TOTAL FUNDING	AGS	210 C	1,765 C

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SOC407 - OAHU COMMUNITY CORRECTIONAL CENTER				
5.	CD8503 OAHU CCC FOOD SERVICES			
	RENOVATE AND EXPAND THE FOOD SERVICES PROGRAM AT THE OAHU CCC.			
	DESIGN		32	84
	CONSTRUCTION		216	563
	EQUIPMENT		200	300
	TOTAL FUNDING	AGS	448 C	947 C
SOC410 - HALAWA MEDIUM SECURITY FACILITY				
6.	HALAWA MEDIUM SECURITY FACILITY			
	CONSTRUCTION OF ADDITIONAL FACILITIES TO HOUSE 248 MORE INMATES, AND COMPLETE CORRECTIONAL PROGRAM SERVICES.			
	CONSTRUCTION		11,500	
	TOTAL FUNDING	AGS	11,500 C	C
SOC493 - GENERAL ADMINISTRATION-CONFINEMENT				
7.	8203 HALAWA MEDIUM SECURITY FACILITY EQUIPMENT			
	EQUIP THE RESIDENTIAL AND PROGRAM SUPPORT FUNCTIONS AT THE HALAWA MEDIUM SECURITY FACILITY TO PROVIDE FOR RESIDENTIAL SECURITY AND CORRECTIONAL PROGRAM SERVICES. (FUNDS SHOULD NOT BE USED FOR COLOR TELEVISION SETS AND OTHER ITEMS NOT QUALIFYING FOR CIP FUNDS.)			
	EQUIPMENT		3,000	
	TOTAL FUNDING	AGS	3,000 C	C
LNR810 - PREVENTION OF NATURAL DISASTERS				
8.	J02 HALAWA STREAM DREDGING			
	PLANS AND CONSTRUCTION OF IMPROVEMENTS TO HALAWA STREAM INCLUDING CLEARING AND DISPOSAL OF DREDGED MATERIAL. FUNDS TO BE SUPPLEMENTED BY \$1,000,000 FROM CITY AND COUNTY OF HONOLULU AND OTHERS.			
	DESIGN		300	
	CONSTRUCTION			3,700
	TOTAL FUNDING	LNR	300 C	2,700 C
		LNR	S	1,000 S

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DEF110 - AMELIORATION OF PHYSICAL DISASTERS

9. A18 ARMY NATIONAL GUARD ARMORY, PAHALA, HAWAII

PLANNING AND CONSTRUCTION OF A SPECIAL DESIGNED ARMORY FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, AND INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

DESIGN			200	
CONSTRUCTION			1,300	
TOTAL FUNDING	AGS		580 C	C
	AGS		920 N	N

10. A19 ARMY NATIONAL GUARD ARMORY, KOHALA, HAWAII

PLANNING AND CONSTRUCTION OF A SPECIAL DESIGN ARMORY FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, AND INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.

DESIGN			200	
CONSTRUCTION			1,300	
TOTAL FUNDING	AGS		580 C	C
	AGS		920 N	N

11. A29 ADDITIONAL IMPROVEMENTS AT THE DEPTL ADMIN BLDG & 100-MAN ARMORY, & ENGR OFF

PLANNING AND CONSTRUCTION OF ADDITIONAL IMPROVEMENTS AT THE DEPARTMENTAL ADMINISTRATION BUILDING AND 100-MAN ARMORY FOR PROVIDING FACILITIES FOR THE JOINT STAFF OF THE ADJUTANT GENERAL'S OFFICE, THE RECRUITING AND RETENTION OFFICE, AND THE HAWAII AREA COMMAND TO INCLUDE ADMINISTRATIVE SPACE, PARKING, LANDSCAPING, FENCING, AND OTHER IMPROVEMENTS. RELOCATION OF ENGINEERING OFFICE.

EQUIPMENT			20	
TOTAL FUNDING	AGS		20 C	C

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12.	A31 ADDITIONAL IMPROVEMENTS TO NATIONAL GUARD ARMORIES			
	PLANNING AND CONSTRUCTION OF ADDITIONAL IMPROVEMENTS AT ALL NATIONAL GUARD ARMORIES TO UPGRADE FACILITIES TO CONFORM TO CURRENT NATIONAL GUARD BUREAU STANDARDS AND CRITERIA AND TO MEET OTHER UNIT REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
	DESIGN		30	30
	CONSTRUCTION		125	125
	TOTAL FUNDING	AGS	155 C	155 C
13.	A33 ARMY NATIONAL GUARD ARMORY, KAUNAKAKAI, MOLOKAI, HAWAII			
	PLANNING AND CONSTRUCTION OF A SPECIAL DESIGNED PERMANENT NATIONAL GUARD ARMORY FACILITY TO INCLUDE ALL UTILITIES, ACCESS ROAD, PARKING AREAS, AND OTHER SUPPORTING FEATURES REQUIRED FOR OCCUPANCY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
	DESIGN		120	
	CONSTRUCTION			1,500
	TOTAL FUNDING	AGS	50 C	600 C
		AGS	70 N	900 N
14.	A37 ARMY NATIONAL GUARD ARMORY, WAILUKU, MAUI			
	PLANNING AND CONSTRUCTION OF A MAJOR RENOVATION TO EXISTING FACILITY, INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
	DESIGN			190
	TOTAL FUNDING	AGS	C	80 C
		AGS	N	110 N
15.	A39 ARMY NATIONAL GUARD ARMORY, HANAPEPE, KAUAI			
	RELOCATION AND RENOVATION OF ORIGINAL ARMORY WITH ADDITION OF A SPECIAL DESIGNED ARMORY FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
	DESIGN		220	

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		CONSTRUCTION		2,000	
		TOTAL FUNDING	AGS	850 C	C
			AGS	1,370 N	N
16.	A41	MODIFICATION OF HAWCOM EMERGENCY OPERATING CENTER			
		DESIGN AND RENOVATION OF PRESENT HAWCOM EMERGENCY OPERATING CENTER IN BATTERY 407, DIAMOND HEAD CRATER, TO PROVIDE MINIMUM ESSENTIAL FACILITIES FOR HAWCOM OPERATIONS FOR MILITARY SUPPORT TO CIVIL DEFENSE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		DESIGN		76	
		CONSTRUCTION		600	
		TOTAL FUNDING	AGS	676 C	C
17.	C12	UPGRADE OF DISASTER WARNING AND COMMUNICATION DEVICES STATEWIDE			
		INCREMENTAL UPGRADE OF CIVIL DEFENSE DISASTER WARNING AND COMMUNICATIONS DEVICES STATEWIDE DUE TO INADEQUATE WARNING COVERAGE OF MANY 20+ YR OLD EXISTING DEVICES. THIS IS A CONTINUING PROGRAM FROM YEAR TO YEAR. ALSO THE RENOVATION AND/OR UPGRADE OF DAMAGED DEVICES FROM NATURAL AND/OR MAN-MADE DISASTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		18	18
		CONSTRUCTION		380	380
		TOTAL FUNDING	AGS	210 C	210 C
			AGS	190 N	190 N
18.	C13	ADDITIONAL DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE			
		INCREMENTAL INSTALLATION OF ADDITIONAL CIVIL DEFENSE DISASTER WARNING SIRENS, OTHER WARNING DEVICES AND COMMUNICATIONS EQUIPMENT, STATEWIDE, TO EXPAND THE COVERAGE OF WARNING SYSTEM TO KEEP PACE WITH NEW DEVELOPMENTS, GROWTH OF COMMUNITIES & POPULATION SHIFTS. THIS IS A CONTINUING PROGRAM FROM YEAR TO YEAR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		38	38

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		CONSTRUCTION		460	460
		TOTAL FUNDING	AGS	270 C	270 C
			AGS	230 N	230 N
19.	C17	ADDITIONAL IMPROVEMENTS FOR BIRKHIMER EMERGENCY OPERATING CENTER			
		PLANNING AND CONSTRUCTION OF ADDITIONAL IMPROVEMENTS AT BIRKHIMER EMERGENCY OPERATING CENTER FOR WHICH FUNDS WERE NOT AVAILABLE IN THE ORIGINAL CONSTRUCTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		80	
		EQUIPMENT		70	
		TOTAL FUNDING	AGS	150 C	C
GOVERNMENT-WIDE SUPPORT					
GOV100 - OFFICE OF THE GOVERNOR					
1.	GO1	PROJECT ADJUSTMENT FUND			
		TO ESTABLISH A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT (TO BE EXPENDED BY OFFICE OF THE GOVERNOR).			
		DESIGN		3,000	3,000
		TOTAL FUNDING	GOV	3,000 C	3,000 C
PED103 - STATEWIDE PLAN AND COORDINATION					
2.	HCD001	KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT, OAHU			
		PLANS, LAND, DESIGN AND CONSTRUCTION FUNDS FOR PLANNING AND DEVELOPMENT OF THE KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT. MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.			
		PLANS		10	
		LAND		10	
		DESIGN		10	
		CONSTRUCTION		16,970	
		TOTAL FUNDING	PED	17,000 C	C
AGS221 - CONSTRUCTION					
3.	A39	KAUNAKAKAI CIVIC CENTER			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A NEW STATE OFFICE BUILDING TO ACCOMMODATE VARIOUS AGENCIES.			
		DESIGN			200
		TOTAL FUNDING	AGS	C	200 C

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4.	A48	LIHUE MAINT. & SERVICE FACILITIES			
		PLANNING, DESIGN, AND CONSTRUCTION OF MAINTENANCE AND SERVICE FACILITIES FOR DAGS PROGRAMS.			
		PLANS			10
		TOTAL FUNDING	AGS	C	10 C
5.	A52	HILO MAINT. AND SVC COMPLEX			
		SITE SELECTION, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A MAINTENANCE AND SERVICE COMPLEX FOR THE HILO AREA.			
		LAND			20
		TOTAL FUNDING	AGS	C	20 C
6.	A53	MOLOKAI MAINT. AND SERVICE FACILITY			
		PLANNING, LAND ACQUISITION, DESIGN AND DEVELOPMENT OF A MULTI-AGENCY MAINTENANCE FACILITY WITH SHOP AND STORAGE FACILITIES.			
		PLANS		16	10
		LAND		10	30
		TOTAL FUNDING	AGS	26 C	40 C
7.	A56	MAKAI PARKING GARAGE			
		DESIGN AND CONSTRUCT A PARKING STRUCTURE ON LOT A TO SERVICE THE STATE OFFICE BUILDINGS IN THE AREA. PROJECT TO INCLUDE LANDSCAPING, DEMOLITION, TEMPORARY ALTERNATIVE PARKING AREAS AND RELATED SERVICES DURING CONSTRUCTION, AND OFFICE SPACE IN THE STRUCTURE.			
		CONSTRUCTION		2,080	
		TOTAL FUNDING	AGS	2,080 D	D
8.	B27	ADVANCED PLANNING STATEWIDE			
		PROVIDE ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO PUBLIC WORKS DIVISION. IT INCLUDES THE PREPARATION OF REPORTS, STUDIES, INVENTORIES, REVIEWS AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.			
		PLANS		140	140
		TOTAL FUNDING	AGS	140 C	140 C
9.	B28	REMODELING STATE OFFICE BUILDINGS			
		DESIGN AND CONSTRUCTION OF REMODELING AND UPGRADING STATE OFFICE BUILDINGS, STATEWIDE. THIS PROJECT WILL SUPPLEMENT FUNDS FROM ACT 1/81, ITEM K-10 ALSO INCLUDES EQUIPMENT. RENOVATION OF SPACE IN THE OLD FEDERAL COURTHOUSE BUILDING IS INCLUDED.			

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		DESIGN		65	70
		CONSTRUCTION		425	450
		EQUIPMENT		30	35
		TOTAL FUNDING	AGS	520 C	555 C

10. B41 STATE CAPITOL IMPROVEMENTS AND RENOVATIONS

IMPROVEMENTS TO THE BUILDING SYSTEMS INCLUDING AIR CONDITIONING, OFFICE RENOVATIONS, POOL IMPROVEMENTS, AND OTHER FACILITIES IMPROVEMENTS AND RENOVATIONS FOR THE STATE CAPITOL.

DESIGN		118	50
CONSTRUCTION		965	700
TOTAL FUNDING	AGS	1,083 C	750 C

11. B57 KALANIMOKU BUILDING A/C IMPROVEMENT

THIS PROJECT INCLUDES THE MODIFICATIONS TO THE KALANIMOKU BUILDING'S AIR CONDITIONING SYSTEM TO INCLUDE THE REPLACEMENT OF CHILLERS, COOLING TOWERS, IMPROVEMENTS TO AIR DISTRIBUTION SYSTEM, THE MODIFICATION OF CONTROLS AND THE INSTALLATION OF AN ENERGY MANAGEMENT AND CONTROL SYSTEM.

CONSTRUCTION		220	
TOTAL FUNDING	AGS	220 C	C

12. B58 WAILUKU COURT BUILDINGS RENOVATION

RENOVATING THE EXSISTING CIRCUIT AND DISTRICT COURT BUILDINGS INCLUDING MINOR RENOVATIONS TO THE WAILUKU STATE OFFICE BUILDING FOR OFFICE USE BY VARIOUS STATE AGENCIES.

CONSTRUCTION		1,007	
EQUIPMENT		50	
TOTAL FUNDING	AGS	1,057 C	C

13. B59 KEKAULUOHI BUILDING, AIR CONDITIONING

REPLACE AIR CONDITIONING EQUIPMENT COMPONENTS SUBJECT TO FREQUENT REPAIRS, AND ADD NEW AIR CONDITIONING SYSTEM FOR THE BASEMENT ARCHIVES STORAGE.

CONSTRUCTION		546	
TOTAL FUNDING	AGS	546 C	C

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				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
14.	B77	KEKUANAOA BUILDING RENOVATION, PHASE 4			
		DESIGN AND CONSTRUCT ALTERATIONS FOR NEW OCCUPANTS OF SPACE VACATED BY THE JUDICIARY IN THE KEKUANAOA BUILDING. PROJECT INCLUDES RENOVATION AND REMODELING OF BASEMENT FOR OFFICE USE AND OTHER MISC. TIE-INS WITH THE BUILDINGS ELECTRICAL HVAC, EMCS, AND OTHER SYSTEMS.			
		CONSTRUCTION		520	
		TOTAL FUNDING	AGS	520 C	C
15.	B79	HALE AUHAU, RENOVATION AND REMODELING			
		PLAN, DESIGN, AND CONSTRUCT BUILDING RENOVATIONS TO MODERNIZE HALE AUHAU. INCLUDES DEMOLITION AND RENOVATION OF A.C., LIGHTING, ELECTRICAL, AND MECHANICAL SYSTEMS TO CORRECT EXSISTING DEFICIENCIES AND FOR ENERGY EFFICIENCY. HANDICAPPED FACILITIES AND BUILDING ALTERATIONS FOR NEW OCCUPANTS WILL ALSO BE CONSTRUCTED. INCLUDES CONNECTION TO EMCS.			
		PLANS		20	
		DESIGN		309	
		CONSTRUCTION			4,015
		EQUIPMENT			15
		TOTAL FUNDING	AGS	329 C	4,030 C
16.	B80	WASHINGTON PLACE IMPROVEMENTS			
		DESIGN AND CONSTRUCTION TO CORRECT CURRENT CODE DEFICIENCIES AND GROUND WATER SEEPAGE. INCLUDES DEMOLITION, MAJOR REWIRING, CONSTRUCTION OF A NEW STAIRWAY, DRAINAGE SYSTEM, UPGRADED ROOFING SYSTEM, AND MISC. STRUCTURAL AND COSMETIC WORK AS NECESSARY.			
		DESIGN		54	
		CONSTRUCTION		319	
		TOTAL FUNDING	AGS	373 C	C
17.	B82	CIVIC CENTER COMMUNICATION DUCTLINES, MAUKA AREA, E.M.C.S.			
		CONSTRUCT COMMUNICATION DUCTLINES BETWEEN LILUOKALANI BUILDING, KINAU HALE, THE CAPITOL BUILDING, AND THE KALANIMOKU BUILDING FOR DATA TRANSMISSION.			
		DESIGN		21	
		CONSTRUCTION		154	
		TOTAL FUNDING	AGS	175 C	C

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)		
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F	
18.	B83	KINAU HALE ENERGY MONITORING AND CONTROL SYSTEM				
		DESIGN AND INSTALLATION OF ENERGY MONITORING AND CONTROL SYSTEM TO MONITOR AND CONTROL LIGHTING AND AIR CONDITIONING EQUIPMENT FOR ENERGY CONSERVATION.				
		DESIGN			12	
		CONSTRUCTION			105	
		TOTAL FUNDING	PED		117 C	C
19.	B84	KAMAMALU CEILING AND AIR CONDITIONING RENOVATION (ASBESTOS REMOVAL)				
		THE PROJECT WILL ELIMINATE THE ASBESTOS PRESENT IN THE CEILINGS WITHIN THE KAMAMALU BUILDING. THE A.C. DISTRIBUTION SYSTEM WILL BE IMPROVED AND NEW ACOUSTICAL CEILING AND LIGHTING WILL BE INSTALLED TO REPLACE THE EXSISTING SYSTEM DEMOLISHED DURING ASBESTOS REMOVAL.				
		DESIGN			97	
		CONSTRUCTION				1,593
		TOTAL FUNDING	AGS		97 C	1,593 C
20.	B85	MAKAI ACCESS RAMP FOR THE CAPITOL BUILDING				
		DESIGN AND CONSTRUCTION OF A MAKAI ACCESS RAMP FOR THE CAPITOL BUILDING.				
		DESIGN			5	
		CONSTRUCTION			40	
		TOTAL FUNDING	AGS		45 C	C
21.	B86	ASBESTOS HAZARD IDENTIFICATION IN STATE BUILDINGS				
		IDENTIFY ASBESTOS HAZARDS IN DAGS BUILDINGS - CONDUCT STUDY OF EACH AFFECTED BUILDING, EVALUATE THE DANGER LEVEL WHERE ASBESTOS IS PRESENT, RECOMMEND THE TYPE OF REMEDIAL ACTION NECESSARY, ESTIMATE COST OF REMEDIAL WORK. INCLUDES PORTION OF DESIGN COST.				
		DESIGN				200
		TOTAL FUNDING	AGS		C	200 C
22.	B91	RECORDS STORAGE CENTER EXPANSION AT SHAFTER FLATS, OAHU, HAWAII				
		DESIGN AND CONSTRUCT ADDITIONAL BUILDING AREA FOR RECORDS STORAGE. INCLUDES PRELIMINARY FOUNDATION WORK AS REQUIRED, OFF-SITE IMPROVEMENTS, LANDSCAPING, PAVING, AND OTHER WORK NECESSARY TO COMPLETE THE PROJECT.				
		DESIGN			150	
		CONSTRUCTION				1,500

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
		EQUIPMENT			80
		TOTAL FUNDING	AGS	150 C	1,580 C
23.	B93	ARCHIVE STORAGE IMPROVEMENTS, SHAFTER FLATS			
		PROVIDE TEMPERATURE AND HUMIDITY CONTROL FOR STORAGE OF FILM RECORDS. PROJECT INCLUDES A.C. OR REFRIGERATION EQUIP., ENCLOSURES, INSTALLATION, ELECTRICAL, MECHANICAL, AND STRUCTURAL WORK, AND ALL OTHER ITEMS NECESSARY TO COMPLETE THE WORK. (DESIGN AND CONSTRUCTION)			
		DESIGN		21	
		CONSTRUCTION		169	
		TOTAL FUNDING	AGS	190 C	C
24.	B97	WASHINGTON PLACE TURN-AROUND AND LANDSCAPING IMPROVEMENTS (MAUKA ENTRY)			
		CONSTRUCT A TURN-AROUND ON MILLER STREET AT WASHINGTON PLACE. INCLUDES DEMOLITION, LANDSCAPING OF A PORTION OF THE WASHINGTON PLACE FRONTAGE AND DRIVEWAY, RECONSTRUCTION AND REPAVING OF PORTIONS OF MILLER STREET.			
		DESIGN		25	
		CONSTRUCTION			146
		TOTAL FUNDING	AGS	25 C	146 C
25.	B98	LILIUOKALANI BUILDING ADDITION AND RENOVATION, AND AIR CONDITIONING			
		DESIGN AND CONSTRUCTION OF AN EXTENSION TO THE LILIUOKALANI BUILDING, RENOVATION OF EXISTING AREAS, AND UPGRADING THE AIR CONDITIONING SYSTEM.			
		PLANS		40	
		DESIGN			215
		TOTAL FUNDING	AGS	40 C	215 C
26.	C04	LEEWARD CIVIC CENTER			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A CIVIC CENTER FACILITY AT A SITE TO BE SELECTED IN WAIPAHU.			
		PLANS		50	
		LAND		1,530	
		DESIGN			370
		CONSTRUCTION		225	
		TOTAL FUNDING	AGS	1,580 C	595 C

CAPITAL IMPROVEMENT PROJECTS

State of Hawaii

Item No.	Capital No.	Project Title	Expending Agency	Appropriations (In 000's)	
				Fiscal M Year O 1985-86 F	Fiscal M Year O 1986-87 F
27.	B66	CIVIC CENTER IRRIGATION SYSTEM, MAUKA AREA			
		PLAN, DESIGN, AND CONSTRUCT A DISTRIBUTION SYSTEM FOR CAPROCK WATER (BRACKISH) FOR IRRIGATION USE IN THE STATE CAPITOL COMPLEX. INCLUDES STUDY OF FEASIBILITY OF USING NON-POTABLE WELL WATER FOR IRRIGATION, WELL CONSTRUCTION, DESIGN AND CONSTRUCTION OF PUMPS AND DISTRIBUTION SYSTEM			
		PLANS		30	
		TOTAL FUNDING	AGS	30 C	C
28.	B78	SIGNAGE, SIDEWALKS AND LANDSCAPING IMPROVEMENTS, STATE CAPITOL DISTRICT			
		DESIGN AND CONSTRUCTION OF STANDARDIZED SIGNAGE AND WALKWAY AND CURB SYSTEMS OF THE STATE CAPITOL DISTRICT. INCLUDES: CONVERSION OF SELECTED SIDEWALKS, CURBS, PATHS, AND OTHER WALKS TO CREATE A STRONG SENSE OF PLACE AND TO IMPROVE THE OVERALL APPEARANCE OF THE CAPITOL DISTRICT. STANDARDIZATION OF SIGNS AND STREET FURNITURE AS NECESSARY AND LANDSCAPING OF VARIOUS AREAS WITHIN THE STATE CAPITOL IS ALSO INCLUDED.			
		DESIGN		40	
		TOTAL FUNDING	AGS	40 C	C

PART V. CAPITAL IMPROVEMENT PROVISIONS

SECTION 223. Part V, Act 285, Session Laws of Hawaii 1984 is amended to read:

“SECTION 83A. Provided that the general obligation bond funds appropriated to Tourism, Department of Planning and Economic Development (PED 113) for the Waikiki Improvement project, the City and County of Honolulu shall conduct a simulation in Waikiki of the sidewalk widening to demonstrate how all types of vehicles will adjust to the [narrowed lanes] project and to designated loading and unloading zones; provided further that the simulation shall occur before any contracts for the widening of the sidewalks are executed; provided further that the simulation be tested over a sufficient period of time to determine the impact of the proposed widening and to allow for public review and comment; provided further that the City and County of Honolulu shall submit a report twenty days before the convening of the [1985] 1986 Regular Session on the results of the simulation.”

SECTION 224. Section 80, Act 301, Session Laws of Hawaii 1983, is amended by amending Item No. H-5, for fiscal year 1983-84, to read as follows:

- “5. Replace HPBA transmitters, antenna, and HPBA01 feedlines. Replacement of KHET transmitter and antenna on Oahu, replacement of KMEB transmitter and feedlines on Maui.

Equipment	[250] 925		[250] 925
Total Funding	AGS 250 C	C	250 C
	AGS 675 N		675 N

SECTION 225. Act 285-84 Section 80, item K-5 is amended to read as follows:

State Office Building no. 2, phase II A40 AGS211 design and construct phase II of a new state office building in the Mililani mall block to include demolition, landscaping, and continuation of phase I.

	FY 1983-84	FY 1984-85	BIENNIUM 1983-85
PLANS			
DESIGN		<u>150</u>	<u>150</u>
CONSTRUCTION	[14,517]	<u>12,067</u>	[14,517] <u>12,067</u>
EQUIPMENT		<u>25</u>	<u>25</u>
TOTAL FUNDING AGS			
	[14,542]	<u>12,242C</u>	[14,542] <u>12,242C</u>

SECTION 226. Act 287, Session Laws of Hawaii, 1984, Section 2, Part I, Item C-1 is amended to read as follows:

1. [Hilo Iron Works,] County of Hawaii \$530,000

Planning, design, construction, renovation, and land purchase or lease of a facility for production, processing, and product development of agricultural, aquacultural, and marine products and other related uses in the State of Hawaii.

SECTION 227. Provided that the funds authorized for the Ala Wai breakwater reconstruction project (TRN 801) shall be expended only upon the federal emergency management administration's (FEMA) determination that the project qualifies for 75% FEMA funds based on a 75% FEMA/25% State matching ratio.

SECTION 228. Provided that the funds authorized for the Kikiaola breakwater reconstruction project (TRN 801) shall be expended only upon the federal emergency management administration's (FEMA) determination that the project qualifies for 75% FEMA funds based on a 75% FEMA/25% State matching ratio.

SECTION 229. Provided that the additional housing facilities to be constructed at Hale Pohaku for Mauna Kea Observatory personnel shall be made available to temporarily house the construction personnel for new telescopes.

SECTION 230. Provided that prior to expending funds appropriated for Polipoli Access Road improvement (LNR 402), the Chairman of the Board of Land and Natural Resources shall adopt rules to restrict the use of certain types of recreational vehicles determined to be inappropriate for this area, and shall provide means for the enforcement of this rule.

SECTION 231. Provided that of the general obligation bond fund appropriation for water resources development for agriculture (LNR 141), the sum of \$150,000 shall be used for the Halaula well development in north Kohala; provided further that the sum of \$300,000 shall be used for the Wailea-Hakalau water system improvement; provided further that the County of Hawaii shall match the appropriation on a dollar-for-dollar basis before the moneys are released by the governor.

SECTION 232. Provided that of general obligation bond funds appropriated to Honolulu harbor, department of transportation (TRN 301), in fiscal year 1986, \$1,000,000, or so much thereof as may be necessary, shall be expended for the dredging of Pearl Harbor, Oahu, Hawaii; provided further that the expenditure of this appropriation shall be contingent upon the United States Navy's commitment to homeport a battleship and its support vessels at Pearl Harbor; provided further that the department of transportation is authorized to contract with the appropriate federal agency, in which case the department of transportation shall be coordinating agency between the federal agency and the State and shall pay such sums as may be necessary to the federal agency.

SECTION 233. Provided that of the general obligation bond funds appropriated to the regular instruction program, department of education, (EDN 105), the sum of \$200,000 shall be expended for the construction and relocation costs of one portable two classroom building for the Wahiawa storefront school.

SECTION 234. Provided that of the general obligation bond fund appropriation for the Hawaii state hospital, department of health (HTH 430), facilities shall be provided for the continuance of the adolescent care program.

SECTION 235. Provided that of the general obligation bond fund appropriation for the halawa medium security facility, (SOC 410) the department of social services and housing shall include a closed intensity security unit (CISU) with appropriate recreational facilities, for the care of mentally ill detainees and offenders.

PART VI. ISSUANCE OF BONDS

SECTION 236. **GOVERNOR'S DISCRETIONARY POWERS.** Where it is deemed in the public interest of the State, the Governor, in his discretion, is authorized to use the state general fund to finance capital improvement projects authorized in this Act, where the method of financing is designated to be the general obligation bond fund.

SECTION 237. **AIRPORT REVENUE BONDS.** The Department of Transportation is authorized to issue airport revenue bonds for airport capital investment projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond fund with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital investments, plus, if so determined by the department and approved by the Governor, such additional amounts as may be necessary by the department to increase reserves for the airport revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned airport revenue bonds shall be issued pursuant to the provisions of Part III, Chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenue from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to Sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the

issuance of such airport revenue bonds shall to the extent not paid from the proceeds of such bonds be paid from the airport revenue fund. The Governor, in his discretion, is authorized to use the airport revenue fund to finance those projects in Part II where the method of financing is designated to be by airport revenue bond funds.

SECTION 239. HARBOR REVENUE BONDS. The Department of Transportation is authorized to issue harbor revenue bonds for harbor capital investment projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond fund with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital investments, plus, if so determined by the department and approved by the Governor, such additional amounts as may be necessary by the department to pay interest on such revenue bonds during the construction period and for six months thereafter, to establish, maintain, or increase reserves for the harbor revenue bonds to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of Part III, Chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall to the extent not paid from the proceeds of such bonds be paid from the harbor special fund. The Governor, in his discretion, is authorized to use the harbor revenue fund to finance those projects in Part II where the method of financing is designated to be by harbor revenue bond funds.

PART VII. SPECIAL PROVISIONS

SECTION 240. Sand Island income from other lands and facilities, other than those set aside for Harbors or Foreign Trade Zone purposes, shall be deposited into the general fund.

SECTION 241. Provided that if federal funds in the amounts designated under the Morrill-Nelson Bankhead-Jones Act, Hatch Act, and Smith-Lever Act are received in excess of the amounts authorized, then the general fund appropriations for Instruction-UOH, Manoa (UOH 101), Organized Research-UOH, Manoa (UOH 102), and Public Service-UOH Manoa (UOH 103), respectively, shall be reduced by the amounts such receipts exceed the federal funds authorized in each year of the fiscal biennium 1985-87.

SECTION 242. There is hereby appropriated out of the public trust fund created by Section 5(f) of the Admission Act (Public Law 86-3, 86th Congress), the total amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by Section 5(b) or later conveyed to the State by Section 5(e), with the exception of such proceeds covered under Section 171-19, Hawaii Revised Statutes, to be disposed of by the Board of Land and Natural Resources, and with the exception of such proceeds to be expended by the Office of Hawaiian Affairs under Chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in Part II of this Act to the Department of Education for the support of public schools, to the

extent such proceeds are realized for the period beginning July 1, 1985, to June 30, 1987. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

SECTION 243. All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 244. No appropriation authorized in this Act shall be considered to be a mandate, under Article VIII, Section 5 of the State Constitution, for a political subdivision to undertake new programs to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act falls within the provisions of Article VIII, Section 5 of the State Constitution, such authorization shall be void, and in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized under this Act in Part V shall be correspondingly decreased.

SECTION 245. In allotting funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the Legislature shall be allotted by the Department of Budget and Finance. For this purpose, agencies concerned shall reduce expenditures below appropriations as prescribed by the Department of Budget and Finance in the event actual population and workload trend is less than the specified figure. In the event that the caseload trend is higher than the specified figure or the reasonable average daily cost of medical care for the needy and medically needy exceeds the anticipated average sum per patient day, or the caseload trend or average payments for money assistance payments is higher than the specified figure, the Governor is authorized to utilize savings as may be available from any other state program for the purpose of meeting the additional expenses of the social welfare program of the Department of Social Services and Housing.

SECTION 246. With the approval of the Director of Finance, the Department of Health may transfer to the Department of Social Services and Housing funds appropriated to the Department of Health for the care and treatment of patients whenever the Department of Social Services and Housing can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents.

The Department of Social Services and Housing is authorized to enter into agreements with the Department of Health to furnish outpatient, hospital, and skilled nursing home care and to pay the Department of Health for such care. With the approval of the Director of Finance, the Department of Health may deposit part of such receipts into the appropriations from which transfers were made.

SECTION 247. Unless otherwise provided in this Act, the Governor is authorized to transfer funds between appropriations within an expending agency for operating purposes.

SECTION 248. Where a program is financed by the general fund as well as by a source of funding other than the general fund, the general fund appropriation shall be decreased to the extent that the amount received from the non-general fund source exceeds the amount approved in this Act from such

source; provided that such decrease of the general fund appropriation shall not jeopardize the receipt of the increased amount from the non-general fund source; provided further that the preceding requirements shall not apply if the excess receipts are to be expended for a purpose or purposes of the program approved by the Governor or the Director of Finance if so delegated by the Governor.

SECTION 249. For the fiscal biennium 1985-87, where a program is authorized under Part II of this Act to expend from a revolving, special, or trust fund, agencies responsible for such funds are authorized to expend so much as may be necessary to carry out the purpose of each such fund; provided that such expenditures in excess of the amount indicated in Part II are approved by the Governor or by the Director of Finance if so delegated by the Governor; provided further that such expenditure shall not exceed the amounts available in such funds.

SECTION 250. Any provision of law to the contrary notwithstanding, the Governor is authorized to utilize an appropriate portion of such sums included in the respective program appropriation in Part II of this Act for personal services, for salary increases for public officers and employees excluded from collective bargaining under Chapter 89, Hawaii Revised Statutes; provided that said increases shall be in conformance with Chapter 89C, Hawaii Revised Statutes.

SECTION 251. Where any agency is able to secure funds or other property from private organizations or individuals, to be expended or utilized in connection with any program authorized by this Act, the Governor or agency with the Governor's approval shall have the power to enter into each undertaking.

SECTION 252. In the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 253. Any law or any provisions of this Act to the contrary notwithstanding, the appropriations made for capital investment projects authorized in this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 1985-87 which are unencumbered as of June 30, 1988, shall lapse as of that date; provided further that the lapsing date shall not apply to projects necessary to qualify for federal aid financing and reimbursement as denoted in Section 20 which appropriations in its entirety the Legislature hereby determines are necessary to qualify for federal aid financing and reimbursement.

SECTION 254. The designated expending agency for capital investments authorized in this Act is authorized to delegate to other State or county agencies the implementation of such projects when it is determined by such agency that it is advantageous to do so.

SECTION 255. All general obligation bond funds used for highway, harbor, boating, airport, parking facilities, land development capital investment purposes, or economic development projects, designated by the letter (D), shall have the bond principal and interest reimbursed from the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the

parking special fund, the special land and development fund, or the economic development special fund, respectively. Bonds issued for irrigation projects shall be reimbursed, as provided by Section 174-21, Hawaii Revised Statutes.

The Governor is authorized to use, at his discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, or the economic development special fund to finance the respective highway, harbor, boating, airport, land development, or economic development projects authorized in this Act, where the method of financing is designated to be general obligation bond fund with debt service cost to be paid from special funds.

SECTION 256. Where county capital improvement projects are partially or totally funded by state grants-in-aid as authorized in this Act or any other act of the Legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 257. The negotiation for the purchase of land by state agencies shall be subject to the approval of the Governor. Private lands may be acquired for the purpose of exchange for federal lands when the Governor determines that such acquisition and exchange are necessary for the completion of any herein authorized projects.

SECTION 258. If general obligation bond proceeds have been allocated to an appropriation which may be satisfied from general obligation bond proceeds and the amount of such proceeds so allocated is in excess of the amount needed to satisfy such appropriation, the amount of such excess proceeds shall be transferred to a separate account and allocated to the satisfaction of other appropriations which may be satisfied from general obligation bond proceeds made in the same or any other act of the Legislature; provided that such allocations shall not be made subsequent to the lapsing date of June 30, 1988.

SECTION 259. In the event that the amount specified for a capital investment project listed in this Act is insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, or revenue bond fund, the Governor may make supplemental allotments from the special fund responsible for cash or debt service payments for the projects or transfer unrequired balances from other projects in this or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, or revenue bond fund; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established.

SECTION 260. The Governor may authorize the expenditure of funds for capital investment projects not previously authorized in this Act to cope with unemployment, unforeseen emergencies arising from elements such as fires and natural disasters and for any federal aid portion of any capital investment project described in this Act where application for such aid has been made and approval has been denied; provided that the unemployment, or such emergencies, or denial of federal aid create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the Governor shall use the project adjustment fund authorized in Part II and described in Part IV to accomplish the purposes of this section.

SECTION 261. General revenues of the State of Hawaii may be expended by the Governor to cope with unemployment and unforeseen emergencies arising from elements such as fires and natural disaster; provided that the unemployment, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the Governor may authorize an increase in repairs and maintenance activities on state facilities to alleviate the unemployment and cope with such emergencies. To accomplish the purpose of this section, the Governor is authorized to transfer to the Building, Repair and Alterations (AGS 233) and the Physical Plant Operations and Maintenance (AGS 807) Programs up to \$5,000,000 in savings as may be available from the appropriated funds of any program in this Act.

SECTION 262. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a capital investment project described in this Act, the Governor may authorize such reduction of project scope; provided that the scope of a project shall not be reduced merely because the appropriation for a project is insufficient.

SECTION 263. In releasing funds for projects, the Governor shall consider the legislative intent and the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 264. The designated expending agency for capital investments authorized in this Act is authorized to delegate to other state or county agencies the implementation of such projects when it is determined by such agency that it is advantageous to do so; provided further that a report of all delegations for the period ending December 31 of each calendar year shall be made to the first regular session of the legislature convened after such delegations have been made.

SECTION 265. Unrequired balances after the objectives of appropriations made in this Act for capital investment purposes from the general obligation bond fund have been met shall be transferred to the project adjustment fund appropriated in Part II and described in Part IV of this Act and shall be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 1988, as provided in Section 43 of this Act.

SECTION 266. In connection with all State park projects, the board of land and natural resources may use its present staff, summer student help, and such temporary personnel who shall be exempted from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed and are duly registered as unemployed with the department of labor and industrial relations. The board may upon approval of the governor, enter into contract for necessary equipment, supplies, materials, labor, professional service and technical assistance to be used in the projects. General funds shall be used for the purpose of this section.

SECTION 267. Provided that planning and design for the Hawaii Ocean Center (PED 102) shall to the extent practicable, consider the implications of this project and future Natatorium development projects, traffic flow and parking availability in the Kapiolani park area.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 268. MISCELLANEOUS. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the Legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 269. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the Governor is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the Legislature at its next session.

SECTION 270. EFFECTIVE DATE. This Act shall take effect on July 1, 1985.

(Approved June 12, 1985.)

A Bill for an Act Relating to Chapter 42.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 42-2, Hawaii Revised Statutes, is amended to read as follows:

“§42-2 **Qualifying standards for organizations.** Any organization applying for a grant, subsidy, or purchase of service agreement shall meet all of the following standards:

- (1) Be a profit organization incorporated under the laws of the State or a nonprofit organization determined to be exempt from the federal income tax by the Internal Revenue Service;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year’s experience with the project or in the program area for which the request is being made; [and] provided that the director may grant an exception where the organization applying for the contract has demonstrated the necessary experience in the program area; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

ACT 302

H.B. NO. 434

A Bill for an Act Relating to Domiciliary Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Regulation of adult family boarding home and care home. (a) For the purpose of regulation under a county’s life safety code, building code, fire code, or any other ordinance of similar purpose, a licensed adult family boarding home or licensed care home which provides living accommodations for:

- (1) The operator of the home and operator’s family; and
- (2) Up to five other persons, not more than two of whom are incapable of self-preservation because of age or physical or mental limitations;

shall be deemed a single-family dwelling occupied by a family.

(b) For the purpose of this section:

“Building code” means an ordinance the purpose of which is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures within the county’s jurisdiction and certain equipment specifically regulated by the ordinance.

“Fire code” means an ordinance adopted under section 132-3 or an ordinance intended to prescribe regulations consistent with recognized good practice for the safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials, and devices and from conditions hazardous to life or property in the use or occupancy of buildings or premises.

“Licensed adult family boarding home” means an adult family boarding home licensed under chapter 346, part IV.

“Licensed care home” means a care home licensed under section 321-15.6.

“Life safety code” means an ordinance the purpose of which is to establish minimum requirements that will provide a reasonable degree of safety from fire in buildings and structures.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 303

S.B. NO. 239

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-20, Hawaii Revised Statutes, is amended to read as follows:

“§237-20 Principles applicable in certain situations. A person or company having shareholders or members (a corporation, association, group, trust, partnership, joint adventure, or other person) is taxable upon its business with them, and they are taxable upon their business with it. A person or company, whether or not called a cooperative, through which shareholders or members are pursuing a common objective (for example, the obtaining of property or services for their individual businesses or use, or the marketing of their individual products) is a taxable person, and such facts do not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. The reimbursement of costs or advances made for or on behalf of one person by another shall not constitute gross income of the latter[, unless]. Where the person receiving such reimbursement also receives additional monetary consideration for making such costs or advances[.] such additional consideration shall constitute gross income.

Funds paid by a customer or the customer’s agent to a travel agent or tour packager for tickets or reservations for a particular tour or package of travel services or accommodations, or both, which are not transmitted to the persons or entities who are to furnish the tour or package of travel services or accommodations shall be presumed not to be part of the gross proceeds or gross income received or accrued by such persons or entities. This presumption may be rebutted by showing an agreement to the contrary.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to payments of general excise taxes under chapter 237, Hawaii Revised Statutes, after June 30, 1985.

(Approved June 12, 1985.)

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-1, Hawaii Revised Statutes, is amended by amending the definition of “health benefits plan” to read as follows:

“(8) “Health benefits plan” means (A) a group insurance contract or medical, hospital, prescribed drugs, vision, or dental service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of health, prescribed drugs, vision, or dental services as determined by the board; or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;”

SECTION 2. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

“§87-22 Determine health benefits plan; contract with carriers. The board of trustees shall determine the health benefits [plans,] plan, which shall be excepted from the minimum group requirements of chapter 431. The health benefits plan shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits [and], vision treatment and care, medical, and dental indemnity benefits.

The board may contract for the following health benefits plans; provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:

- (1) A statewide indemnity benefit plan under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services.
- (2) A statewide service benefit plan under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services, or, under certain conditions, payment is made by a carrier to an employee-beneficiary.
- (3) Health maintenance organization plans which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers.
- (4) A plan to offer dental benefits [to those children of employee-beneficiaries who have not attained the age of nineteen] through either [an] a statewide indemnity[,] plan, a statewide service benefit plan, or [a] health maintenance organization [plan.] plans.
- (5) A plan to offer prescription drug benefits through either a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or a combination thereof.
- (6) A plan to offer vision care benefits through either a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or a combination thereof.
- [5] (7) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in health benefit plans authorized in paragraphs (1) [through (4) of this section.] to (6)."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

ACT 305

H.B. NO. 101

A Bill for an Act Relating to an Office of Community Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER COMMUNITY SERVICES

§ -1 Findings and purpose. The State of Hawaii has long been a leader among the states in the development of progressive and innovative undertakings in behalf of its needy people. Securing the well-being of all of the State's needy citizens continues to be a policy concern deserving of the highest priority.

Yet, even as we commit a growing share of the State's resources to programs and services to assist the poor, the disadvantaged, refugees, immigrants, and other people in need, we must also ensure that government resources are used prudently, that tax dollars are not being expended in a wasteful or extravagant manner, and that the State recognizes changes in societal attitudes, values, and emphasis which have produced new issues requiring new approaches for their resolution.

The purpose of this chapter is to establish a new office, the office of community services, within the department of labor and industrial relations for administrative purposes, to replace the office of the progressive neighborhoods program, the Hawaii office of economic opportunity, the refugee resettlement program, and the state immigrant services center. The primary purposes of the new office are to facilitate and enhance the development, delivery, and coordination of effective programs for those in need and to provide advice and assistance to the agencies of the executive branch, other private agencies in the human services field, and the legislature. The establishment of the office of community services would:

- (1) Comply with requirements of the Hawaii State Constitution;
- (2) Improve the efficiency and effectiveness of the operations of the executive branch;
- (3) Improve the delivery of services to disadvantaged persons, refugees, and immigrants;
- (4) Fix responsibility and accountability for successfully carrying out programs, policies, and priorities of the office; and
- (5) Improve responsiveness to the needs of the people of Hawaii.

§ -2 Office of community services, establishment. (a) There is established within the department of labor and industrial relations, for administrative purposes only, an office of community services. The following shall be among the programs to be under the auspices of and coordinated through the office:

- (1) Progressive neighborhoods program;
- (2) Hawaii office of economic opportunity;
- (3) Refugee resettlement program; and
- (4) State immigrant services center.

(b) The head of the office shall be known as the executive director of the office of community services, hereinafter referred to as executive director. The executive director shall have: training and experience in the field of social work, education, public health, or related fields; direct experience in programs and services related to disadvantaged persons, refugees, or immigrants; and experience in a supervisory, consultative, or administrative capacity. The executive director shall be appointed by the governor without regard to chapters 76 and 77, and shall be compensated at a salary level no less than that of a second deputy. The executive director shall be included in any benefit program generally applicable to the officers and employees of the State.

§ -3 General functions, duties, and powers of the executive director. The executive director shall:

- (1) Serve as the principal official in state government responsible for the coordination of programs for the needy, poor, and disadvantaged persons, refugees, and immigrants;
- (2) Oversee, supervise, and direct the performance by subordinates of activities in such areas as planning, evaluation, and coordination of programs for disadvantaged persons, refugees, and immigrants and development of a statewide service delivery network;
- (3) Assess the policies and practices of public and private agencies impacting on the disadvantaged and conduct advocacy efforts on behalf of the disadvantaged, refugees, and immigrants;
- (4) Devise and recommend legislative and administrative actions for the improvement of services for the disadvantaged, refugees, and immigrants;
- (5) Serve as a member of advisory boards and panels of state agencies in such areas as child development programs, elderly programs, social services programs, health and medical assistance programs, refugee assistance programs, and immigrant services programs;
- (6) Administer funds allocated for the office of community services; and apply for, receive, and disburse grants and donations from all sources for programs and services to assist the disadvantaged, refugees, and immigrants;
- (7) Adopt, amend, and repeal rules pursuant to chapter 91 for purposes of this chapter;
- (8) Retain such staff as may be necessary for the purposes of this chapter, who shall be exempt from chapters 76 and 77;
- (9) Contract for such services as may be necessary for the purposes of this chapter;
- (10) Orient members of the advisory council to the goals, functions, and programs of the office; and
- (11) Seek the input of council members on all matters pertaining to the functions of the office.

§ -4 General duties of the office of community services. The office of community services shall:

- (1) Establish statewide goals and objectives relating to disadvantaged persons, refugees, and immigrants;
- (2) Study the facts concerning the needs of disadvantaged persons, refugees, and immigrants in the State through adequate research studies, such research to be carried on whenever possible through the departments or agencies of the state and county governments responsible for providing services in the fields of health, education, social welfare, employment, and related areas. Where such research cannot be done within such established agencies, it shall be carried out by this office or contracted by this office;
- (3) Review legislation pertaining to programs within the purview of the office and appropriations made for services to the disadvantaged, refugees, and immigrants, recommend revisions and additions needed, and report to the governor regarding such legislation;
- (4) Evaluate the availability, adequacy, and accessibility of all services for the disadvantaged, refugees, and immigrants within the State;
- (5) Assist and coordinate the efforts of all public and private agencies providing services which affect the disadvantaged, refugees, and immigrants including, without limitation to the generality of the foregoing, the department of health, the department of social

services and housing, the department of labor and industrial relations, and the department of education, and report such facts and the office's recommendations to the governor and to the legislature. The executive heads of all such departments and agencies shall make available to the office of community services such information as the office deems necessary for the effective discharge of its duties under this chapter;

- (6) Maintain contacts with local, state, and federal officials and public and private agencies concerned with planning for the disadvantaged, refugees, and immigrants; and
- (7) Encourage and foster local action in behalf of the disadvantaged, refugees, and immigrants.

§ -5 Advisory council for community services; composition and compensation. (a) There is established within the office of community services, the advisory council for community services, herein referred to as council, except as otherwise indicated. The council shall be composed of twelve members appointed by the governor subject to section 26-34, except as provided in this section. Members shall have had training, experience, or special knowledge concerning human services programs. Of the twelve members:

- (1) Four members shall be representatives of client groups served by the office of community services which shall include: one member from the client group previously served by the progressive neighborhood program; one member from the client group previously served by the Hawaii office of economic opportunity; one member from the client group previously served by the refugee resettlement program; and one member from the client group previously served by the state immigrant services center;
- (2) Two members shall be representatives of private organizations which are engaged in the planning or delivery of human services; and
- (3) Six members shall be from the general public, at least one representative from each county, provided that not more than three shall be from Oahu.

(b) Members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for performance of their duties.

§ -6 Council, duties. The council shall:

- (1) Advise the executive director, the governor, and the legislature on matters relating to programs and services for the disadvantaged, refugees, and immigrants;
- (2) Assist the executive director in determining program and policy needs and priorities for the State in establishing and implementing a comprehensive program for the disadvantaged, refugees, and immigrants in accordance with the goals and objectives expressed in this chapter;
- (3) Assist the executive director in formulating short-term and long-range goals for programs and services for the disadvantaged, refugees, and immigrants;
- (4) Assist the executive director in consulting with and seeking the opinion of the general public in relation to a comprehensive system of programs and services for the disadvantaged, refugees, and immigrants;

- (5) Assist the executive director in the evaluation of general and specific policies relating to the needs of the disadvantaged, refugees, and immigrants; and
- (6) Assist the executive director in encouraging both public and private agencies and programs to work toward the development and maintenance of a comprehensive and coordinated system for human services.

§ -7 Relationships with other departments and agencies and cooperation with office of community services. Every state department, county agency, or other public or private agencies providing programs and services to the disadvantaged, refugees, and immigrants shall be encouraged to actively work toward the goals and objectives established by the office of community services and to coordinate with the office of community services the development of its program plans. The executive heads of all such departments and agencies shall cooperate with the office of community services in providing information as the office deems necessary for the effective discharge of its duties. However, nothing contained in this chapter shall be deemed to delegate or detract in any way from the functions, powers, and duties prescribed by law for any other department or agency of this State or county, nor to terminate any existing contracts between such department or agency and any private organizations for the development or administration of programs or services to the disadvantaged, refugees, and immigrants. Notwithstanding that each county shall maintain maximum control over the development and administration of human service programs tailored to meet county needs, each department, agency, officer, and employee of the State and of the counties shall cooperate with and assist the office of community services in the performance of the functions, powers, and duties of the office."

SECTION 2. All functions and programs of the office of the progressive neighborhoods program, the Hawaii office of economic opportunity, the refugee resettlement program, and the state immigrant services center, are transferred to the office of community services.

All officers and employees who are exempt from chapters 76 and 77, Hawaii Revised Statutes, whose functions are transferred by this Act, shall be transferred to the office of community services and shall perform such duties as designated by the executive director of the office of community services upon their transfer, without any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, subject to the state personnel laws and this Act.

Any employee who, prior to this Act, was exempted from civil service and who may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act.

SECTION 3. Transfer of records, equipment, appropriations, authorizations, and other property. All records, equipment, machines, files, supplies, contracts, books, papers, appropriations, authorizations, documents, maps, and other property heretofore made, used, acquired, or held by the progressive neighborhoods program, the Hawaii office of economic opportunity, the refugee resettlement program, and the state immigrant services center shall be transferred with the present functions to which they relate to the office of community services.

SECTION 4. Chapter 362, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 202-9, Hawaii Revised Statutes, is repealed.

SECTION 6. If any provisions of this Act shall conflict with a provision of the Executive Order dated January 2, 1965, as amended by Executive Order 74-1, this Act shall control.

SECTION 8.¹ All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All Acts passed during this Regular Session of 1985, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such Acts specifically provide that this Act relating to "Office of Community Services" is being amended.

SECTION 9.¹ This Act shall be liberally construed in order to accomplish the purposes set forth in Section 1. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10.¹ Statutory material to be repealed is bracketed.²

SECTION 11.¹ This Act shall take effect upon its approval.

(Approved June 25, 1985.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5

ACT 306

S.B. NO. 213

A Bill for an Act Relating to Private Detectives and Guards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 463-2, Hawaii Revised Statutes, is amended to read as follows:

"§463-2 Board of private detectives and guards; appointment; qualifications; term. Appointment and removal. There shall be a board of detectives and guards consisting of [four] seven members, [three] six of whom shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. The terms of such members shall be for four years. Each term shall commence on January 1 and expire on December 31. No person shall be appointed consecutively to more than two terms, provided[,] that such membership shall not exceed eight consecutive years. The director of commerce and consumer affairs shall be an ex officio nonvoting [fourth] seventh member of the board and may designate a representative to sit in his stead.

Of the [three] six appointed members, [one] two shall be [the chief] chiefs of police of any of the four counties, [one] two shall be [a] private [citizen] citizens not engaged in any of the licensed practices, and [one] two shall be [a person] persons actively engaged in any of the licensed practices[.]; provided that one person shall be a licensed private detective and one person shall be a licensed guard.

The board shall examine applicants for [a] private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter."

PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 1985.)

PROPOSED CONSTITUTIONAL AMENDMENTS

H.B. NO. 355

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article VI, section 2 of the Constitution of the State of Hawaii. It would allow the chief justice to appoint retired intermediate appellate court, circuit court, district court and district family court judges to serve temporarily on the court level from which they retired should the need arise.

SECTION 2. Article VI, section 2, of the Constitution of the State of Hawaii is amended to read as follows:

"SUPREME COURT; INTERMEDIATE APPELLATE COURT; CIRCUIT COURTS

Section 2. The supreme court shall consist of a chief justice and four associate justices. The chief justice may assign a judge or judges of the intermediate appellate court or a circuit court to serve temporarily on the supreme court, a judge of the circuit court to serve temporarily on the intermediate appellate court and a judge of the district court to serve temporarily on the circuit court. As provided by law, at the request of the chief justice, retired justices of the supreme court also may serve temporarily on the supreme court [at the request of the chief justice], and retired judges of the intermediate appellate court, the circuit courts, the district courts and the district family courts may serve temporarily on the intermediate appellate court, on any circuit court, on any district court and on any district family court, respectively. In case of a vacancy in the office of chief justice, or if the chief justice is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in place of the chief justice."

SECTION 3. The question shall be placed on the ballot shall be as follows:

"To provide additional judges for temporary service when needed by the courts, shall the chief justice of the Hawaii supreme court be permitted to appoint retired judges from the intermediate appellate court, the circuit courts, district courts and district family courts to serve temporarily on the intermediate appellate court, any circuit court, any district court and any district family court, respectively?"

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

PROPOSED CONSTITUTIONAL AMENDMENTS

H.B. NO. 29

A Bill for an Act Proposing an Amendment to Article I, Section 13, of the Hawaii Constitution, to Change the Jurisdictional Amount Required for Jury Trials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article I, section 13, of the Constitution of the State of Hawaii to change the jurisdictional amount for jury trials in civil cases. The intent of the amendment is to allow the legislature to establish the value in controversy for jury trials.

SECTION 2. Article I, section 13, of the Constitution of the State of Hawaii is amended to read as follows:

"TRIAL BY JURY, CIVIL CASES

Section 13. In suits at common law where the value in controversy shall exceed [one thousand dollars,] an amount as determined by law, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the constitutional right to a jury trial, now limited to civil cases where the value in controversy exceeds \$1,000, be amended to preserve that right in civil cases where the value in controversy is established by the legislature?"

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

(Passed by Senate on April 1, 1985, by majority vote and passed by House on April 16, 1985, by more than two-thirds vote.)

**COMMITTEE REPORTS
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